# CONDITIONAL SALE AGREEMENT

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INTERSTATE COMMERCE COMMISSION

Dated as of February 1, 1974

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

NATIONAL RAILROAD PASSENGER CORPORATION

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AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1974

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

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Guaranty by Department of Transportation

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100 Locomotives

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## ATTACHMENTS


EXHIBIT 1—CERTIFICATE OF ACCEPTANCE

SCHEDULE A—DESCRIPTION OF EQUIPMENT

SCHEDULE B—BUILDER'S WARRANTY

# CONDITIONAL SALE AGREEMENT

**CONDITIONAL SALE AGREEMENT** dated as of February 1, 1974, 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 pursuant to the terms of a Sale and Lease Back Agreement (hereinafter called the Sale and Lease Back Agreement) dated as of February 1, 1974 between the Railroad and First Security Bank of Utah, National Association, as Trustee (hereinafter, together with any successor thereto, called the Trustee) under a Trust Agreement dated as of January 1, 1974, the Railroad has agreed to sell to the Trustee, 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 certain of its rights under this Agreement, and to lease the Equipment back from the Trustee pursuant to the terms of an Equipment Lease (hereinafter called the Lease) dated as of February 1, 1974 between the Railroad and the Trustee and the Trustee has agreed to purchase the Equipment and such rights from the Railroad, to lease the Equipment back to the Railroad pursuant to the Lease and to pay for the Equipment in the manner set forth in Article 3 of the Sale and Lease Back Agreement;

NOW, THEREFORE, in consideration of the premises and 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 June 30, 1974 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 and workmanship 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, 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 warranties 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 warranties 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. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed $46,876,584, the Builder (and any assignee of the Builder) will, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices to not more than $46,876,584 and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in such number of groups of the Equipment delivered to and accepted by the Railroad on or before June 30, 1974 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 27.1387% of the aggregate Purchase Price of the units in such Group, plus (ii) the amount by which (x) the Purchase Price of all units of Equipment for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of $34,154,889 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 27 consecutive semiannual 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 15 and July 15, commencing July 15, 1975, to and including July 15, 1988 (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(b) of the Lease, at a rate per annum equal to ¾ of 1% in excess of the prime interest rate of Bank of America National Trust and Savings Association (being the best rate of interest charged by Bank of America National Trust and Savings Association to its prime large commercial customers on short-term unsecured borrowings) from time to time in effect (hereinafter called the Interim Rate) and (ii) from and including the Assignment Date at a rate per annum equal to the Long Term Debt Rate (as hereinafter defined), which shall be set forth in a supplement hereto, entered into on or before the Assignment Date, between the Vendor and the Railroad. 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 each January 15 and July 15 following the Assignment Date; *provided, however,* if the Assignment Date occurs after July 15, 1974, interest accrued to July 15, 1974, shall be payable on that date. 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 27 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 June 30, 1974), 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; *provided, however,* that there shall not be more than one closing in any one calendar week. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the city and state in which the principal office of the Vendor or the Vendee is located are authorized to remain closed. The term "Long Term Debt Rate" as used herein means the interest rate per annum payable to the long-term institutional lenders referred to in paragraph (b) of Section 25.1 of the Lease.

Interest under this Agreement shall be calculated on the basis of a 360-day year and actual days elapsed.

The Railroad will pay, to the extent legally enforceable, interest at the Overdue Rate (as hereinafter defined) 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. The term "Overdue Rate" shall mean interest at a rate per annum equal to the interest rate payable on the Conditional Sale Indebtedness at the time the foregoing amounts become due and payable.

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.

Notwithstanding anything to the contrary contained herein, in the event that on or before January 14, 1975, the Long Term Debt Rate shall not have been specified in a supplement hereto, as hereinabove provided, or the condition provided for in Section 25.1(b) of the Lease shall have occurred, the then entire unpaid balance of the Conditional Sale Indebtedness, together with interest accrued and unpaid thereon at the Interim Rate shall become due and payable on January 31, 1975.

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 foreign, 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, foreign, 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 parts of the Equipment 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 by a plate or stenciled upon 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 and on the next succeeding date for payment of interest under Article 3 hereof, shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit or units of Equipment as of the date of such payment. 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.

In the event the Vendor receives any insurance proceeds under Section 21.1 of the Lease in respect of a Casualty Occurrence, such proceeds shall be applied in the manner provided in the first paragraph of this Article 7 and shall be deducted from the amount payable hereunder or, if such proceeds are received after full payment under this Article 7, such proceeds shall be paid to the Railroad.

ARTICLE 8. *Maintenance; Compliance with Laws and Rules.* The Railroad shall use or cause the use of the Equipment only in the United States, except that the Railroad may from time to time use or cause to be used in Canada units of Equipment provided that, during any calendar year the total use of the Equipment

in Canada shall not exceed, on an aggregate basis, more than 2% of the total aggregate use of the Equipment in the United States and Canada. The Railroad shall use the Equipment 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. 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. Any parts installed or replacements made by the Railroad upon any unit of Equipment (except radio equipment or devices having a similar use which have been added to any such unit of Equipment by the Railroad, the cost of which is not included in the Purchase Price of such unit) 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 the preceding sentences of this Article 8.

ARTICLE 9. *Reports and Inspection Rights.* On or before April 1 in each year, commencing with the year 1975, 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 reasonably imposed by any railroad, terminal company or other entity upon the property on 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 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 constitute or 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 Warranties 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 shall 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, setoff, 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 reasonably 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 Ag[re]ement within 15 days after payment thereof shall be due hereunder; or

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

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad 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

(d) 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

(e) 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

(f) 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 Overdue Rate (as defined in Article 3 hereof), 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 the Equipment or 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 contractual 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 therof, 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 deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor); 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.

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.* The table of contents and 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. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the extent provided herein.

ARTICLE 23. *Approvals of Administrator.* 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 the Railroad'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.

ARTICLE 24. *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.

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.

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*

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 22 day of March, 1974, before me personally appeared HAROLD L. SMITH , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Julia C. Clark
*Notary Public*

[NOTARIAL SEAL]

My Commission Expires: JULY 11, 1976

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss.:

On this 27 day of March, 1974, before me personally appeared Robert C. Short, 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.

Patricia A. Wallace
*Notary Public*

[NOTARIAL SEAL]

My Commission Expires:

My Commission Expires August 31, 1978

## EXHIBIT 1

## CERTIFICATE OF ACCEPTANCE

TO: GENERAL MOTORS CORPORATION (Electro-Motive Division), and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, as Trustee under Trust Agreement dated as of January 1, 1974.

I, duly appointed inspector and authorized representative of NATIONAL RAILROAD PASSENGER CORPORATION ("Railroad"), for the purpose of the Conditional Sale Agreement dated as of February 1, 1974 between General Motors Corporation (Electro-Motive Division) and the Railroad, and the Equipment Lease dated as of February 1, 1974 between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, Trustee under the Trust Agreement dated as of January 1, 1974, 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: , 1974.

Inspector and Authorized
Representative of
NATIONAL RAILROAD PASSENGER CORPORATION

## SCHEDULE A

## DESCRIPTION OF EQUIPMENT†

| Type | Quantity | Manufacturer's Specifications | Place of Acceptance | R.R. Nos. | Unit Price* | Total Price | Delivery |
|---|---|---|---|---|---|---|---|
| )0 H.P. Diesel Electric .ocomotives Model DP40F | 40 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-1 dated 8/2/73 and Purchase Order WKL-3220-009 dated 8/8/73 and Supplements 1 through 7 thereto). | McCook, Illinois | 540 through 579 (both inclusive) | $ 462,494.00 | $18,499,760.00 | 9 Locomotives in March 1974<br>31 Locomotives in April 1974 |
| )0 H.P. Diesel Electric .ocomotives Model DP40F | 55 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 580 through 634 (both inclusive) | $ 470,513.00 | $25,878,215.00 | 32 Locomotives in May 1974<br>23 Locomotives in June 1974 |
| 00 H.P. Diesel Electric .ocomotives Model DP40F | 5 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 635 through 639 (both inclusive) | $ 470,811.00 | $ 2,354,055.00 | 5 Locomotives in June 1974 |
| tal | 100 | | | | | $46,732,030.00 | |

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 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 car body, 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. Liquidated damages 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 is not in accordance with standards generally accepted in the railroad industry or which does not have the approval of the Builder. However, the Builder's guarantee shall not extend to parts that are not manufactured by the Builder and that are used in the repair or alteration of any unit. 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 Railroad agrees to indemnify, protect and hold harmless such assignee from and against any and all

liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against 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

**AGREEMENT AND ASSIGNMENT** dated as of February 1, 1974, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (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 February 1, 1974 (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 the first paragraph 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 (including Schedules A and B thereto) 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 Messrs. Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said 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) A favorable opinion of Messrs. Cravath, Swaine & Moore, dated as of such Closing Date, (1) as to the Conditional Sale Agreement and this Assignment being legal, valid and binding instruments and the vesting of security title to the units of Equipment in such Group in the Assignee and (2) setting forth that (i) no approval of the Interstate Commerce Commission 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, (ii) 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, (iii) 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 (hereinafter called the Administrator) pursuant to the Guaranty Agreement (hereinafter called the Government Guaranty), dated the date of execution and delivery of this Assignment, among the Administrator, First Security Bank of Utah, National Association, as Trustee, and the Assignee under the provisions of the Rail Passenger Service Act of 1970, as amended, and the Government Guaranty and the guaranty of the Administrator endorsed on this Assignment have been duly executed and delivered and constitute valid, binding and enforceable general obligations of the United States of America backed by the full faith and credit of the Government of the United States and (iv) 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) A favorable opinion of counsel for the Railroad, dated as of such Closing Date, as to the due authorization, execution and delivery of the Conditional Sale Agreement by the Railroad and as to the enforceability thereof under the laws of the District of Columbia, to the effect set forth in clause (2) (i) and (ii) 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;

(f) A favorable opinion of counsel for the Builder addressed to the Assignee and the Trustee (as defined in the Conditional Sale Agreement), dated as of such Closing Date, to the effect set forth in clause (1) of subparagraph (d) above;

(g) A favorable opinion of General Counsel of the Department of Transportation, in form and substance satisfactory to the Assignee, to the effect set forth in clause (2)(iii) of subparagraph (d) above and stating that all necessary approvals of the Secretary of the Treasury have been obtained;

(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;

(i) A duly executed copy of the Government Guaranty; and

(j) A favorable opinion of Canadian counsel for the Railroad, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor) and that no other filing or recordation is necessary for the protection of the rights of the Assignee under such documents in Canada or in any province or territory thereof.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion by general reference to limitations as to enforceability as imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. 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 and 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 California on the opinion of house counsel for the Assignee 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 (c) or (d) 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 subject to the provisions of Article 23 of the Conditional Sale Agreement. 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 binding 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 California; *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.

[CORPORATE SEAL]

Attest: W R Thomas
*Assistant Secretary*

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By Harold J. Smith
*Vice President*

[CORPORATE SEAL]

Attest:

*Assistant Secretary*

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By
*Vice President*

**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 March 29, 1974 among the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America, as Guarantor, First Security Bank of Utah, National Association, as Trustee, and said Assignee.

By
*Federal Railroad Administrator*
*Guarantor*

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 22 day of March, 1974, before me personally appeared HAROLD L. SMITH , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Zula C. Clair
*Notary Public*

My Commission Expires: JULY 11, 1976

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } SS.:

On this day of March, 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[NOTARIAL SEAL]

Geraldine D. Taylor
*Notary Public*

My Commission Expires: ~~My Commission Expires March 14, 1979~~

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } SS.:

On this 29 day of March, 1974, before me personally appeared John W. Ingram , to me personally known, who, being by me duly sworn, says that he is the Federal Railroad Administrator, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportaion; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Federal Railroad Administrator.

[NOTARIAL SEAL]

Geraldine D. Taylor
*Notary Public*

My Commission Expires: My Commission Expires March 14, 1979

## 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 February 1, 1974.

NATIONAL RAILROAD PASSENGER CORPORATION

By Robert C. Moot
*Vice President*

EXHIBITS A+D

# CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1974

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

NATIONAL RAILROAD PASSENGER CORPORATION

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# AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1974

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

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Guaranty by Department of Transportation

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100 Locomotives

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## ATTACHMENTS


EXHIBIT 1—CERTIFICATE OF ACCEPTANCE

SCHEDULE A—DESCRIPTION OF EQUIPMENT

SCHEDULE B—BUILDER'S WARRANTY

# CONDITIONAL SALE AGREEMENT

**CONDITIONAL SALE AGREEMENT** dated as of February 1, 1974, 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 pursuant to the terms of a Sale and Lease Back Agreement (hereinafter called the Sale and Lease Back Agreement) dated as of February 1, 1974 between the Railroad and First Security Bank of Utah, National Association, as Trustee (hereinafter, together with any successor thereto, called the Trustee) under a Trust Agreement dated as of January 1, 1974, the Railroad has agreed to sell to the Trustee, 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 certain of its rights under this Agreement, and to lease the Equipment back from the Trustee pursuant to the terms of an Equipment Lease (hereinafter called the Lease) dated as of February 1, 1974 between the Railroad and the Trustee and the Trustee has agreed to purchase the Equipment and such rights from the Railroad, to lease the Equipment back to the Railroad pursuant to the Lease and to pay for the Equipment in the manner set forth in Article 3 of the Sale and Lease Back Agreement;

NOW, THEREFORE, in consideration of the premises and 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 June 30, 1974 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 and workmanship 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, 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 warranties 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 warranties 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. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed $46,876,584, the Builder (and any assignee of the Builder) will, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices to not more than $46,876,584 and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in such number of groups of the Equipment delivered to and accepted by the Railroad on or before June 30, 1974 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 27.1387% of the aggregate Purchase Price of the units in such Group, plus (ii) the amount by which (x) the Purchase Price of all units of Equipment for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of $34,154,889 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 27 consecutive semiannual 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 15 and July 15, commencing July 15, 1975, to and including July 15, 1988 (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(b) of the Lease, at a rate per annum equal to ¾ of 1% in excess of the prime interest rate of Bank of America National Trust and Savings Association (being the best rate of interest charged by Bank of America National Trust and Savings Association to its prime large commercial customers on short-term unsecured borrowings) from time to time in effect (hereinafter called the Interim Rate) and (ii) from and including the Assignment Date at a rate per annum equal to the Long Term Debt Rate (as hereinafter defined), which shall be set forth in a supplement hereto, entered into on or before the Assignment Date, between the Vendor and the Railroad. 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 each January 15 and July 15 following the Assignment Date; *provided, however,* if the Assignment Date occurs after July 15, 1974, interest accrued to July 15, 1974, shall be payable on that date. 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 27 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 June 30, 1974), 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; *provided, however,* that there shall not be more than one closing in any one calendar week. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the city and state in which the principal office of the Vendor or the Vendee is located are authorized to remain closed. The term "Long Term Debt Rate" as used herein means the interest rate per annum payable to the long-term institutional lenders referred to in paragraph (b) of Section 25.1 of the Lease.

Interest under this Agreement shall be calculated on the basis of a 360-day year and actual days elapsed.

The Railroad will pay, to the extent legally enforceable, interest at the Overdue Rate (as hereinafter defined) 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. The term "Overdue Rate" shall mean interest at a rate per annum equal to the interest rate payable on the Conditional Sale Indebtedness at the time the foregoing amounts become due and payable.

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.

Notwithstanding anything to the contrary contained herein, in the event that on or before January 14, 1975, the Long Term Debt Rate shall not have been specified in a supplement hereto, as hereinabove provided, or the condition provided for in Section 25.1(b) of the Lease shall have occurred, the then entire unpaid balance of the Conditional Sale Indebtedness, together with interest accrued and unpaid thereon at the Interim Rate shall become due and payable on January 31, 1975.

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 foreign, 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, foreign, 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 parts of the Equipment 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 by a plate or stenciled upon 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 and on the next succeeding date for payment of interest under Article 3 hereof, shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit or units of Equipment as of the date of such payment. 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.

In the event the Vendor receives any insurance proceeds under Section 21.1 of the Lease in respect of a Casualty Occurrence, such proceeds shall be applied in the manner provided in the first paragraph of this Article 7 and shall be deducted from the amount payable hereunder or, if such proceeds are received after full payment under this Article 7, such proceeds shall be paid to the Railroad.

ARTICLE 8. *Maintenance; Compliance with Laws and Rules.* The Railroad shall use or cause the use of the Equipment only in the United States, except that the Railroad may from time to time use or cause to be used in Canada units of Equipment provided that, during any calendar year the total use of the Equipment

in Canada shall not exceed, on an aggregate basis, more than 2% of the total aggregate use of the Equipment in the United States and Canada. The Railroad shall use the Equipment 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. 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. Any parts installed or replacements made by the Railroad upon any unit of Equipment (except radio equipment or devices having a similar use which have been added to any such unit of Equipment by the Railroad, the cost of which is not included in the Purchase Price of such unit) 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 the preceding sentences of this Article 8.

ARTICLE 9. *Reports and Inspection Rights.* On or before April 1 in each year, commencing with the year 1975, 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 reasonably imposed by any railroad, terminal company or other entity upon the property on 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 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 constitute or 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 Warranties 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 shall 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, setoff, 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 reasonably 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) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad 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

(d) 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

(e) 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

(f) 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 Overdue Rate (as defined in Article 3 hereof), 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 the Equipment or 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 contractual 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 therof, 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 deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor); 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.

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.* The table of contents and 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. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the extent provided herein.

ARTICLE 23. *Approvals of Administrator.* 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 the Railroad'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.

ARTICLE 24. *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.

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.

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*

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this day of March, 1974, 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 March, 1974, 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 FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, as Trustee under Trust Agreement dated as of January 1, 1974.

I, duly appointed inspector and authorized representative of NATIONAL RAILROAD PASSENGER CORPORATION ("Railroad"), for the purpose of the Conditional Sale Agreement dated as of February 1, 1974 between General Motors Corporation (Electro-Motive Division) and the Railroad, and the Equipment Lease dated as of February 1, 1974 between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, Trustee under the Trust Agreement dated as of January 1, 1974, 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: , 1974.

Inspector and Authorized
Representative of
NATIONAL RAILROAD PASSENGER CORPORATION

## SCHEDULE A

## DESCRIPTION OF EQUIPMENT†

| Type | Quantity | Manufacturer's Specifications | Place of Acceptance | R.R. Nos. | Unit Price* | Total Price | Delivery |
|---|---|---|---|---|---|---|---|
| 00 H.P. Diesel Electric .ocomotives Model ;DP40F | 40 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-1 dated 8/2/73 and Purchase Order WKL-3220-009 dated 8/8/73 and Supplements 1 through 7 thereto). | McCook, Illinois | 540 through 579 (both inclusive) | $ 462,494.00 | $18,499,760.00 | 9 Locomotives in March 1974<br>31 Locomotives in April 1974 |
| )00 H.P. Diesel Electric Locomotives Model SDP40F | 55 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 580 through 634 (both inclusive) | $ 470,513.00 | $25,878,215.00 | 32 Locomotives in May 1974<br>23 Locomotives in June 1974 |
| 000 H.P. Diesel Electric Locomotives Model SDP40F | 5 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 635 through 639 (both inclusive) | $ 470,811.00 | $ 2,354,055.00 | 5 Locomotives in June 1974 |
| Total..... | 100 | | | | | $46,732,030.00 | |

* 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 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 car body, 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. Liquidated damages 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 is not in accordance with standards generally accepted in the railroad industry or which does not have the approval of the Builder. However, the Builder's guarantee shall not extend to parts that are not manufactured by the Builder and that are used in the repair or alteration of any unit. 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 Railroad agrees to indemnify, protect and hold harmless such assignee from and against any and all

liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against 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

**AGREEMENT AND ASSIGNMENT** dated as of February 1, 1974, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (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 February 1, 1974 (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 the first paragraph 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 (including Schedules A and B thereto) 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 Messrs. Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said 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) A favorable opinion of Messrs. Cravath, Swaine & Moore, dated as of such Closing Date, (1) as to the Conditional Sale Agreement and this Assignment being legal, valid and binding instruments and the vesting of security title to the units of Equipment in such Group in the Assignee and (2) setting forth that (i) no approval of the Interstate Commerce Commission 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, (ii) 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, (iii) 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 (hereinafter called the Administrator) pursuant to the Guaranty Agreement (hereinafter called the Government Guaranty), dated the date of execution and delivery of this Assignment, among the Administrator, First Security Bank of Utah, National Association, as Trustee, and the Assignee under the provisions of the Rail Passenger Service Act of 1970, as amended, and the Government Guaranty and the guaranty of the Administrator endorsed on this Assignment have been duly executed and delivered and constitute valid, binding and enforceable general obligations of the United States of America backed by the full faith and credit of the Government of the United States and (iv) 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) A favorable opinion of counsel for the Railroad, dated as of such Closing Date, as to the due authorization, execution and delivery of the Conditional Sale Agreement by the Railroad and as to the enforceability thereof under the laws of the District of Columbia, to the effect set forth in clause (2) (i) and (ii) 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;

(f) A favorable opinion of counsel for the Builder addressed to the Assignee and the Trustee (as defined in the Conditional Sale Agreement), dated as of such Closing Date, to the effect set forth in clause (1) of subparagraph (d) above;

(g) A favorable opinion of General Counsel of the Department of Transportation, in form and substance satisfactory to the Assignee, to the effect set forth in clause (2)(iii) of subparagraph (d) above and stating that all necessary approvals of the Secretary of the Treasury have been obtained;

(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;

(i) A duly executed copy of the Government Guaranty; and

(j) A favorable opinion of Canadian counsel for the Railroad, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor) and that no other filing or recordation is necessary for the protection of the rights of the Assignee under such documents in Canada or in any province or territory thereof.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion by general reference to limitations as to enforceability as imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. 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 and 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 California on the opinion of house counsel for the Assignee 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 (c) or (d) 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 subject to the provisions of Article 23 of the Conditional Sale Agreement. 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 binding 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 California; *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.

[CORPORATE SEAL]

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

Attest:

By .....
*Vice President*

.....
*Assistant Secretary*

[CORPORATE SEAL]

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

Attest:

By .....
*Vice President*

.....
*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 , 1974 among the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America, as Guarantor, First Security Bank of Utah, National Association, as Trustee, and said Assignee.

By .....
*Federal Railroad Administrator*
*Guarantor*

EXHIBIT C

# EQUIPMENT LEASE

**Dated as of February 1, 1974**

**between**

**FIRST SECURITY BANK OF UTAH,**
**NATIONAL ASSOCIATION, as Trustee**
**Lessor**

**and**

**NATIONAL RAILROAD PASSENGER CORPORATION,**
**Lessee**

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**Guaranty by Department of Transportation**

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**100 Locomotives**

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ATTACHMENTS

Schedule A—Description of Equipment

Schedule B—Determination of Basic Lease Rate

Schedule C—Schedule of Casualty Value

Schedule D—Schedule of Maximum Purchase Price

Schedule E—Schedule of Trustors

# EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of February 1, 1974 between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee under a Trust Agreement (the "Trust Agreement") dated as of January 1, 1974 (the "Lessor"), 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 (the "Lessee");

W I T N E S S E T H :

## SECTION 1. MANUFACTURE AND DELIVERY OF EQUIPMENT.

**1.1. Intent to Purchase, Sell and Lease.** The Lessee is purchasing certain equipment (collectively the "Equipment" and individually an "Item of Equipment") described in Schedule A attached hereto and made a part hereof pursuant to a Conditional Sale Agreement (the "Conditional Sale Agreement") dated as of February 1, 1974 with General Motors Corporation (Electro-Motive Division) (the "Manufacturer"). Upon delivery of each Item of Equipment by the Manufacturer, and the execution and delivery by and on behalf of the Lessee of a Certificate of Acceptance therefor, substantially in the form of Exhibit 1 to the Conditional Sale Agreement, the Lessee, prior to placing such Item of Equipment in service, is selling such Item of Equipment to the Lessor, subject to the provisions of the Conditional Sale Agreement, pursuant to the Sale and Lease Back Agreement (as defined in the Conditional Sale Agreement). The Lessor agrees to lease and let each such Item of Equipment to the Lessee and the Lessee agrees to hire each such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth; provided that the Acquisition Cost (as defined in Section 2.2 hereof) of all Items of Equipment leased hereunder shall not exceed an aggregate of $46,876,584.

**1.2. Inspection and Acceptance.** Upon delivery of each Item of Equipment by the Manufacturer, an authorized representative of the Lessee will inspect such Item of Equipment and if such Item of Equipment tendered for delivery appears to meet the specifications, such representative will accept delivery thereof and execute and deliver to the Manufacturer and the Lessor duplicate Certificates of Acceptance.

**1.3. Certificate of Acceptance.** The Lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's rights, if any, against the Manufacturer, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any. The execution of a Certificate of Acceptance with respect to an Item of Equipment shall constitute representation by the Lessee that it has no knowledge of any such defect in such Item of Equipment.

## SECTION 2. RENTS AND PAYMENT DATES.

**2.1. Rent for Equipment.** The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) **Interim Rent.** For each Item of Equipment, as Interim Rent (i) an amount equal to the Acquisition Cost thereof multiplied by a percentage equal to ¾ of 1% in excess of the prime interest rate of Bank of America National Trust and Savings Association (being the best rate of interest charged by Bank of America National Trust and Savings Association to its prime large commercial customers on short-term unsecured borrowings) from time to time in effect, computed on the basis of a 360-day year and actual days elapsed, for the rental period from and including the date of delivery

of a bill of sale to the Lessor for such Item of Equipment to the date on which the long-term institutional lenders (as defined in Section 25.1(b) hereof) acquire the interest of the Vendor (as defined in the Conditional Sale Agreement) pursuant to Section 25.1(b) hereof (hereinafter called "the Assignment Date"), in respect of all the Equipment, plus an amount equal to the guaranty fee payable by the Lessor, as Trustee, to the Federal Railroad Administrator of the Department of Transportation of the United States of America (the "Administrator") under the Government Guaranty (as defined in Section 15 hereof) in respect of such rental period (the "Guaranty Fee") and (ii) an amount equal to $^1/_{180}$th of the Basic Lease Rate (as defined in Section 2.1 (b) hereof of the Acquisition Cost of each Item of Equipment subject to this Lease) for each day elapsed from the Assignment Date to the Term Lease Commencement Date (as defined in Section 2.2 hereof) or the date of the Lessee's purchase of the Equipment from the Lessor pursuant to Section 25.1 hereof, whichever is later, plus an amount equal to the Guaranty Fee payable in respect of such rental period.

(b) **Periodic Rent.** For each Item of Equipment 30 semiannual installments of Periodic Rent payable in an amount equal to (i) that percentage of the Acquisition Cost (herein called the Basic Lease Rate) of such Item of Equipment set forth in Schedule B hereto opposite the applicable Long Term Debt Rate (as defined in the Conditional Sale Agreement) plus (ii) an amount equal to the Guaranty Fee payable in respect of each rental period. If the applicable Long Term Debt Rate is not expressly set forth in Schedule B, the Basic Lease Rate shall be interpolated or extrapolated from the percentages appearing in Schedule B.

**2.2. Rent Payment Dates; Acquisition Cost.** The Term Lease Commencement Date (herein "Term Lease Commencement Date") for all Items of Equipment shall be January 15, 1975. Interim Rent shall be due and payable on the Assignment Date with respect to Interim Rent accrued to such date and on the Term Lease Commencement Date with respect to Interim Rent accrued to such date; provided, however, if the Assignment Date occurs after July 15, 1974, Interim Rent accrued to July 15, 1974, shall be payable on that date. The installments of Periodic Rent for each Item of Equipment shall be due and payable semiannually following the Term Lease Commencement Date on January 15 and July 15 of each year, commencing July 15, 1975. The term "Acquisition Cost" as used herein shall mean, with respect to each Item of Equipment, the cost to the Lessor of the acquisition and delivery of such Item of Equipment (including the unpaid amount of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) with respect to such Item assumed by the Lessor).

**2.3. Place and Manner of Rent Payment.** The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available San Francisco or Federal funds (including but not limited to the payments required under Section 11 hereof) for the account of the Lessor, care of the Vendor, Bank of America Center, Box 37070, San Francisco, California 94137, attention of the National Division—Leasing (or at such other place as the Vendor shall specify in writing) on or before 10:00 a.m., San Francisco time, on the date upon which payments are due and payable. With respect to payments made in immediately available funds, the Lessee will instruct the bank transferring said funds on the Lessee's behalf to wire advice of said transfer to Bank of America National Trust and Savings Association, to the attention of its National Division—Leasing not later than 10:00 a.m. San Francisco time on the rental payment date. With respect to payments made in Federal funds, the Lessee will instruct the Bank transferring said funds on the Lessee's behalf to make said transfer to the attention of the National Division—Leasing of Bank of America National Trust and Savings Association.

**2.4. Net Lease.** This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Manufacturer of the Equipment, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment (except for any defect or failure of title resulting from acts or omissions of the Lessor) or any defect in or damage to or loss or destruction of all or any of the Equipment from

whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is made available to Lessor, or until, pursuant to Section 16, 23.1 or 25 hereof, the Lessee shall purchase the Equipment; provided, however, that neither this Section 2.4 nor any other provision of this Lease shall preclude any separate, independent claim (not by way of any abatement or reduction of any amount at any time payable by the Lessee hereunder) by the Lessee for the breach of any representation, covenant, undertaking or agreement made herein by the Lessor for itself or for the Trustors (as defined in Section 26.12 hereof).

## SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of delivery of a bill of sale to the Lessor for such Item of Equipment and subject to the provisions of Sections 11, 16 and 25 hereof shall terminate, in the case of each Item of Equipment, 15 years following the Term Lease Commencement Date.

## SECTION 4. OWNERSHIP AND MARKING OF THE EQUIPMENT.

**4.1. Retention of Title.** The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

**4.2. Duty to Number and Mark Equipment.** The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stenciled upon each side of each Item of Equipment in letters not less than one inch in height as follows:

> "Owned by a Secured Party under a Security Agreement Filed under the Interstate Commerce Act, Section 20c"

with appropriate changes thereof and additions thereto as from time to time may be reasonably requested by the Lessor in order to protect the title of the Lessor or the Vendor to such Item of Equipment and the rights of the Lessor under this Lease and of the Vendor. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease shall have been filed, recorded or deposited.

**4.3. Prohibition Against Certain Designations.** Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on transportation equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

**4.4. Indemnification for Improper Marking.** The Lessee shall indemnify the Lessor and the Trustors against any liability, loss or expense incurred by any of them as a result of any act or omission of the Lessee which is inconsistent with Sections 4.2 or 4.3 hereof.

## SECTION 5. DISCLAIMER OF WARRANTIES.

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT, AS-IS, WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) INTERFERENCE BY ANY PARTY OTHER THAN LESSOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER (other than Lessor's Warranty), IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer in respect thereof. "Lessor's Warranty" shall mean as to any property a warranty by the Lessor that: (i) the Lessor has received whatever title (subject to the security title of the Vendor) to such property as was conveyed to the Lessor by the Lessor's predecessor in title to such property; and (ii) such property will be free of all liens, charges, encumbrances, claims or security interests which either (A) result from action taken or omissions to act by the Lessor which are not expressly permitted by this Lease or which are not expressly requested or consented to by the Lessee in writing or (B) result from action taken or omissions to act by the Lessor other than with respect to the Equipment or in connection with this Lease.

## SECTION 6. LESSEE'S INDEMNITY.

**6.1. Scope of Indemnity.** Except as provided in Sections 12.3, 13, 18 and 26.1 hereof, the Lessee shall defend, indemnify and save harmless the Lessor and the Trustors from and against any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may reasonably be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements or (iv) based on any event which results in any claim for negligence or strict liability in tort.

**6.2. Continuation of Indemnities and Assumptions.** The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in clause (i), (ii) or (iv) of Section 6.1 hereof occurring after the termination of this Lease or in respect of any matters referred to in clause (iii) of Section 6.1 hereof arising out of alterations to the Equipment by the Lessor (except for any such matters occurring after such termination arising in connection with the Lessee's performance of its obligations under Sections 13 or 18 hereof). The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of any such matters indemnified against pursuant to Section 6.1 hereof, and the Lessor and the Trustors agree to cooperate with the Lessee in any such defense.

## SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance on any such Item 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 Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements, at its own cost.

## SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use or cause the use of the Equipment only in the United States, except that the Lessee may from time to time use or cause to be used in Canada Items of Equipment, provided that during any calendar year the total use of the Equipment in Canada shall not exceed, on an aggregate basis, more than 2% of the total aggregate use of the Equipment in the United States and Canada and, upon the request of the Lessor, the Lessee shall, for any calendar year specified in such request, furnish to the Lessor, within 60 days after such request, a certificate setting forth the aggregate use of the Equipment in Canada compared with the total aggregate use of the Equipment in the United States and Canada. The Railroad shall use the Equipment only in the manner for which it was designed and intended. The Lessee 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 Lessee upon any Item of Equipment (except radio equipment or devices having a similar use which have been added to any such Item of Equipment by the Railroad, the cost of which is not included in the Acquisition Cost of such Item) shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor, provided that the Lessee shall be entitled to remove any such accession so long as such removal is not inconsistent with the Lessee's obigations set forth in the preceding sentence or under Section 7 hereof.

## SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims (other than the security interest of the Vendor) against, through or under the Lessee or its successors or assigns which, if unpaid, might constitute or become a lien, security interest or a charge upon the Equipment or any Item thereof, and any liens, security interests or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims 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 Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of this Lease.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due or 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.

## SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

**10.1. Filing.** Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor), and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the security interest granted to any assignee under Section 19 hereof in, the Equipment to the reasonable satisfaction of the Lessor's or such assignees's counsel or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor and any assignee thereof hereunder evidence of all such filings, registering, recording, depositing, refiling, re-registering, re-recording and/or redepositing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and any assignee thereof hereunder. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

**10.2. Payment of Taxes.** The Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold the Lessor and each Trustor 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 Lessor's action or failure to act) imposed against the Lessor, any Trustor, the Lessee or the Equipment by any foreign, 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, transfer of title or sale to the Lessee hereunder or in connection herewith, or upon the rentals or receipts arising therefrom, or upon or with respect to this Lease, the Conditional Sale Agreement, the Sale and Lease Back Agreement hereinafter defined and any document contemplated thereby (excluding, however, foreign, Federal, state and local taxes on, or measured by, the net income of the Lessor or any Trustor); provided, however, that the Lessee 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 Lessor to the Equipment, and the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge. The Lessee agrees to assist the Lessor in the preparation, and where possible to file, on behalf of the Lessor, all required tax returns and reports relating to taxes for which the Lessee is responsible under this Section 10.2. The Lessor shall keep the Lessee informed of any claim made against the Lessor or any Trustor for the payment of any such tax, levy, impost, duty, charge or withholding. The obligations of the Lessee contained in this Section 10.2 shall survive the termination of this Lease.

## SECTION 11. PAYMENT FOR CASUALTY OCCURRENCE.

**11.1. Duty of Lessee to Notify Lessor.** In the event that any Item of Equipment shall be or become lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which does not exceed the remaining term of this Lease in respect of such Item, being hereinafter called a Casualty Occurrence), the Lessee shall within 30 days after it has knowledge of such Casualty Occurrence notify the Lessor in writing in regard thereto and specify the date such Item of Equipment was first placed in revenue service.

**11.2. Sum Payable for Casualty Loss.** The Lessee, on the rent payment date next succeeding the notification provided in Section 11.1, shall pay to the Lessor a sum equal to the Casualty Value (as defined in Section 11.5 hereof) of such Item or Items of Equipment as to which notification is given as of the date of such payment together with the rental with respect to such Item or Items of Equipment otherwise due on such date.

**11.3. Rent Termination.** Upon (but not until) payment of the Casualty Value in respect of any Item or Items of Equipment, on the date provided in Section 11.2 hereof, together with the rental with respect to such Items or Items of Equipment otherwise due on such date, the obligation to pay rent for such Item or Items of Equipment shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

**11.4. Disposition of Equipment.** The Lessee shall (unless it shall exercise the option provided in this Section 11.4), as agent for the Lessor, dispose of such Item or Items of Equipment which have suffered a Casualty Occurrence as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts of such price and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any (minus, to the extent it shall not exceed such excess, the fair market value of the modifications included therein, determined as provided in Section 23.1 hereof), to the Lessor. The Lessee may, at its option, retain any such Item of Equipment if the fair market value thereof (minus the fair market value of the modifications included therein), determined as provided in Section 23.1 hereof, shall not exceed the Casualty Value attributable thereto, or, if such fair market value (minus such fair market value of the modifications) shall exceed the Casualty Value attributable thereto and the Lessee

shall pay to the Lessor the amount of such excess. If the Lessee shall elect to retain any such Item of Equipment as aforesaid, the Lessor shall deliver to the Lessee a bill of sale therefor as provided in Section 23.1 hereof.

**11.5. Casualty Value.** The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid to the Lessor under Section 11.2 hereof (and not the date of the Casualty Occurrence) equal to that percentage of the Acquisition Cost of such Item of Equipment as set forth in the Casualty Value Schedule attached hereto as Schedule C and as provided in the last sentence of this Section 11.5. The percentages appearing in Schedule C have been computed without regard to recapture of the investment credit permitted by Section 38 and related sections of the Code (as defined in Section 15 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence before the third, fifth and seventh anniversary of the date such Unit was placed in revenue service shall be increased by the applicable percentage of the Acquisition Price set forth below.

| Anniversary of Date Placed in Revenue Service | Percentage of Acquisition Price |
|---|---|
| Third | 14.1457% |
| Fifth | 9.4305% |
| Seventh | 4.7152% |

The Lessor and Lessee agree that in the event there is a change in Section 38 and related sections of the Code adjusting the amount of recapture of the investment credit, the foregoing percentages shall be adjusted accordingly, provided that such adjustment, in the reasonable opinion of each Trustor, shall not adversely affect the after tax results of such payment to such Trustor using the assumptions which were originally used in deriving the foregoing percentages.

**11.6. Eminent Domain.** In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease in respect of such Item, the Lessee's duty to pay rent with respect to such Item shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any (to the extent such amount constitutes compensation for use of the Equipment, but not otherwise), shall be payable to and retained by the Lessor as its sole property.

## SECTION 12. REPORTS AND INSPECTION RIGHTS.

**12.1. Annual Report.** The Lessee shall furnish to the Lessor, promptly upon its becoming available, a copy of its annual report to the Congress of the United States, including the financial statements contained therein.

**12.2. Equipment Reports.** On or before April 1 in each year, commencing with the year 1975, the Lessee shall furnish to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items 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 Lease), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, (b) describing the modifications (as defined in Section 23.1(c) hereof) to the Equipment made during the preceding calendar year (or, in the case of the first such statement, for the portion thereof commencing with the date of this Lease), and (c) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

**12.3. Lessor's Inspection Rights.** The Lessor shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance

thereof during the continuance of this Lease. The foregoing right of inspection shall be subject, however, to such terms and conditions of access as may be reasonably imposed by any railroad, terminal company or other entity upon the property on which the Equipment is situate at the time of any such inspection. Lessor and each Trustor hereby jointly and severally agree to indemnify and hold harmless the Lessee, 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.

**SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.**

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, make available such Item of Equipment to the Lessor upon such tracks as the Lessor shall reasonably designate (and as to which the Lessee then has a contractual right of access), and the Lessee will arrange for the storage of such Item of Equipment on such tracks for a period not exceeding 90 days, all as directed by the Lessor upon not less than 30 days' notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same, but only on the terms and conditions set forth in Section 12.3 hereof, which Section the Lessor shall cause to be applicable to any such prospective purchaser and any such authorized representative. The making available, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so make available, store and transport the Equipment. During the storage period the Lessee shall maintain insurance on such Item of Equipment in accordance with Section 21 hereof.

**SECTION 14. LESSEE'S REPRESENTATIONS AND WARRANTIES.**

The Lessee represents and warrants that:

(a) The Lessee is a corporation duly organized under the Rail Passenger Service Act of 1970, as amended, and the laws of the District of Columbia, is in good standing under the laws of the District of Columbia and believes that it is not required to qualify to do business as a foreign corporation in any State.

(b) The Lessee is duly authorized to execute and deliver this Lease, to lease the Equipment hereunder, and to execute and deliver the Conditional Sale Agreement (including the Certificates of Acceptance provided for thereunder) and the Sale and Lease Back Agreement dated as of February 1, 1974 between the Lessor and the Lessee (herein "Sale and Lease Back Agreement") and to perform its obligations hereunder and thereunder.

(c) The execution and delivery of this Lease, the Conditional Sale Agreement (including such Certificates of Acceptance) and the Sale and Lease Back Agreement by the Lessee, and the performance by the Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of existing law or of the Articles of Incorporation or bylaws of the Lessee or, in any material respect, of any agreement binding upon the Lessee.

(d) The execution, delivery and performance of this Lease, the Conditional Sale Agreement (including such Certificates of Acceptance) and the Sale and Lease Back Agreement by the Lessee and the consummation by the Lessee of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any Federal or District of Columbia authority, or, to the Lessee's belief, any other governmental authority.

(e) This Lease, the Conditional Sale Agreement and the Sale and Lease Back Agreement are, and the Certificates of Acceptance will be when entered into, legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization and similar laws affecting the rights and remedies of lessors, creditors and secured parties.

(f) Each Item of Equipment will constitute "new section 38 property" within the meaning of Section 48(b) of the Code (as defined in Section 15 hereof), at the time of delivery of the Equipment to the Lessor under the Sale and Lease Back Agreement, the Equipment will not have been placed in service by the Lessee and no person will have claimed any investment credit or amortization or depreciation deductions with respect thereto; and each Item of Equipment will be placed in revenue service on or before June 30, 1974.

(g) Each Item of Equipment on the date of delivery thereof to the Lessor is, in the opinion of the Lessee, estimated to have a useful life of at least two years beyond the expiration of the term of the Lease and estimated to have a fair market value at the end of the term of the Lease of at least 15% of the Acquisition Cost for such Item of Equipment.

**SECTION 15. CONDITIONS TO LESSOR'S OBLIGATIONS; GOVERNMENT GUARANTY.**

The Lessor shall not be obligated to purchase any Item of Equipment to be purchased by the Lessor under the Sale and Lease Back Agreement, and to lease such Item of Equipment hereunder, unless, on the date such purchase is requested by the Lessee: (a) the Lessor shall have been furnished with a certificate signed by a duly authorized officer of the Lessee stating that (i) all of the Lessee's representations and warranties in Section 14 of this Lease are true and correct as though made as of such date, (ii) no litigation or governmental proceedings are pending or, to the Lessee's knowledge, threatened against the Lessee which may to a material extent adversely affect the continued operation of the Lessee, and (iii) no event of default, or event which might mature into an event of default, has occurred or is continuing; (b) the Government Guaranty shall have been executed and delivered by the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation, the Lessor and the Vendor, and shall be in full force and effect; (c) the Lessee shall have furnished in form and substance reasonably satisfactory to the Lessor: (i) resolutions of the Board of Directors of the Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Equipment hereunder and the execution, delivery and performance of this Lease, the Conditional Sale Agreement and the Sale and Lease Back Agreement, (ii) evidence of compliance with the insurance provisions of Section 21 of this Lease, (iii) a favorable opinion of counsel for the Lessee regarding the matters set forth in paragraphs (a) through (e) of Section 14 of this Lease (except that (A) with respect to paragraph (c) such counsel's opinion may be limited to Federal and District of Columbia laws and, insofar as it covers "any agreement binding upon the Lessee", may be qualified to relate only to agreements of which such counsel has knowledge, (B) with respect to paragraphs (a) and (d) such counsel's opinion need not extend to matters expressed as the belief of the Lessee, and (C) with respect to paragraph (e) such counsel's opinion insofar as it covers enforceability of any of the instruments referred to therein need relate only to the enforceability thereof under the laws of the District of Columbia), and stating that the Lease and the Sale and Lease Back Agreement have been duly filed 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 Lessor under such instruments in any state of the United States of America or in the District of Columbia, (iv) such releases, financing statements, waivers and other documents as the Lessor may reasonably request to insure that the Equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest (other than the security interest created by the Conditional Sale Agreement), (v) an opinion of the general counsel of the Department of Transportation, in form and substance satisfactory to the Lessor, that the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation has the power under the Rail Passenger Service Act of 1970, as amended, to execute and deliver the Government Guaranty, that such execution and delivery has been duly authorized, and that 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 all necessary approvals of the Secretary of the Treasury have been obtained, and (vi) an opinion of special Canadian counsel for the Lessee stating that the Lease and the Sale and Lease Back Agreement have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor) and no other filing or recordation is necessary for the protection of the rights of the Lessor under such instruments in Canada or in any province or territory thereof; (d) the Lessor shall have been furnished with an opinion of special

counsel to the Lessor, in form and substance satisfactory to the Lessor, with respect to Section 5 of the Government Guaranty; and (e) the Lessor shall have been furnished with copies of all of the documents delivered to Bank of America National Trust and Savings Association, as assignee, pursuant to Section 4 of the Agreement and Assignment dated as of February 1, 1974, between the Manufacturer and Bank of America National Trust and Savings Association. The "Government Guaranty", as that term is used in this Lease, shall mean the Guaranty Agreement, dated the date of execution and delivery of this Lease, among the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation, the Lessor and Bank of America National Trust and Savings Association, as assignee of the Manufacturer under the Conditional Sale Agreement.

Notwithstanding any other provisions of this Lease, the Lessor shall not be obligated to make payment for any Item of Equipment if on or prior to the requested date of payment there shall have been any amendment, modification, addition or change (other than a change in tax rates) made in or to the provisions of the Internal Revenue Code of 1954, as amended (the "Code"), the Treasury Regulations under the Code (including the Treasury Regulations relating to the Asset Depreciation Range System of depreciation under Section 167(m) of the Code), published Internal Revenue Service Revenue Procedures, published Internal Revenue Service Revenue Rulings or other published Internal Revenue Service administrative interpretations, or applicable judicial precedents (any of the foregoing being hereinafter referred to as a "Change in Tax Law"), which Change in Tax Law in the reasonable written opinion of Messrs. Foley & Lardner (a copy of which opinion shall be furnished to the Lessee), might reasonably be expected to preclude Trustors from claiming tax benefits on a basis that is at least as favorable as that to which Trustors would be entitled under the Internal Revenue Service ruling referred to in Section 25.1(a) hereof (whether or not such ruling has been issued) or from taking (a) investment credit at the rate of 7% on the full Acquisition Cost for the Equipment on the basis that such property is "new section 38 property" or (b) depreciation deductions with respect to the full Acquisition Cost for the Equipment over an asset depreciation period of 12 years to a gross salvage value of 15% of Acquisition Cost, as reduced by 10% of the Acquisition Cost as provided in Section 167(f) of the Code, computed initially under the double declining balance method of depreciation provided in Section 167(b)(2) of the Code and then changing to the sum-of-the-years digits method of depreciation provided in Section 167(b)(3) of the Code, with the annual allowance determined without reduction for salvage.

**SECTION 16. RIGHT OF LESSOR TO TERMINATE FOR TAX REASONS.**

**16.1. Events Giving Rise to Right to Terminate.** If, in the reasonable written opinion of Messrs. Foley & Lardner (rendered promptly after the occurrence of any of the events specified in clauses (a), (b), (c) or (d) of this sentence), either

(a) the Internal Revenue Service shall have questioned the validity or applicability of any Internal Revenue Service Ruling issued pursuant to Section 25.1(a) hereof; or

(b) such Ruling shall have ceased to be in full force and effect; or

(c) any Change in Tax Law shall have occurred which will materially adversely affect the Trustor's ability to realize tax benefits on a basis that is at least as favorable as that to which the Trustors would otherwise have been entitled under such Ruling; or

(d) the Lessee takes or fails to take any action whatsoever which would cause any item of Equipment to cease to be "section 38 property" within the meaning of Section 48(b) of the Code (as defined in Section 15 hereof)

(any of the foregoing being hereinafter referred to as a "Loss of Tax Benefits"); then the Lessor shall, promptly upon such Loss of Tax Benefits, notify the Lessee of such occurrence (which notice shall be accompanied by a copy of such opinion and by a statement of the material facts on the basis of which it is claimed that any Loss of Tax Benefits has occurred) and the Trustors shall forbear payment of any tax claimed for at least 30 days after the giving of such notice. Within 30 days after the giving of such notice, the Lessee shall give to the Lessor and the Lessor shall give to the Lessee notice of the Lessee's or the Trustors' decision, as the case may be, as to whether or not such Loss of Tax Benefits shall be contested pursuant to Section 16.3 hereof. In the event that there shall be a contest of such Loss of Tax Benefits pursuant to Section 16.3 hereof and there is a termination of such contest sustaining such Loss of Tax Benefits (or if the parties decide that there shall be no contest of such Loss of Tax Benefits or if the Lessee shall admit in writing to the Lessor the applicability of the first proviso to the first sentence of Section 16.2 hereof), the Lessor shall, within 30 days of such termination (or decision not to contest or admission in

writing by the Lessee), notify the Lessee whether or not the Trustors will require the Lessee to purchase all or any part of the Equipment subject to such Loss of Tax Benefits, and, if such purchase is required, the Lessee shall purchase, on the next rent payment date hereunder, from the Lessor such Items of Equipment then subject to this Lease as are specified in such notice for a purchase price determined as of the date of payment hereunder by subtracting (i) the unpaid principal amount of the Conditional Sale Indebtedness applicable to such Items of Equipment, from (ii) the sum of (x) the aggregate Casualty Value for such Items of Equipment and (y) any other amounts owing by the Lessee to the Lessor hereunder. Such purchase price shall be payable at the office of the Lessor in Salt Lake City, Utah, in immediately available funds against delivery by the Lessor of a bill of sale conforming to the requirements of Section 23.1(a) hereof, except that such conveyance shall be subject to the security title of the Vendor, provided that such purchase price shall be increased by any amount payable by the Lessee to the Lessor as damages pursuant to Section 16.2 hereof. If, on the date of payment of such purchase price, any amount payable by the Lessee to the Lessor as damages pursuant to Section 16.2 hereof has not been determined, such amount shall be payable promptly following the determination thereof.

**16.2. Limitation on Rights of Lessor and Trustors.** Except as provided in Section 16.1 hereof, neither the Lessor nor any Trustor shall have any claim or right whatsoever against the Lessee based upon a Loss of Tax Benefits; provided, however, that if any Trustor can sustain the burden of proving (or the Lessee shall admit in writing) that either of the events contemplated by Section 16.1(a) or Section 16.1(b) hereof has resulted in material part from (i) any information furnished by the Lessee to the Lessor for uses relating to such Ruling (and certified by an officer of the Lessee) proving to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, (ii) the Lessee, or any officer, employee, agent or counsel thereof, failing to state any material fact in connection with the obtaining of such Ruling, (iii) the Lessee, or any officer, employee, agent or counsel thereof, taking or failing to take any action whatsoever (including, without limitation, any action in respect of the Lessee's income tax returns) which is inconsistent with or in contravention of any of the matters set forth in such Ruling or which constitutes a breach of any representation or warranty set forth in clauses (f) and (g) of Section 14 hereof, then the Lessee shall pay to the Lessor, as part of the purchase price under Section 16.1 hereof, the amount of any damages, including any Loss of Tax Benefits not otherwise provided for by payment of the amounts specified in Section 16.1 hereof (but not exceeding in any event the excess of the amount (hereinafter the "Maximum Purchase Price") provided for in Schedule D attached hereto and made a part hereof over the amount provided for in Schedule C, both amounts being determined as of the date of payment under Section 16.1 hereof), which have resulted in material part from any of the matters referred to in the preceding clauses (i), (ii) or (iii) hereof; provided, further, however, that neither the Lessor nor any Trustor shall be entitled to such damages unless it shall, upon the occurrence of either of the events contemplated by Section 16.1(a) or Section 16.1(b) hereof, promptly give the notices contemplated by, and otherwise proceed in accordance with, Section 16.1 hereof. Under no circumstances shall the Lessee have any responsibility to the Lessor or any Trustor for the tax consequences attributable to any period prior to the issuance of such Ruling (except as for tax consequences resulting from a breach of any representation or warranty set forth in clauses (f) and (g) of Section 14 hereof) or, if such Ruling is not issued, to any period whatsoever; provided, however, that this sentence shall not affect the Lessee's obligations to purchase the Equipment under Section 25.1 hereof.

**16.3. Contest of Loss of Tax Benefits.** In the event that the Lessee requests that a Loss of Tax Benefits be contested (or in the event that the parties shall mutually agree to such contest), (a) the Trustors agree to take such action in respect to such contest as the Lessee shall reasonably request in writing from time to time and to keep the Lessee informed as to the progress of such contest, but only if the Lessee shall have (i) made provision to reimburse the Trustors in a manner satisfactory to them for the Lessee's share (as provided in Section 16.4 hereof) of all reasonable costs and expenses (including, without limitation, legal fees and expenses) which the Trustors may incur in connection with such contest and (ii) in the event that the Lessee shall have requested the Trustors to contest a Loss of Tax Benefits (with which request the Trustors do not agree), furnished the Trustors with an opinion of independent tax counsel, reasonably satisfactory to the Trustors, to the effect that a reasonable defense exists to such claim and (b) the Lessee shall have the right to approve counsel for the Trustors, which approval shall not be

unreasonably withheld; provided, however, that each Trustor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such contest and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Court of Claims, as such Trustor shall elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed.

**16.4. Expenses.** In the event that the Lessor or the Lessee, as the case may be, shall have given notice requesting a contest of a Loss of Tax Benefits, to which decision the other party does not agree, the party requesting such contest shall bear the full expense of such contest, except that, if the position of the party requesting such contest shall be sustained, the other party shall reimburse the party requesting such contest for one-half of the reasonable expenses of such contest. In the event that both the Lessee and the Lessor shall mutually agree that such Loss of Tax Benefits shall be contested, the expenses of such contest shall be borne equally by the Lessor and the Lessee.

**SECTION 17. EVENTS OF DEFAULT.**

(a) The following shall be events of default hereunder:

(i) Default, and continuance thereof for 15 days, in the payment of any rent or other amount hereunder;

(ii) The Lessee shall, for more than 30 days after the Lessor shall have demanded in writing thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Lease 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 Lessor for such compliance;

(iii) Any representation or warranty made by the Lessee in this Lease is untrue in any material respect, or any statement, report, schedule, notice, or other writing furnished by the Lessee to the Lessor in connection herewith is untrue in any material respect, on the date as of which the facts set forth are represented, warranted, stated or certified;

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

(v) Any other proceeding shall be commenced by or against the Lessee 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 rents and other amounts 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 Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee 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;

(vi) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or any unauthorized transfer of the right to possession of any Item of the Equipment; or

(vii) The Government Guaranty shall, for any reason, cease to be in full force and effect.

When used herein, unless the context otherwise requires, the term "event of default" shall mean any event described in the foregoing clauses (i) through (vii) and the term "event which might mature into an event of default" shall mean any event which with the lapse of time, or with notice to the Lessee and lapse of time, would constitute an event of default. To the extent of its knowledge thereof, the Lessee shall give the Lessor prompt notice of any event of default or of any event which might mature into an event of default.

(b) Upon the happening of an event of default, the Lessor shall (except to the extent otherwise required by law) be entitled to:

(1) proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;

(2) repossess any or all Items of Equipment without prejudice to any remedy or claim hereinafter referred to;

(3) elect to sell any or all Items of Equipment, after giving 30 days' notice to the Lessee, at one or more public or private sales and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Casualty Value of such Items of Equipment on the date such notice is given, (ii) all rent owing or accrued hereunder to and including the date such notice is given, (iii) all costs and expenses (including sales tax) reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and selling such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all reasonable costs and expenses, including (without limitation) legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (B) the amount received by the Lessor upon such public or private sales of such Items of Equipment;

(4) upon notice to the Lessee receive prompt payment from Lessee of an amount equal to the aggregate Casualty Value on the rental payment date next preceding the date such notice is given of all Items of Equipment which have not been sold by the Lessor pursuant to clause (3) above plus, to the extent not otherwise recovered from the Lessee pursuant to said clause (3) above, (i) any rent owing or accrued hereunder to and including the date such notice is given, (ii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Items of Equipment, (iii) all other amounts owing by the Lessee hereunder, whether as additional rent, indemnification or otherwise, and (iv) all reasonable costs and expenses, including (without limitation) legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder; provided that upon receipt of payment in full of such amount, the Lessor shall deliver to the Lessee a bill of sale for the Items of Equipment then subject to this Lease as provided in Section 23.1 hereof;

(5) by notice to the Lessee declare this Lease terminated without prejudice to the Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(6) avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses (3) and (4) of this paragraph (b) shall each include, without limitation, interest at the Overdue Rate (as defined in the Conditional Sale Agreement), to the date of receipt by the Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately preceding the date on which notice is given under said clause, from the respective due dates of such installments, and interest at said rate on all other reasonable costs, expenses and losses for which the Lessor is entitled to payment under said clause from the respective dates incurred by the Lessor.

It is agreed that the rights and remedies of the Lessor hereunder shall be subject to the rights and remedies of the Vendor.

## SECTION 18. RETURN OF EQUIPMENT UPON DEFAULT.

**18.1. Lessee's Duty to Return.** If the Lessor shall terminate this Lease pursuant to Section 17 hereof, the Lessee shall forthwith make the Equipment available to the Lessor and store and transport the Equipment as provided in Section 13 hereof.

**18.2. Specific Performance.** The making available, storage and transporting of the Equipment as provided in this Section 18 are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so make available, store and transport the Equipment.

**18.3. Lessor Appointed Lessee's Agent.** Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 18, the Lessee (to the extent of its corporate power) hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to make available any Items of Equipment to the Lessor pursuant to Section 17 hereof, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## SECTION 19. ASSIGNMENTS BY LESSOR; SUCCESSOR TRUSTEES.

**19.1. Assignments by Lessor.** The benefits of this Lease shall be assignable (but only as an entirety) by the Lessor without the consent of the Lessee to a single institutional corporate agent or trustee acting for institutional corporate lenders, or to a single institutional corporate lender, of recognized standing, or to any agency or instrumentality of the United States Government, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor; provided that any such assignment by the Lessor (other than to the Vendor as collateral security) shall make appropriate provision for the assumption by the assignee of the obligations of the Lessor under the Sale and Lease Back Agreement. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee at the place and in the manner set forth in Section 2.3. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in the Lessor's title (except for any defect or failure of title resulting from acts or omissions of the Lessor), or any interruption from whatsoever cause (other than from a wrongful act of the Lessor or the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever, and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except as aforesaid, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right (except as otherwise provided in such assignment) to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor. The term "Lessor" as used in this Lease shall mean the original Lessor, any permitted assignee and any successor trustee appointed in accordance with the provisions of Section 19.2 hereof.

**19.2. Successor Trustees.** The Lessee agrees that in the case of the appointment of any successor trustee in accordance with the terms of the Trust Agreement, such successor trustee shall, upon written notice of such appointment to the Lessee by the Lessor, succeed to all the rights, powers and title (subject to the obligations) of the Lessor hereunder, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment of a successor trustee shall not preclude the further appointment of successor trustees. Any successor trustee shall be a bank or trust company incorporated under the laws of the United States or of any state thereof, having its principal place of business in the United States of America and having a combined capital and surplus of at least $100,000,000 and a member of the Federal Reserve System.

**19.3. Successor Trustors.** The Lessor agrees that the Trust Agreement shall contain irrevocable provisions such that any successor Trustor or Trustors thereunder shall be limited to corporations which are (a) formed under the laws of the United States or of any state thereof and (b) financial institutions, or financing corporations, of recognized standing.

**SECTION 20. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.**

**20.1. Lessee's Rights to the Equipment.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, subject to Section 20.2 hereof, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 20.2 hereof.

**20.2. Use and Possession by Lessee.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and/or use of the Equipment (by itself or by others on its behalf) in accordance with the terms hereof upon the rail lines over which the Lessee conducts, or has conducted for it, rail passenger service.

**20.3. Merger, Consolidation or Acquisition of Lessee.** Nothing in this Section 20 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation, governmental agency or other entity (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

**SECTION 21. INSURANCE.**

**21.1. Lessee's Covenant to Carry Insurance.** The Lessee will cause to be carried and maintained at all times and at its own expense during the term of this Lease physical damage and public liability insurance covering the Equipment in the name of the Lessor, the Vendor and the Lessee (as their interests may appear) in such form as is commonly maintained on comparable equipment by companies similarly situated. In all events the Lessee will cause to be carried and maintained in the name of the Lessor, the Vendor and the Lessee (as their interests may appear) insurance against all risks of physical damage to the Equipment as provided under a standard all-risk policy. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with the Lessee, the Vendor and the Lessor and will be payable to the Lessor, the Vendor and the Lessee as their respective interests shall appear. It is agreed that the standard all-risk policy shall provide coverage of at least $5,500,000, and may provide for a deductible of not more than $500,000, with respect to any one loss, and that the public liability policy shall provide coverage of at least $40,000,000, and may provide for a deductible of not more than $2,000,000, with respect to any one loss. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Items suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to Section 11 hereof. If the Lessor shall receive any such net insurance proceeds after the Lessee shall have made payments pursuant to Section 11 hereof, without deduction for such net insurance proceeds, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to an Item paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

**21.2. Evidence of Insurance.** The policies of insurance required under this Section 21 shall be valid and enforceable policies issued by insurers of recognized responsibility reasonably acceptable to the Lessor. Upon the execution of the first Certificate of Acceptance, and thereafter not less than 10 days prior to the expiration dates of any expiring policies theretofore furnished under this Section 21, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by the Lessee to the Lessor except that the Lessor may accept copies of the policies and certificates of insurance in lieu of original policies. Such policies may be blanket policies covering other equipment not covered by this Lease, provided that any blanket policy shall in an accompanying certificate of insurance or rider

specifically designate the Items of Equipment as being included therein and covered thereby to the full extent of the amounts herein required and shall name the Lessor and the Vendor as insured parties thereunder with respect to such Items of Equipment. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least 10 days' prior written notice to the Lessor and the Vendor and that the insurer will give notice to the Lessor and the Vendor in the event of nonpayment of premiums by the Lessee when due.

**SECTION 22. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.**

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts reasonably expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also, as additional rent hereunder, an amount equal to the Overdue Rate (as defined in the Conditional Sale Agreement) on the overdue rentals and such amounts so expended for the period of time during which they are overdue or expended and not repaid.

**SECTION 23. OPTIONS TO PURCHASE AND RENEW.**

**23.1. Option to Purchase.** Provided that the Lessee is not in default, the Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all but not less than all of the Equipment at the expiration of the term of this Lease (including any renewal term) at a price equal to the "fair market value" (as hereinafter defined). The Lessee shall give the Lessor notice 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds then current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing Lessor's Warranty, but without any other representation or warranty, express or implied, as to the condition of the Equipment or any other matters. Notwithstanding the giving of notice by the Lessee as aforesaid, the Lessee shall not be obligated to purchase the Equipment if the Lessee shall advise the Lessor within 15 days after the determination of the option price under this Section 23.1 that the Lessee has decided not to purchase the Equipment.

(b) The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise the purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within 90 days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company or its successor. Costs incurred in connection with any such appraisal shall be borne equally by the Lessor and the Lessee.

(c) There shall be deducted from the option price payable hereunder an amount equal to the portion of the fair market value of the Equipment which is attributable to modifications (as hereinafter defined) to the Equipment which resulted in an increase in the fair market value of the Equipment, determined as above provided, as of the date of determination, as compared with the fair market value the Equipment would have had, as of the date of determination, without such modifications, determined as above provided. "Modifications" shall mean any one or more change(s) to an Item of Equipment not included in normal repairs, maintenance and replacements required by Section 8 hereof and the initial cost of which (including installation) shall in the aggregate have exceeded $5,000. The term "fair market value of the modifications" shall mean, when used elsewhere in this Lease, the portion of the fair market value of an Item of Equipment which is attributable to modifications, determined as aforesaid.

(d) Unless the Lessee has given the Lessor 180 days' notice as required in connection with exercise of the foregoing option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 13 hereof.

Notwithstanding any election of the Lessee to purchase, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase unless the purchase price has been agreed upon by the parties pursuant to this Section 23, in which event such purchase price shall govern.

**23.2. Option to Renew.** Provided that the Lessee is not in default, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to such Items of Equipment as it may elect for four additional renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease excepting only that the Periodic Rent for each such renewal term, which shall be payable semiannually in arrears during each such term, shall be an amount equal to the "fair market rental value" (as hereinafter defined) of such Equipment. Each such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor notice not less than 90 days prior to the end of the original term or of the then current renewal term of its election to exercise any renewal option provided for by this Section 23.2. Notwithstanding the giving of any notice by the Lessee as aforesaid, the Lessee shall not be obligated to renew and extend this Lease for the renewal term covered by such notice if the Lessee shall advise the Lessor within 45 days after the determination of the rental for such renewal term under this Section 23.2 that the Lessee has decided not to rent the Equipment for such renewal term.

(b) The "fair market rental value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market rental value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise any renewal option, the fair market rental value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market rental value is not so determined within 60 days after receipt by the Lessor of the Lessee's election to renew, the same shall be determined by American Appraisal Company or its successor. Costs incurred in connection with any such appraisal shall be borne equally by the Lessor and the Lessee.

(c) There shall be deducted from the rental payable hereunder for any renewal term an amount equal to the portion of the fair market rental value of the Equipment which is attributable to modifications to the Equipment which resulted in an increase in the fair market rental value of the Equipment, determined as above provided, for such renewal term, as compared with the fair market rental value the Equipment would have had, for such renewal term, without such modifications, determined as above provided.

## SECTION 24. CONCERNING THE LESSOR.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Lessor, while in form purporting to be the representations, covenants, undertakings and agreements of First Security Bank of Utah, National Association, are nevertheless each and every one of them made and intended not as personal representations, covenants and undertakings and agreements of it in its individual corporate capacity or for the purpose or with the intention of binding it in its individual corporate capacity, but are made and intended for the purpose of binding only the Trust Estate as that term is used in the Trust Agreement (a true copy of which Trust Agreement has been delivered by the Lessor to the Lessee, initialled for identification by an Authorized Officer of the Lessor) the Trustee under such Trust Agreement is the Lessor hereunder, and this Lease is executed and delivered by First Security Bank of Utah, National Association, not in its own right but solely in the exercise of the powers conferred upon it as trustee under the Trust Agreement; and no liability or responsibility in it

individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against said Association, or any incorporator or any past, present or future subscriber to the capital stock of said Association, on account of this Lease or the Sale and Lease Back Agreement or on account of any representation, covenant, undertaking or agreement of said Association in this Lease or the Sale and Lease Back Agreement contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Except as provided in Section 26.10 hereof, each representation, covenant, undertaking and agreement herein made on the part of the Lessor (including, without limitation, the Lessor's Warranty set forth in Section 5 hereof), for itself or for the Trustors, shall be deemed to have been made by each Trustor, to the extent of its pro rata interest, as well as by the Lessor. The Lessor hereby represents to the Lessee that it has full and irrevocable power and authority to bind each Trustor in accordance with the preceding sentence.

## SECTION 25. MANDATORY PURCHASE OF ITEMS OF EQUIPMENT BY LESSEE UNDER CERTAIN CONDITIONS.

**25.1. Purchase on or before January 31, 1975.** If on or before January 14, 1975:

(a) The Internal Revenue Service for any reason whatsoever (other than a default by the Lessor under its obligation set forth in Section 25.6 hereof) shall not have issued to the Trustors and the Lessee a favorable tax ruling (which shall not have been affected by any Change in Tax Law which in the reasonable written opinion of Messrs. Foley & Lardner (a copy of which opinion shall be furnished to the Lessee) might reasonably be expected to preclude the Trustors from claiming tax benefits on a basis that is at least as favorable as that to which the Trustors would be entitled under such ruling) to the effect that:

1. The organization created by the Trust Agreement will be a partnership subject to Subchapter K, Chapter 1 of Subtitle A of the Code and the Trustors shall take into account in computing their respective taxable incomes and credits their proportionate shares of the items of income, gain, loss, deduction, or credit of such partnership.

2. The partnership created by the Trust Agreement will be considered the owner, lessor and original user of the Equipment.

3. The Lease is a true lease under which the partnership created by the Trust Agreement is the lessor and the Lessee is the lessee.

4. The partnership created by the Trust Agreement will have a cost basis in the Equipment for purposes of computing the investment credit and depreciation deductions with respect thereto which will include the Acquisition Cost and all other items properly included under Section 1012 of the Code.

5. The partnership created by the Trust Agreement may elect to use the Class Life Asset Depreciation Range System with respect to the Equipment pursuant to Section 167(m) of the Code and Treasury Regulation § 1.167(a)-11 and may elect to use the "modified half-year convention" pursuant to Treasury Regulation § 1.167(a)-11(c)(2)(ii) and the elections by the partnership under Treasury Regulation § 1.167(a)-11 will not constitute an election by any Trustor with respect to any eligible property separately placed in service by such Trustor.

6. The Equipment falls within Asset Guideline Class 00.25 of Revenue Procedure 72-10, I.R.B. 1972-8, 13, and may be assigned an asset depreciation period of 12 years.

7. The partnership created by the Trust Agreement may elect to compute depreciation deductions with respect to the Equipment using a method of depreciation consisting initially of the declining balance method using a rate not exceeding twice the straight line rate and thereafter may switch to the sum-of-the-years digits method and thereafter to the straight line method without the consent of the Commissioner, pursuant to Section 167(m) of the Code and Treasury Regulation § 1.167(a)-11.

8. Since neither the Lessor nor any of the Trustors will elect to treat the Lessee as having acquired the Equipment pursuant to Section 48(d) of the Code, each Trustor, pursuant to Section 38 of the Code, will be entitled to take into account its proportionate share of the investment credit attributable to the entire cost basis of the Equipment.

9. Each Trustor will be entitled to take into account its proportionate share of the amounts paid or accrued as interest with respect to the Conditional Sale Indebtedness and the interim loan to the Lessor pursuant to Section 163(a) of the Code.

10. The Lessee may deduct the rental payments made under the Lease pursuant to Section 162(a)(3) of the Code; or

(b) The Lessee shall not have arranged for long-term institutional lenders (the "long-term institutional lenders") to acquire from the Vendor (and the long-term institutional lenders shall not have acquired) the interest of the Vendor under the Conditional Sale Agreement at a price equal to the unpaid Conditional Sale Indebtedness, all on such reasonable terms and conditions (including any amendments to this Lease and the Conditional Sale Agreement, approved by the Administrator and the Secretary of the Treasury, to reflect the interest rate to be paid to the long-term institutional lenders, and any other documents executed in connection with this Lease and the Conditional Sale Agreement, which may reasonably be required) as shall be reasonably satisfactory in form and substance to such institutional lenders and to the Lessor;

then the Lessee hereby unconditionally agrees that it will, on or before January 31, 1975, purchase from the Lessor each Item of Equipment theretofore delivered hereunder to the Lessor by paying to the Lessor, at the office of the Lessor in Salt Lake City, Utah, in immediately available funds, an amount equal to the sum of the following: (i) the aggregate Acquisition Cost for all of the Items of Equipment, (ii) the amount of all fees and expenses payable to the Lessor for its services as Trustee, (iii) the amount of all out-of-pocket expenses (including an amount equal to ½ of 1% of the Conditional Sale Indebtedness which long-term institutional lenders have committed to acquire and all attorneys' fees (not to exceed $35,000) and disbursements and the cost of printing all documents) reasonably incurred by the Lessor in connection with the transaction contemplated by this Lease, and (iv) any rent accrued and unpaid to the date of such purchase.

(c) The Lessee shall certify to the Lessor in writing that, in the judgment of the Lessee, the conditions set forth in this Section 25.1 cannot be complied with on or before January 15, 1975, then at any time on or before January 31, 1975, the Lessee may, on not less than 10 days' prior notice to the Lessor, require the Lessor to sell to the Lessee each Item of Equipment theretofore delivered hereunder to the Lessor for the purchase price determined in accordance with the provisions of this Section 25.1.

**25.2. Purchase of Items of Equipment by Lessee after Term Lease Commencement Date.** If, at any time on or after the Term Lease Commencement Date, the Lessor shall, by reason of the application of Section 17(a)(vii) hereof, be entitled to proceed under Section 17(b) hereof, then the Lessee hereby unconditionally agrees that it will, upon the written request of the Lessor, purchase from the Lessor the Equipment by paying to the Lessor, as the purchase price therefor, within 10 days after such written request, at the office of the Lessor in Salt Lake City, Utah, in immediately available funds, an amount equal to the sum of (i) the aggregate Casualty Value (as determined as of the rent payment date coincident with or next preceding the date of payment under this Section 25.2) for all of the Equipment, (ii) any rent accrued and unpaid on the Equipment to and including the date of such payment under this Section 25.2 and (iii) any other amounts owing by the Lessee to the Lessor hereunder.

**25.3. Borrowing on Guaranty.** The Lessee agrees, if it shall become necessary, to obtain the funds for any purchase required under Section 16 hereof or this Section 25 by using the guaranty authority of the Secretary of the Department of Transportation which has been set aside for such purpose pursuant to the Government Guaranty.

**25.4. Conveyance by Lessor.** On the date of any purchase of an Item of Equipment as above provided in this Section, the Lessor will sell such Item of Equipment to the Lessee by delivering to the Lessee, without representation or warranty of any kind, express or implied (other than Lessor's

Warranty), a bill of sale covering such Equipment purchased by the Lessee. Any cost, expense or sales or use tax incurred by the Lessor or the Lessee, in connection with the sale and purchase of such Equipment, shall be paid by the Lessee, and the Lessor shall have no duty or liability whatsoever with respect to such sale and purchase except as expressly provided in the preceding sentence hereof. In the case of each such Item of Equipment purchased by the Lessee, the Lessee shall be liable for all of its indemnities under Sections 6 and 10.2 hereof with respect to such Equipment as to events occurring prior to, but not after, the date of such purchase.

**25.5. Satisfaction of Obligation to Pay Casualty Value.** If the Lessee shall purchase the Equipment pursuant to this Section 25, it shall have the right to satisfy any obligation it may have to pay Casualty Value for the Equipment because of the happening of a Casualty Occurrence by purchasing such Equipment in accordance with the terms of this Section 25.

**25.6. Internal Revenue Service Ruling.** The Lessor shall, as promptly as practicable, prepare and file a request for the Internal Revenue Service ruling referred to in Section 25.1 hereof, and each of the Lessor and Lessee shall use its reasonable efforts to cause such ruling to issue at the earliest practicable date and shall keep each other reasonably informed as to the status of such request.

**SECTION 26. MISCELLANEOUS.**

**26.1. Fees.** The Lessor and the Lessee agree that there has been no third party, other than ITEL Leasing Corporation and Salomon Brothers, involved as agent, broker or finder in connection with this Lease, and the Lessee indemnifies the Lessor and Trustors from liability for fees, commissions or other claims of any agent, broker or finder, acting pursuant to purported authority granted by the Lessee, made upon the Lessor or Trustors and the Lessor and each Trustor indemnifies the Lessee from liability for fees, commissions or other claims of any agent, broker or finder, acting pursuant to purported authority granted by the Lessor or such Trustor, made upon the Lessee, except in each case for the fee payable to ITEL Leasing Corporation and Salomon Brothers. The payment of such fee shall be the sole responsibility of the Lessor and the Lessor hereby agrees to pay such fee.

**26.2. Lessor is Owner.** This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to the Lessee any right, title or interest in any Item of Equipment except as a lessee only. The Lessor and the Lessee agree that for all Federal, state and local income tax purposes the Lessor, on behalf of Trustors, will be the owner and lessor of the Equipment and that the Lessee will be the lessee. In addition, nothing contained herein shall be construed as an election by the Lessor or Trustors to treat the Lessee as having acquired any Item of Equipment for purposes of the investment credit allowed by Section 38 of the Code, and the Lessor, the Trustors and the Lessee agree that they will not make such an election.

**26.3. Trustee's Fees.** The Lessee agrees to pay the Lessor's fees and reasonable expenses, as trustee under the Trust Agreement, for the acceptance and administration of the trust, and the reasonable fees and expenses of the agent for the long-term institutional lenders. The Lessee will reimburse the Lessor and the agent for such fees and expenses promptly upon notice from the Lessor and the agent of the amount thereof. It is agreed that the Lessor's fee for acceptance of the trust and administration shall be equal to $\frac{1}{10}$ of 1% of the aggregate payments required by Article 3 (a) of the Sale and Lease Back Agreement, together with reasonable attorneys' fees for counsel for the Lessor, which fees shall not exceed $1,500.

**26.4. Action by Lessee.** Except as otherwise specifically provided herein, any provision in this Lease that the Lessee shall take any action shall require the Lessee to do so at its sole cost and expense.

**26.5. Lessor's Right to Perform.** If the Lessee fails to make any payments required by this Lease, or to perform any of its other obligations contained herein, the Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and the Lessor's reasonable costs and expenses, including (without limitation) legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by the Lessee to the Lessor upon demand.

**26.6. Opinion of Lessor's Counsel.** The Lessee shall not be obligated to sell any Item of Equipment to be sold by the Lessee under the Sale and Lease Back Agreement, and to lease such Item of Equipment hereunder, unless, on the date of such purchase the Lessee shall have been furnished with a favorable opinion of counsel for the Lessor, dated as of such date, to the effect that this Lease, the Sale and Lease Back Agreement and the Government Guaranty have been duly authorized, executed and delivered by the Lessor and constitute the legal, valid and binding obligations of the Lessor enforceable against the Lessor in accordance with their respective terms, subject as to any limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

**26.7. Notices.** Any notice or other communication hereunder shall be in writing and, if mailed, shall be deemed to be given on the second day after it is sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at 955 L'Enfant Plaza North, S.W., Washington, D.C. 20024, Attention: Secretary, (ii) if to Lessor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Trust Department, with a copy to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, or (iii) to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

**26.8. Law Governing, etc.** If this Lease or any provision hereof shall be deemed invalid, illegal or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this Lease in other respects and other jurisdictions shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, the Lessor's rights and the Lessee's duties shall in no way be affected by the Lessor's inspection of, or failure to inspect, the Equipment or any Item thereof. The Lessee hereby waives any right to assert that the Lessor cannot enforce this Lease (or that this Lease is invalid) because of any failure of the Lessor to qualify to do business in any jurisdiction. This Lease shall be governed by the laws of the District of Columbia and shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective successors and assigns.

**26.9. Section Headings.** The Table of Contents and Section headings in this Lease are for convenience of reference only and shall not be considered to be a part of this Lease.

**26.10. Lessor's Authorization.** The Lessor represents to the Lessee that the execution, delivery and performance of this Lease, the Sale and Lease Back Agreement and the Government Guaranty are within the corporate power of the Lessor, have been duly authorized by all necessary corporate and other action and are, and at all times will be, authorized under the Trust Agreement.

**26.11. Modification of Lease.** No variation or modification of this Lease shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

**26.12. Trustor Defined.** The term "Trustors" as used herein means the institutions listed in Schedule E hereto, as Trustors under the Trust Agreement dated as of January 1, 1974 among the Trustors and the Lessor, and their respective successors in interest and assigns under said Trust Agreement as permitted by Section 19.3 hereof.

**26.13. Approvals of the Administrator.** The parties agree that before any amendment or modification (other than to the Specifications) of this Lease, or any assignment or transfer of the interest of the Lessor hereunder or any Trustor (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 of the interest of the Lessee hereunder, becomes effective, the Federal Railroad Administrator must approve the same in writing. In consideration of his guarantee of the Lessee' financial obligations under this Lease, the Federal Railroad Administrator shall have the right to enforce this provision irrespective of any other provision of this Lease.

**26.14. Execution in Counterparts.** This Lease, and any lease supplemental hereto, 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. Although this Lease 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.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereto affixed.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,
as Trustee

By .....
*Authorized Officer*

(CORPORATE SEAL)

ATTEST

LESSOR

.....
*Authorized Officer*

NATIONAL RAILROAD PASSENGER CORPORATION

By .....
*Vice President*

(CORPORATE SEAL)

ATTEST

LESSEE

.....
*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 the prompt payment of the Guaranteed Lease Obligations, pursuant to and in accordance with the Guaranty Agreement dated , 1974 among the Federal Railroad Administrator of the Department of Transportation of the United States of America, as Guarantor, First Security Bank of Utah, National Association, as Trustee, and Bank of America National Trust and Savings Association.

FEDERAL RAILROAD ADMINISTRATOR

By .....
Federal Railroad Administrator

ATTEST:

GUARANTOR

.....
*Chief Counsel* F.R.A.

STATE OF UTAH
COUNTY OF SALT LAKE } ss.:

On this day of March, 1974, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

(SEAL)

My Commission expires:

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.:

On this day of March, 1974, 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

(SEAL)

My Commission expires:

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.:

On this day of March, 1974, before me personally appeared , to me personally known, who being by me duly sworn, says that he is the Federal Railroad Administrator, 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 Federal Railroad Administrator.

Notary Public

(SEAL)

My Commission expires:

## SCHEDULE A

## DESCRIPTION OF EQUIPMENT†

| Type | Quantity | Manufacturer's Specifications | Place of Acceptance | R.R. Nos. | Unit Price* | Total Price |
|---|---|---|---|---|---|---|
| 3,000 H.P. Diesel Electric Locomotives Model SDP40F | 40 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL 214-1 dated 8/2/73 and Purchase Order WKL-3220-009 dated 8/8/73 and supplements 1 through 7 thereto). | McCook, Illinois | 540 through 579 (both inclusive) | $ 462,494.00 | $18,499,760.00 |
| 3,000 H.P. Diesel Electric Locomotives Model SDP40F | 55 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 580 through 634 (both inclusive) | $ 470,513.00 | $25,878,215.00 |
| 3,000 H.P. Diesel Electric Locomotives Model SDP40F | 5 | Builder's Specification Number 8093 dated 11/1/72 as amended by specification supplements (contained in Lessee's Request for Quotation RFQ X-JKL-214-2 dated 8/2/73 and Purchase Order WWJ-3284-001 dated 10/11/73 and Supplements 1 & 2 thereto). | McCook, Illinois | 635 through 639 (both inclusive) | $ 470,811.00 | $ 2,354,055.00 |
| Total..... | 100 | | | | | $46,732,030.00 |

* Not including fuel and freight.

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

## SCHEDULE B

### Determination of Basic Lease Rate

| If The Long Term Debt Rate is: | Then the Basic Lease Rate is: |
|---|---|
| 7.5% | 4.34856% |
| 7.625 | 4.37674 |
| 7.75 | 4.40502 |
| 7.875 | 4.43341 |
| 8 | 4.46192 |
| 8.125 | 4.49051 |
| 8.25 | 4.51923 |
| 8.375 | 4.54802 |
| 8.5 | 4.57694 |

## SCHEDULE C

## SCHEDULE OF CASUALTY VALUE

CASUALTY VALUE: The following per cent of the Acquisition Cost (as defined in the Lease) to the Lessor of any Item of Equipment is to be paid on a rental payment due date pursuant to Section 11 of the Lease as the result of any Item of Equipment becoming the subject of a Casualty Occurrence, depending upon when the Casualty Value is paid. Casualty Value does not include any amounts for which the Lessor may be entitled to indemnification under Sections 6 and 10.2 of the Lease.

Before Term Lease Commencement Date Casualty Value* shall equal 90.3841%.

| If Casualty Occurrence is during semiannual period ending on Periodic Rent Payment Date | Casualty Value Payable Per Item* | If Casualty Occurrence is during semiannual period ending Periodic Rent Payment Date | Casualty Value Payable Per Item |
|---|---|---|---|
| 1 | 90.1890% | 16 | 60.7800% |
| 2 | 89.4139 | 17 | 57.9493 |
| 3 | 88.5942 | 18 | 54.7356 |
| 4 | 87.4024 | 19 | 51.7052 |
| 5 | 86.1608 | 20 | 48.3556 |
| 6 | 84.4566 | 21 | 45.1625 |
| 7 | 82.7746 | 22 | 41.6893 |
| 8 | 80.6844 | 23 | 38.3408 |
| 9 | 78.7357 | 24 | 34.8380 |
| 10 | 76.3904 | 25 | 31.5201 |
| 11 | 74.2129 | 26 | 28.1602 |
| 12 | 71.5458 | 27 | 24.9709 |
| 13 | 69.2273 | 28 | 21.8086 |
| 14 | 66.4178 | 29 | 18.5247 |
| 15 | 63.7993 | 30 and thereafter | 15.0000 |

* Plus in the case of the period before to the Term Lease Commencement Date and the first 14 amounts listed below, the percentages which may be applicable as provided in the table set forth in Section 11.5 of the Lease.

## SCHEDULE D

### SCHEDULE OF MAXIMUM PURCHASE PRICE

The MAXIMUM PURCHASE PRICE shall mean the following per cent of the Acquisition Cost (as defined in the Lease) to the Lessor of any Item of Equipment for the purpose of determining any amount payable pursuant to Section 16.2 of the Lease, depending upon when the Maximum Purchase Price is paid. The Maximum Purchase Price does not include any amounts for which the Lessor may be entitled to indemnification under Sections 6 and 10.2 of the Lease.

Before Term Lease Commencement Date Maximum Purchase Price shall equal 104.5298%.

| If Maximum Purchase Price is determined during semiannual period ending on Periodic Rent Payment Date | Maximum Purchase Price Payable Per Item | If Maximum Purchase Price is determined during semiannual period ending on Periodic Rent Payment Date | Maximum Purchase Price Payable Per Item |
|---|---|---|---|
| 1 | 104.3347% | 16 | 74.9257% |
| 2 | 103.5596 | 17 | 72.0950 |
| 3 | 102.7399 | 18 | 68.8813 |
| 4 | 101.5481 | 19 | 65.8509 |
| 5 | 100.3065 | 20 | 62.5013 |
| 6 | 98.6023 | 21 | 59.3082 |
| 7 | 96.9203 | 22 | 55.8350 |
| 8 | 94.8301 | 23 | 52.4865 |
| 9 | 92.8814 | 24 | 48.9837 |
| 10 | 90.5361 | 25 | 45.6658 |
| 11 | 88.3586 | 26 | 42.3059 |
| 12 | 85.6915 | 27 | 39.1166 |
| 13 | 83.3730 | 28 | 35.9543 |
| 14 | 80.5635 | 29 | 32.6704 |
| 15 | 77.9450 | 30 and thereafter | 29.1457 |