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7526-E

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RECORDATION NO. 7526-E Filed 1425
JUN 30 1980 - 4 00 PM
INTERSTATE COMMERCE COMMISSION

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FEE OPERATION BR.

June 30, 1980

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No.
Date JUN 30 1980
Fee $ 10.00
ICC Washington, D. C.

Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20434

Dear Madam:

Enclosed for recordation pursuant to the provisions of Section 11303(a) of Title 49 of the United States Code and the regulations thereunder are three counterparts of a Release and Reassignment dated June 27, 1980 executed by Central Penn National Bank.

The document relates to a Chattel Mortgage and Security Agreement dated May 3, 1974 between Emons Leasing Co., Inc. and Central Penn National Bank which was filed and recorded at 3:25 p.m. on May 7, 1974, and assigned Recordation Number 7526.

A general description of the railroad equipment covered by the document is set forth in Exhibit A attached to this letter and made a part hereof.

The undersigned is agent for Central Penn National Bank for the purpose of recording the document and has knowledge of the matters set forth therein.

Please return the counterparts of the document not needed for recordation purposes to Charles T. Kappler, Esq., Alvord and Alvord, 200 World Center Building, Washington, D.C. 20006.

Also enclosed is a remittance in the amount of $10.00 in payment of the required recordation fee.

Very truly yours,

ALVORD AND ALVORD

By Charles T. Kappler
Charles T. Kappler

Counterparts C.T. Kappler

7527
RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 29, 1974

Among

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

as Manufacturer

MIDLANTIC NATIONAL BANK
as Trustee under Milwaukee Road Trust No. 74-1

as Vendee

and

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

as Guarantor

(Milwaukee Road Trust No. 74-1)

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Attachments to Conditional Sale Agreement

Schedule A—Description of Equipment

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT, dated as of May 29, 1974 among GENERAL MOTORS CORPORATION ELECTRO-MOTIVE DIVISION), a Delaware corporation (the "Manufacturer"), MIDLANTIC NATIONAL BANK, as Trustee under Milwaukee Road Trust No. 74-1 (the "Vendee") pursuant to the Trust Agreement dated as of May 29, 1974 (the "Trust Agreement") between the Vendee and AMERICAN FLETCHER LEASING CORPORATION, an Illinois corporation and SUREWAY LEASING, INC., a Delaware corporation (the "Trustors") and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (the "Guarantor").

WHEREAS, the Manufacturer is willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the railroad equipment described in Schedule A attached hereto (collectively the "Equipment" and individually "Item of Equipment"); and

WHEREAS, the Vendee is entering into a lease in respect of the Equipment dated as of the date hereof with the Guarantor, subject to this Agreement, substantially in the form attached as Exhibit C to the Trust Agreement (the "Lease"), and the Guarantor is willing to guarantee to the Manufacturer the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth; and

WHEREAS, the Manufacturer, the Vendee and the Guarantor have entered into an Acquisition Agreement dated as of the date hereof relating to the acquisition of the Equipment, substantially in the form attached as Exhibit A to the Trust Agreement (the "Acquisition Agreement");

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

SECTION 1. CONSTRUCTION AND SALE.

The Manufacturer will construct, sell and deliver to the Vendee, and the Vendee will purchase from the Manufacturer and accept delivery of and pay for as hereinafter provided, the Equipment, each Item of which shall be constructed in accordance with the applicable specifications referred to in Schedule A hereto, with such modifications thereof as may be agreed upon in writing by the Guarantor and the Manufacturer (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material in such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to new railroad equipment of the character of such Items as of the date of this Agreement.

SECTION 2. DELIVERY.

2.1. The Manufacturer will deliver the various Items of Equipment to the Vendee in accordance with the applicable delivery schedule set forth in Schedule A hereto; provided, however, that the Manufacturer shall have no obligation to deliver any Item of Equipment hereunder subsequent to the filing by or against the Guarantor of a petition for reorganization under Section 77 of the Bankruptcy Act.

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

2.3. Notwithstanding the foregoing provisions, the Vendee shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before the outside delivery date

provided therefor in Schedule A hereto. Any Equpiment not so delivered and accepted, as well as any Items of Equipment which are delivered and accepted as provided herein, but for which the Vendee is relieved of any obligation to make any payment therefor pursuant to Section 3 of the Acquisition Agreement, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer shall remain obligated to construct, sell and deliver to the Guarantor, and the Guarantor shall remain obligated to purchase from the Manufacturer, accept delivery of and pay for, any of the Equipment thus excluded from this Agreement, and the Guarantor, the Vendee and the Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and the Manufacturer and the Guarantor shall further execute a separate agreement providing for the sale of such excluded Equipment by the Manufacturer to the Guarantor upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Guarantor may determine and as may be reasonably satisfactory to the Manufacturer.

2.4. The Equipment during construction shall be subject to inspection by an inspector or other authorized representative of the Guarantor and the Vendee. Acceptance of the Equipment by the Guarantor under the Lease shall be deemed to be acceptance of the Equipment by the Vendee, and the Guarantor agrees to furnish the Certificate or Certificates of Acceptance under the Lease to the Manufacturer in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss thereof or damage thereto until delivery to and acceptance by the Guarantor. Upon delivery and acceptance by the Guarantor of each of such Items of Equipment (i) the Vendee, subject to the limitations set forth in Section 14 hereof, shall bear the risk of loss of or damage to such Items, and (ii) subject to the Manufacturer's security title to and property in such Items retained by it pursuant to Section 4.1 hereof, the beneficial ownership of such Items shall be transferred to and vested in the Vendee.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest, insurance and all other charges, is as set forth in Schedule A hereto. The base price per Item of Equipment shall be subject to increase or decrease as may be agreed to in writing by the Manufacturer thereof and the Guarantor, and the term "purchase price" as used herein shall mean the base price as so increased or decreased; provided that the purchase price for each Item of Equipment shall not exceed the maximum price provided therefor in Schedule A hereto.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than two groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. Subject to the provisions of Section 14 hereof, the Vendee hereby acknowledges itself to be indebted to the Manufacturer in the amount of and hereby promises to pay to the Manufacturer at such bank or trust company in the United States of America as the Manufacturer or its assignee shall designate for payment to it, the purchase price of the Items of Equipment as follows:

(a) On each Closing Date an amount equal to 30.00% of the aggregate purchase price for all Items of Equipment in the Group for which settlement is then being made; and

(b) an amount equal to the difference between the aggregate purchase price of the Equipment and the aggregate amount paid pursuant to subparagraph (a) of this Section 3.3 (herein sometimes called the "Conditional Sale Indebtedness") plus interest on the unpaid balance thereof payable in installments, as follows:

(1) One installment of interest only at the rate per annum equal to 120% of the corporate base rate of interest (the "Base Rate") charged by The First National Bank of Chicago from

time to time to its largest and most credit worthy commercial borrowers on 90-day commercial loans for the period from and including the Closing Date for each such Item of Equipment to but not including July 2, 1974, payable on July 2, 1974, followed by

(2) One installment of interest only at the rate per annum equal to 120% of the Base Rate from time to time in effect for the period from and including July 2, 1974 to but not including October 2, 1974, payable on October 2, 1974, followed by

(3) One installment of interest only for the period from and including October 2, 1974 to but not including January 2, 1975, payable on January 2, 1975, at the rates of interest for the respective proportions of said Conditional Sale Indebtedness determined as follows:

(A) for an amount equal to 81.962482% of the Conditional Sale Indebtedness, interest shall be determined at the rate of 10% per annum, and

(B) for an amount equal to 18.037518% of the Conditional Sale Indebtedness, interest shall be determined at the rate per annum equal to 120% of the Base Rate from time to time in effect,

followed by

(4) 58 quarterly installments, including both principal and interest at the rate of 10% per annum, payable on the 2nd day of each January, April, July and October in each year commencing April 2, 1975 to and including July 2, 1989.

The principal amount of the indebtedness payable on each of the 58 quarterly payment dates set forth in clause (4) above shall be calculated on such a basis that the aggregate of the principal and interest payable on each such payment date shall be substantially equal in amount and that such 58 installments of principal and interest amortize the Conditional Sale Indebtedness.

3.4. The obligations of the Vendee under this Agreement to accept delivery of and to pay for any Items of Equipment shall, in addition to any conditions herein set forth, be subject to the satisfaction of the conditions set forth in Section 3 of the Acquisition Agreement. The payment by the Vendee on any Closing Date of the amount referred to in subparagraph (a) of the preceding Section 3.3 shall be conclusive evidence of such satisfaction but only as to the Group for which settlement is made on such Closing Date.

3.5. The term "Closing Date" with respect to each Group shall mean such date which is not more than 10 business days following presentation by the Manufacturer to the Guarantor of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to such Group, as shall be fixed by the Guarantor by written or telegraphic notice delivered to the Vendee and the Manufacturer at least seven business days prior to the Closing Date designated therein.

3.6. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Illinois or New Jersey are authorized or required to close.

3.7. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

3.8. The Vendee will pay interest at the rate of 12% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.9. All payments provided for in this Agreement shall be made by the Vendee 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.

3.10. Except as provided in Section 5 of the Acquisition Agreement and in Section 6.1 hereof, the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. The Manufacturer shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all of the payments hereunder 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 Vendee or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when the Manufacturer shall have been paid the full indebtedness in respect of the purchase price of the Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Section 20 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, 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 Vendee to the Equipment, and will pay to the Vendee any money paid to the Manufacturer, pursuant to Section 6.1 hereof and not theretofore applied as therein provided. The Vendee 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 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 to file such certificate within a reasonable time after written demand by the Vendee.

SECTION 5. MARKING OF EQUIPMENT.

The Guarantor shall keep each Item of Equipment marked as contemplated by Section 4 of the Lease.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Guarantor or the Vendee, irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the period ending July 2, 1989, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the purchase price of such Item, together with interest thereon and all other payments required hereby, the Vendee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Manufacturer thereof in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the date of payment of the next succeeding installment of principal and interest on such indebtedness, shall pay to the Manufacturer thereof the Casualty Payment of such Item as of the date of such payment. Each such payment shall be accompanied by notification from the Vendee that said payment constitutes a Casualty Payment.

6.2. The Manufacturer shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of the indebtedness in respect of the purchase price of the Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The quarterly payments of the indebtedness in respect of the purchase price of the remaining Equipment and interest thereon, becoming due thereafter shall be re-

determined on the basis of the amount of such indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application.

6.3. Upon payment to the Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Item shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer thereof.

6.4. The payment to be made to the Manufacturer in respect of each Item of Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be that portion of the original purchase price thereof remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that prior to July 2, 1989, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Vendee's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Vendee 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.

SECTION 7. OBLIGATIONS OF GUARANTOR.

7.1. The Guarantor, for value received, hereby unconditionally guarantees to the Manufacturer the due and punctual payment of that portion of the purchase price of the Equipment payable pursuant to Section 3.3(b) hereof and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Manufacturer that all sums payable by the Vendee under this Agreement (including, but not limited to, all sums payable by the Vendee with respect to the purchase price of the Equipment except for the sums payable by the Vendee pursuant to Section 3.3(a) hereof) will be promptly paid when due in accordance with the provisions of this Agreement, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payment the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Manufacturer hereunder.

7.2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or limit the recourse of the Manufacturer against the Vendee. The Guarantor hereby waives diligence, presentment, demand for payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Manufacturer of any of its rights hereunder and no action by the Manufacturer to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

7.3. The Guarantor hereby covenants and agrees with the Manufacturer, for the benefit of the Manufacturer, faithfully to observe all the terms, covenants and conditions set forth in the Lease and to perform all obligations of the Guarantor thereunder, it being agreed that the undertakings of the Guarantor pursuant to the Lease shall be deemed a part of this Agreement with the same force and effect as if set forth herein in full. The obligations of the Guarantor under the provisions of the preceding sentence shall not be affected by any termination of the Lease or the invalidity thereof, as between the Vendee and the Guarantor, for any reason but shall continue as though the Lease continued in full force and effect until the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, shall have been paid in full.

7.4. The Guarantor agrees that, at its own cost and expense, it will maintain and keep each Item of Equipment in the same order, condition and repair as when delivered hereunder, ordinary wear

and tear excepted. The Guarantor agrees that during the period that any portion of the indebtedness in respect of the purchase price of the Equipment remains outstanding and unpaid, the Guarantor will not assign any Item of Equipment to service involving the regular operation or maintenance thereof outside the United States of America.

7.5. The Guarantor agrees that any insurance maintained pursuant to the Lease shall include among the named beneficiaries the Vendee and the Manufacturer, as their respective interests may appear.

7.6. In the event that the Guarantor shall make any payments to the Manufacturer on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the Items of Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; provided, however, that after the payment by the Guarantor to the Manufacturer of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Manufacturer against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee is in receipt of funds constituting a part of the Trust Estate (as defined in the Trust Agreement) and has not applied such funds to the payment, in accordance with this Agreement, of sums payable by the Vendee to the Manufacturer hereunder.

SECTION 8. REPORTS AND INSPECTIONS.

On or before May 1 in each year, commencing with the year 1975, the Guarantor will furnish to the Manufacturer, concurrently with the transmission thereof to the Vendee, copies of each and every report or statement to be furnished to the Vendee by the Guarantor pursuant to Section 12 of the Lease. The Manufacturer shall have the right, by its agents, to inspect the Equipment and records of the Vendee and the Guarantor with respect thereto once in every year.

SECTION 9. POSSESSION AND USE.

9.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Vendee, to the possession of the Equipment and the use thereof upon and subject to all the terms and conditions of this Agreement.

9.2. Without limiting any of the rights of the Vendee under Section 13 hereof, the Vendee may lease the Equipment to the Guarantor or its assigns as permitted by, and for use as provided in, Section 17 of the Lease, provided, however, and the Guarantor hereby acknowledges, that the rights of the Guarantor and its permitted assigns under the Lease are subordinate and junior in rank to the rights, and are subject to the remedies, of the Manufacturer under this Agreement. A copy of any such assignment by the Guarantor shall be furnished to the Manufacturer. Subject always to the provisions of Section 16 of the Lease the Vendee hereby agrees that it will not exercise any of the remedies provided in Section 14 of the Lease unless it shall notify the Manufacturer in writing of its intended exercise thereof, and hereby further agrees to furnish to the Manufacturer, at its written request, copies of all summons, writs, processes and other documents served by it upon the Guarantor or served by the Guarantor upon it in connection therewith.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its successors or assigns (other than the Guarantor or its assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Vendee in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

10.2. 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 (such liens being herein called "permitted liens").

SECTION 11. INDEMNITIES.

11.1. The Guarantor agrees to indemnify, protect and hold harmless the Manufacturer 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 Manufacturer of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Manufacturer, and also agrees that the Manufacturer shall be entitled to the benefit and protection of all indemnities of the Guarantor contained in the Lease to the same extent and with the same force and effect as if said indemnities were set forth herein in full and the Manufacturer were expressly named in the Lease as one of the parties entitled to the benefit and protection thereof. 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 the Equipment and the conveyance of the Equipment, as provided in Section 4.2 hereof, or the termination of this Agreement in any manner whatsoever.

11.2. As between the Manufacturer and the Vendee, the Vendee, after delivery to and acceptance by the Guarantor pursuant to Section 2.5 hereof, will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

11.3. The Manufacturer for itself warrants that the Items of Equipment will be built in accordance with the Specifications therefor and warrants that the Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Guarantor and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Guarantor its Agent and attorney-in-fact to assert and enforce from time to time in the name of the Manufacturer but for the account of the Vendee and the Guarantor as their interests may appear and in all cases at the sole cost and expense of the Guarantor whatever claims and rights the Manufacturer may have against the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any such Item of Equipment which shall within two years after the delivery of such Item of Equipment to the Vendee or before such Item of Equipment has been in scheduled service 250,000 miles, whichever event shall first occur, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; *provided, however,* that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment or (ii) any Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND THE MANUFACTURER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Item of Equipment at any time with the approval of the Guarantor without incurring any obligation to make similar changes or additions in respect of other Item of Equipment previously delivered to the Guarantor. The Manufacturer further agrees with the Vendee that acceptance of any Item of Equipment under Section 2.4 hereof shall not be deemed a waiver by the Vendee of any of its rights under this Section 11.3.

SECTION 12. PATENT INDEMNITIES.

12.1. Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees for itself to indemnify, protect and hold harmless the Vendee and the Guarantor 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 the Vendee or the Guarantor because of the use in or about the construction or operation of any Item of Equipment, of any design, article or material which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Manufacturer and the Vendee 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 the Manufacturer or the Vendee because of the use in or about the construction or operation of any Item of Equipment, of any design specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or other similar right in respect of which liability may be charged against the Manufacturer, and the use of any Item of Equipment is enjoined, the Manufacturer shall, at its own expense and at its option, either procure for the Vendee and the Guarantor the right to continue using such Item of Equipment or replace the same with non-infringing equipment, or modify it so it becomes non-infringing. Without intending any limitation of the foregoing, the Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Items of Equipment on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Manufacturer further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Vendee and the Guarantor of any claim known to the Manufacturer from which liability may be charged against the Vendee or the Guarantor hereunder and the Guarantor and the Vendee will each give notice to the Manufacturer of any claim known to it from which liability may be charged against the Manufacturer hereunder.

12.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

12.3. The obligations and liabilities of the Manufacturer under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

SECTION 13. ASSIGNMENTS.

13.1. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 9.2 hereof, transfer the right to possession of any Item of Equipment except to a successor trustee appointed pursuant to the provisions of Section 6.9 of the Trust Agreement. No such sale, assignment or transfer shall subject the Manufacturer to any duties, obligations or liabilities whatsoever.

13.2. All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Manufacturer and reassigned by an assignee at any time or from time to time. No such assignment shall subject any

assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance with the provisions hereof or to respond to its guaranties, warranties and agreements contained herein, or relieve the Vendee or the Guarantor of their respective obligations to the Manufacturer hereunder.

13.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, 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 of the assigning Manufacturer's right, security title and interest in and to the Equipment, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

13.4. The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some or all of the rights of the Manufacturers hereunder, is contemplated. The Vendee and the Guarantor expressly represent, 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 Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the purchase price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Manufacturer.

13.5. In the event of any such assignment or successive assignments by the Manufacturer of security title to the Equipment and of the Manufacturer's rights hereunder with respect thereto, the Vendee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Guarantor, the Guarantor shall change the names and word or words to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement, (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

13.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Vendee and the Guarantor will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents reasonably required by the terms of such assignment to be delivered by the Vendee and the Guarantor, respectively, to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

13.7. If this Agreement shall have been assigned by the Manufacturer and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of Equipment for Items of Equipment designated herein as included in such Group of an amount equal to that portion

of the purchase price of such Items of Equipment included in such Group as provided in the instrument of assignment, the Manufacturer will promptly notify the Guarantor of such event, such Items of Equipment included in the Group shall be excluded thereupon and the Guarantor shall not later than 90 days after such Closing Date pay or cause to be paid to the Manufacturer the purchase price of all such Items of Equipment, or the portion thereof unpaid by the assignee, together with interest thereon from such Closing Date to the date of payment by the Guarantor at a rate per annum equal to 1% over the prime rate of interest of Continental Illinois National Bank and Trust Company of Chicago in effect on such Closing Date, such payment to be in cash either directly or indirectly if Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Guarantor shall determine and as may be reasonably satisfactory to the Manufacturer.

SECTION 14. LIMITATION OF VENDEE'S OBLIGATIONS.

It is expressly understood and agreed by and between the Vendee, the Trustors and the Manufacturer and their respective successors and assigns that this Agreement is executed by Midlantic National Bank, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Midlantic National Bank hereby warrants that it possesses full power and authority to enter into and perform this Agreement); and it is expressly understood and agreed that, except in the case of gross negligence or wilful misconduct of the Trustee or the Trustors, nothing herein contained shall be construed as creating any liability on Midlantic National Bank, or on said Trustors individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the Manufacturer and by each and every person now or hereafter claiming by, through or under the Manufacturer; and that so far as Midlantic National Bank or the Trustors or the Manufacturer, individually or personally are concerned, the Manufacturer and any person claiming by, through or under the Manufacturer shall looks solely to the Trust Estate as defined in the Trust Agreement for payment of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon and all other payments and obligations as herein provided. Nothing in this Section 14 shall limit any rights of the Manufacturer under this Agreement against the Guarantor.

SECTION 15. DEFAULTS.

15.1. In the event that any one or more of the following Events of Default shall occur and be continuing, to-wit:

(a) The Vendee or the Guarantor shall fail to pay in full any sum payable by the Vendee or the Guarantor, respectively, when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten business days; or

(b) The Vendee or the Guarantor shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; 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 the Guarantor or shall be filed against the Guarantor and shall not be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force and such effectiveness shall continue) within 60 days after such proceedings shall have been commenced; or

(d) Any other proceedings shall be commenced by the Vendee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) or shall be filed against the Vendee or the Guarantor and shall not be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force and such effectiveness shall continue) within 60 days after such proceedings shall have been commenced; or

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

(f) An Event of Default shall have occurred and be continuing under the Lease;

then at any time after the occurrence and during the continuance of such an event of default the Manufacturer may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, but without prejudice to any rights of the Vendee under the Lease with respect to any default thereunder, cause the Lease immediately upon such notice to terminate as to the Equipment and/or declare 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 at the rate of 12% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled, subject to the provisions and limitations of Section 14 hereof, to recover judgment for the entire unpaid balance of the indebtedness in respect of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Guarantor wherever situated or out of property of the Vendee subject to the provisions and limitations of Section 14 hereof.

15.2. In addition to the right of the Vendee to elect to cure a default hereunder as provided in Sections 15.3 and 15.4 hereof, and notwithstanding the rights of the Manufacturer otherwise expressed herein, in the case of any default hereunder or under the Lease, other than the occurrence and continuation of an event set forth in Section 15.1(c) or Section 15.1(d) hereof or Section 14.1(d) or Section 14.1(e) of the Lease, the Manufacturer shall not, without the prior written consent of the Vendee and the Trustors, exercise any of the rights or remedies provided herein or in the Lease during a 30-day period following the giving of written notice of such default by the Manufacturer to the Vendee. During such 30-day period the Vendee shall have the right to cure such default on behalf of the Guarantor; provided that such right to cure a default may be exercised not more than two times in respect of any default which may be cured by the payment of money to the Manufacturer pursuant to this Agreement, and for all other defaults which may be cured pursuant to this Section 15.2, such right to cure one or more such defaults shall be limited to an aggregated period of six months from the date of the giving of the notice or notices of such default or defaults by the Manufacturer to the Vendee. No party exercising the right to cure a default pursuant to this Section 15.2 shall obtain any lien, charge or encumbrance of any kind on any of the Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid or expenses incurred in connection with the exercise of such right or the curing of such default, nor shall any claims of such party against the Guarantor or against any other party for the repayment of such sums so advanced or expenses so incurred impair the prior right of the Manufacturer to the sums payable by the Guarantor hereunder and under the Lease.

15.3. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. With respect to any termination of the Lease by the Manufacturer, the aforesaid waiver, rescission and annulment shall be deemed made, and the Lease shall be deemed not to have been terminated, if the Vendee within 30 days after receiving written notice thereof as aforesaid, shall elect in writing to cure such default. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

15.4. Any default hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 16.3, shall pay or cause to be paid to the Manufacturer 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.

SECTION 16. REMEDIES.

16.1. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Vendee and the Guarantor and for such purpose may enter upon the premises of the Vendee or the Guarantor or 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 Vendee or the Guarantor, with or without process of law.

16.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Manufacturer, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Guarantor, for a period not exceeding 180 days, until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

16.3. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer with or without the retaking of possession thereof may, at its election, sell the Equipment, or any Item thereof, free from any and all claims of the Vendee, or of any other party (including the Guarantor) claiming by, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Manufacturer under the provisions of this Agreement.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer 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 Manufacturer may determine, provided that the Vendee and the Guarantor shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid

for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

16.5. Each and every power and remedy hereby specifically given to the Manufacturer 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 Manufacturer. 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 Manufacturer 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.

16.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the purchase price of the Equipment accrued and unpaid and third to the payment of the indebtedness in respect of the purchase price of the Equipment. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, subject to the provisions of Section 14 hereof. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

16.7. The Vendee, subject to the provisions of Section 14 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

16.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 17. APPLICABLE STATE LAWS.

17.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

17.2. Except as otherwise provided in this Agreement, the Vendee, 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 the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

17.3. Nothing in this Section 17 or any other provision of this Agreement shall be deemed to make ineffective, or to modify or waive, the provisions and limitations of Section 14 hereof.

SECTION 18. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the

same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Vendee or the Guarantor hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturer's rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 19. RECORDING.

The Guarantor will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Guarantor will promptly furnish to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Guarantor with respect thereto, satisfactory to the Manufacturer.

SECTION 20. NOTICE.

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

(a) to the Vendee: Midlantic National Bank, 744 Broad Street, Newark, New Jersey 07102, Attention: Mr. Daniel Schwebel, with a copy to each Trustor at its address for notice set forth in Section 9.2 of the Trust Agreement,

(b) to the Guarantor: Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 516 West Jackson Boulevard, Chicago, Illinois 60606,

(c) to the Manufacturer: General Motors Corporation (Electro-Motive Division) La Grange, Illinois 60525,

(d) to any assignee of the Manufacturer, or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Manufacturer, as the case may be, and to the Guarantor, 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.

SECTION 21. HEADINGS.

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

SECTION 22. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedule relating hereto, together with the Lease and the Acquisition Agreement, exclusively and completely state the rights and agreements of the Manufacturer, the Vendee and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers, the Vendee and the Guarantor. Without the prior written consent of the Manufacturer, the Vendee will not consent to any amendment, modification, waiver or supplement to the Lease or, except in accordance with Section 14 thereof, cancel or terminate the Lease prior to the payment in full of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon.

SECTION 23. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 24. DEFINITIONS.

The term "Manufacturer", 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 the manufacturing properties and business thereof, and, after any such assignment, 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 and excluded from any assignment.

SECTION 25. ASSIGNMENT OF LEASES.

To further secure the payment of the full amount of the indebtedness in respect to the purchase price of the Equipment, together with interest thereon, and all other payments as herein provided and for the performance of the Vendee's obligations herein contained, the Vendee hereby assigns, transfers and sets over unto the Manufacturer, and grants a security interest in, all the Vendee's right, title and interest, as Lessor under the Lease, together with all rights, powers and privileges, and all other benefits of the Vendee as Lessor under the Lease, including, without limitation, except as hereinafter provided, the immediate right to receive and collect all rentals and profits and other sums payable to or receivable by the Vendee under or pursuant to the provisions of the Lease insofar as the same cover or relate to said Equipment, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease and to do any and all other things whatsoever which the Vendee, as lessor, is or may become entitled to do under the Lease with respect to said Equipment. In furtherance of the foregoing assignment, the Vendee hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Vendee, or as its attorneys, to ask, demand, sue for, collect and receive any and all sums to which the Vendee is or may become entitled under the Lease in respect of the Equipment, and to enforce compliance by the Lessee with all the terms and provisions of the Lease. The Vendee further agrees to notify promptly the Manufacturer of any Event of Default under the Lease of which it has notice. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Guarantor, as lessee, under the Lease, shall be and remain enforceable by the Guarantor, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Vendee, as its attorney, on the happening of any failure by the Vendee to perform or cause to be performed, any such obligation. The Manufacturer hereby agrees with the Vendee that the Manufacturer will not, so long as an Event of Default under the Lease or an Event of Default hereunder has not occurred or is not then continuing or during the period within which the Vendee may cure a default as provided in Section 15 hereof, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations, or benefits assigned and transferred by the Vendee to the Manufacturer by the assignment set forth in this Section 25, except the right to apply the payments so assigned to those payments of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, which are due and payable hereunder on or prior to the due date of the payments from time to time made under the Lease, and the amount of any such such Lease payments which are in excess of any such payments of indebtedness and interest thereon shall be released by

the Manufacturer to or upon the order of the Vendee. Upon the full discharge and satisfaction of the full amount of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, and all other payments as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and all estate, right, security title and interest of the Vendee granted, assigned, transferred or set over pursuant to this Section 25 in and to the Lease shall revert to the Vendee.

SECTION 26. 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 for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

(Corporate Seal)

By Harold F. Smith
Its Vice President

Attest:

W H Thomas
Assistant Secretary

MIDLANTIC NATIONAL BANK, as Trustee
under Milwaukee Road Trust No. 74-1

(Corporate Seal)

By [illegible]
Its Vice President

Attest:

Daniel M. Schwebel

ASSISTANT TRUST OFFICER

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

(Corporate Seal)

By R. H. Kratochwill
Its Vice President

Attest:

J. T. Young
Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 3RD day of June, 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.

J. Harry
Notary Public

(Seal)

My Commission Expires: October 28, 1975

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss

On this 4th day of June, 1974, before me personally appeared WILLIAM H. OSBORNE III, to me personally known, who, being by me duly sworn, says that he is a Vice President of MIDLANTIC NATIONAL BANK, 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.

Ronald J. Magin
Notary Public

(Seal)

RONALD J. MAGIN
My Commission Expires: NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 3, 1976

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 3rd day of June, 1974, before me personally appeared R. F. Kratochwill, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Bonnie Lamaster
Notary Public

(Seal)

My Commission Expires: My Commission Expires March 2, 1975

SCHEDULE A

to Conditional Sale Agreement

MANUFACTURER	General Motors Corporation (Electro-Motive Division)
PLANT OF MANUFACTURER	McCook, Illinois
DESCRIPTION OF EQUIPMENT	11 3,000 H.P. Model EMD SD-40-2 Locomotives, MILW Road Numbers 182 to 192, both inclusive
SPECIFICATIONS	General Motors Locomotive Specification 8087
BASE PRICE	$351,427 per Item ($3,865,697 for 11 Items) or such other price not exceeding $360,000 per Item ($3,960,000 for 11 Items) as shall be agreed to between the Guarantor and the Manufacturer
DELIVER TO	Chicago, Milwaukee, St. Paul and Pacific Railroad Company
PLACE OF DELIVERY	Bensenville, Illinois
ESTIMATED DELIVERY DATES	June, 1974
OUTSIDE DELIVERY DATE	July 2, 1974