

Interstate Commerce Commission  
Washington, D. C.

8842-A

Filed & Recorded

JUN 2 1977

RECORDATION NO.

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INTERSTATE COMMERCE COMMISSION

I. C. C.

FEE OPERATION B

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and 9 counterparts each of a Conditional Sale Agreement dated as of May 1, 1977 and an Agreement and Assignment dated as of May 1, 1977 relating thereto.

The general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendor under Conditional Sale Agreement and Assignor under Agreement and Assignment: General Motors Corporation (Electro-Motive Division) LaGrange, Illinois 60525

Vendee under Conditional Sale Agreement: First National Bank and Trust Company of Evanston 800 Davis Street Evanston, Illinois 60204

Assignee under Agreement and Assignment: First National Bank of Minneapolis 120 South Sixth Street Minneapolis, Minnesota

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

Please return the original and 7 copies of the Conditional Sale Agreement and the Agreement and Assignment to Larry Elkins, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, not in its individual capacity but solely as Trustee under Illinois Terminal Trust--No. 77-1

By Warren E. Sowers  
Its Authorized Officer

Enclosures

VENDEE AS AFORESAID

*Vertical handwritten signature on the left margin.*

MANUFACTURER: General Motors Corporation  
(Electro-Motive Division)

PLANT OF MANUFACTURER: McCook, Illinois

DESCRIPTION OF EQUIPMENT: 4 GP-38-2 Diesel Electric Locomotives  
bearing Illinois Terminal Railroad  
Company identifying numbers 2001 to  
2004, both inclusive

SPECIFICATIONS: General Motors No. 8090

BASE PURCHASE PRICE: \$425,000 per Item (\$1,700,000 for  
4 Items)

MAXIMUM PURCHASE PRICE: \$1,877,932.16

DELIVER TO: Illinois Terminal Railroad Company

PLACE OF DELIVERY: McCook, Illinois

ESTIMATED DELIVERY DATES: May, 1977

OUTSIDE DELIVERY DATE: June 30, 1977

LESSEE: Illinois Terminal Railroad Company

ASSIGNEE OF MANUFACTURER: First National Bank of Minneapolis

SCHEDULE A

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

6/2/77

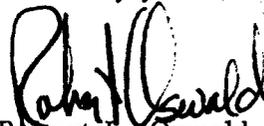
OFFICE OF THE SECRETARY

Larry Elkins, Esq.  
Chapman And Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 6/2/77 at 11:05am, and assigned recordation number(s) 8842, 8842-A & 8843

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

8842

RECORDATION NO. .... Filed & Recorded

JUL 2 1977 -11 02 AM

INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1977

Between

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

Manufacturer

And

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON,  
as Trustee under Illinois Terminal Trust No. 77-1

Vendee

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(Illinois Terminal Trust No. 77-1)

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Attachments to Conditional Sale Agreement:

- Schedule A - Description of Equipment
- Schedule B - Amortization Schedule

CONDITIONAL SALE AGREEMENT dated as of May 1, 1977 between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (the "Manufacturer") and FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, as Trustee (the "Vendee") under a Trust Agreement dated as of May 1, 1977 (the "Trust Agreement") with BORG-WARNER LEASING CORPORATION, a Delaware corporation (the "Trustor") known as Illinois Terminal Trust No. 77-1.

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");

WHEREAS, the Vendee is entering into an Equipment Lease dated as of the date hereof with Illinois Terminal Railroad Company, a Delaware corporation (the "Railroad") substantially in the form attached as Exhibit B to the Trust Agreement providing for the lease of the Equipment to the Railroad (the "Lease"); and

WHEREAS, the Manufacturer and the Vendee contemplate that the rights, security title and interest of the Manufacturer in and to the Equipment and certain rights and interests of the Manufacturer in and to this Agreement will be assigned to First National Bank of Minneapolis, as agent (the "Assignee") pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") between the Manufacturer and the Assignee;

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, those Items of Equipment which are indicated on Schedule A attached hereto to be constructed and sold by the Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedule with such modifications thereof as may be agreed upon in writing by the Vendee, the Railroad 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 Closing Date (as hereinafter defined).

SECTION 2. DELIVERY.

2.1. The Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Vendee in accordance with the applicable delivery schedule set forth in said Schedule A, provided, however, that the Manufacturer shall have no obligation to deliver any Item of Equipment hereunder so long as any Event of Default pursuant to Section 14.1 hereof shall have occurred and be continuing; and provided, further, that delivery of any Item of Equipment shall not be made except concurrently with the settlement therefor on the Closing Date pursuant to Section 3 hereof.

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 or delays of carriers or subcontractors.

2.3. Notwithstanding the foregoing provisions in this Section 2, 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. Any Equipment not so delivered and accepted pursuant to Sections 2.1, 2.3 and 3.1 hereof 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 of such excluded Equipment shall, for the benefit of the Railroad, remain obligated to construct, sell and deliver to the Railroad, and the Vendee and the Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and the Manufacturer agrees to look solely to the obligations of the Railroad pursuant to Section 1.2 of the Lease in respect of any such excluded Item of Equipment.

2.4. The Equipment during construction shall be

subject to inspection by an inspector or other authorized representative of the Railroad and the Vendee. Upon completion of the Equipment, it shall be presented on the Closing Date to an inspector of the Railroad for inspection at the place specified for delivery. Acceptance of any Items of Equipment by the Railroad under the Lease on the Closing Date shall be deemed to be acceptance of such Items of Equipment by the Vendee, and the Vendee agrees to use its best efforts to cause the Railroad to furnish the Certificate or Certificates of Acceptance under the Lease to the Manufacturer in such number of counterparts as may be reasonably requested. Any Item of Equipment which is not so accepted by the Railroad shall be excluded from this Agreement and shall not be included in the term "Equipment" as used in this Agreement.

2.5. The Manufacturer shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance thereof by the Railroad and the Vendee. Upon delivery and acceptance by the Railroad of each of such Items of Equipment pursuant to Section 2.4 hereof, the Vendee shall bear the risk of loss of or damage to such Items.

### SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, which shall include prepaid freight charges, if any, and storage charges, if any, prior to delivery, but exclusive of interest and all other charges, is as set forth in Schedule A. Such base price per Item of Equipment shall be subject to increase or decrease as set forth in an invoice from the Manufacturer to the Vendee accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such Item as set forth in said invoice, and the term "Purchase Price" as used herein shall mean such base price as so increased or decreased; provided that the Purchase Price for any Item of Equipment shall not exceed the Maximum Purchase Price provided therefor in such Schedule A. If on the Closing Date the Purchase Price of any Item of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence, cause the Maximum Purchase Price for all Items of Equipment on such Schedule to be exceeded, then the Vendee will enter into an agreement with the Manufacturer of the Item or Items of Equipment then proposed for settlement excluding from this Agreement such Item or Items of Equipment as will, after giving effect to such exclusion, reduce such aggregate Purchase Price of all Items of Equipment on such Schedule

to not more than the Maximum Purchase Price provided in such Schedule, and the Manufacturer agrees to look solely to the obligation of the Railroad pursuant to Section 1.2 of the Lease in respect of such excluded Equipment.

3.2. For the purpose of making settlement for the Equipment, all Items of Equipment delivered and accepted on the Closing Date pursuant to Section 2.4 hereof shall be referred to as a "Group".

3.3. Subject to the provisions of Section 13 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 shall designate for payment to it, the Purchase Price of the Items of Equipment as follows:

(a) On the Closing Date an amount equal to 33.2830% 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 such aggregate Purchase Price and the aggregate amount paid pursuant to subparagraph (a) of this Section 3.3 (such difference being 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 of 8.5% per annum for the period from and including the Closing Date to but not including July 1, 1977, payable on July 1, 1977, followed by

(2) Twenty-seven (27) semiannual installments, including both principal and interest at the rate of 8.5% per annum, payable on January 1, 1978 and on the first day of each July and January thereafter to and including January 1, 1991 as set forth in Schedule B hereto.

3.4. The obligation of the Vendee to pay the amounts specified in Section 3.3 hereof is, for the Group, subject to the fulfillment on or before the respective dates hereinafter set forth of the following conditions (any of which may be waived by the Vendee and the payment by the Vendee of the amounts specified in clause (a) of Section 3.3 with respect to

the Group shall be conclusive evidence that such condition has been fulfilled or irrevocably waived, provided, however, no act or omission of the Vendee other than such payment or a written waiver signed by the Vendee shall constitute a waiver for purposes of this Section 3.4):

(a) The Assignee shall pay or cause to be paid concurrently with payment by the Vendee to the Manufacturer the amount contemplated by Section 5 of the Assignment.

(b) No Event of Default specified in the Lease or herein or any event which with the lapse of time and/or notice provided for in the Lease or herein would constitute such an Event of Default, shall have occurred and be continuing, and a certificate of a Vice President of the Railroad dated such Closing Date shall be delivered to the Vendee to such effect and to the effect that the representations and warranties made by the Railroad in the Lease and the Finance Agreement remain true and correct.

(c) The Vendee shall have received the following opinions, each addressed to and in scope and substance satisfactory to the Vendee, namely:

(1) The opinion of counsel for the Railroad referred to in Section 18 of the Lease; and

(2) The opinions of counsel for the Manufacturer, dated the Closing Date, referred to in subparagraph (f) of Section 5 of the Assignment.

In giving the opinions specified above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's and lessor's rights generally.

(d) The Vendee shall have received the following additional instruments, each in scope and substance satisfactory to the Vendee, namely:

(1) Bills of Sale from the Manufacturer to the Assignee transferring to the Assignee security title to the Items of Equipment in the Group settled for with the Manufacturer on the Closing Date and warranting to the Assignee and to the Vendee that at the time of delivery of such Items to the Vendee under this Agreement the Manufacturer

had legal title to such Items and good and lawful right to sell such Items and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under this Agreement and the rights of the Railroad under the Lease;

(2) Certificates of Acceptance dated the Closing Date signed by an authorized representative of the Railroad of the character described in Section 1 of the Lease with respect to each such Item of Equipment (which shall constitute acceptance by the Vendee of each such Item of Equipment in accordance with Section 2.4 hereof); and

(3) Invoices for such Items of Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such Items as set forth therein.

3.5. The term "Closing Date" with respect to the Group shall mean such date which is not more than ten business days following presentation by the Manufacturer to the Vendee of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to the Group, as shall be fixed by the Railroad by written or telegraphic notice delivered to the Vendee, the Manufacturer and any assignee of 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 Minnesota are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next preceding business day.

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 9.5% 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 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 built by it 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 Railroad as herein provided. Any and all additions to the Equipment (not including, however, except as provided below in this parenthetical, any parts installed on and additions to any Item of Equipment, any portion of whose cost is furnished by the Railroad and which are readily removable without causing material damage to such Item of Equipment, but including parts installed on and replacements made to any Item of Equipment pursuant to the Railroad's obligations in Section 7 of the Lease to comply with all laws, regulations, requirements and rules applicable to the use, maintenance and operation of the Equipment or which constitute ordinary maintenance and repairs made by the Railroad pursuant to Section 8 of the Lease) and any and all replacements of the Equipment and of parts thereof 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 built by it, 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 such 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 such 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 19 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 such Equipment, and will pay to the Vendee any money paid to the Manufacturer, pursuant to Section 6.1 hereof and not

theretofore applied as provided in Section 6.2 hereof. 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 Vendee will use its best efforts to cause the Railroad to 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 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 (each such occurrence, except for any requisition which by its terms is for an indefinite period unless the same continues in effect on July 1, 1992, or is for a stated period which does not extend to or beyond July 1, 1992, 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 actual 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 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 (as defined in Section 6.4 hereof). Promptly following such payment, the Vendee will furnish to the Assignee, the Trustor and the Railroad a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

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 semiannual payments of the indebtedness in respect of the Purchase Price

of the remaining Equipment and interest thereon, becoming due thereafter shall be redetermined on the basis of the amount of such indebtedness remaining unpaid and on the basis of the number of semiannual 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, except that the Manufacturer, if requested by the Vendee so to do, will, subject to the limitations stated therein, take any and all action as specified in Section 4.2 hereof.

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 1, 1992, 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. INSPECTIONS.

The Manufacturer shall have the right, by its agents, to inspect the Equipment when the Equipment is available for such inspection and records of the Vendee with respect thereto once in every year.

## SECTION 8. POSSESSION AND USE.

8.1. 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, but only upon and subject to all the terms and conditions of this Agreement.

8.2. Without limiting any of the rights of the Vendee under Section 12 hereof, the Vendee may lease the Equipment to the Railroad or its assigns as permitted by, and for use as provided in, Section 17 of the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturer under this Agreement are subject to the rights and interest of the Railroad under the Lease. A copy of any such assignment by the Railroad pursuant to Section 17 of the Lease shall be furnished to the Manufacturer. The Lease shall not be amended or terminated without the prior written consent of the Manufacturer, which shall not be unreasonably withheld.

#### SECTION 9. PROHIBITION AGAINST LIENS.

9.1. 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 Railroad 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 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.

9.2. 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 10. INDEMNITIES.

10.1. The Vendee shall cause the Railroad to assume all risk and expense arising from the possession, use, operation and maintenance by whomsoever of the Equipment.

10.2. As between the Manufacturer and the Vendee, the Vendee, after delivery to and acceptance by the Railroad 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.

10.3. The Manufacturer warrants that the Items of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that such Items of Equipment will

be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Railroad 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, the Railroad and the Manufacturer as their interests may appear and in all cases at the sole cost and expense of the Railroad 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 such 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 OR 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 NEITHER ASSUMES NOR AUTHORIZES 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 Items of Equipment to be built by it at any time with the approval of the Railroad without incurring any obligation to make similar changes or additions in respect of other Items of Equipment previously delivered to the Railroad. The Manufacturer further agrees with the Vendee that acceptance of any Items of Equipment under Section 2.4 hereof shall not be deemed a waiver by the Vendee of any of its rights under this Section 10.3.

10.4. It is hereby agreed that the Railroad shall be and is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed in this Section 10.

SECTION 11. PATENT INDEMNITIES.

11.1. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees for itself to indemnify, protect and hold harmless the Vendee and the Railroad 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 Railroad because of the use in or about the construction or operation of any Item of Equipment to be built by it, 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 Railroad 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 Manufacturer or the Vendee because of the use in or about the construction or operation of any Item of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad 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 Railroad the right to continue using such Item of Equipment or replace the same with non-infringing equipment reasonably satisfactory to the Vendee and the Railroad, 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 to be built by it 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 Railroad of any claim known to the Manufacturer from which liability may be charged against the Vendee or the Railroad hereunder and the Railroad 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.

11.2. 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.

11.3. 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.

11.4. It is hereby agreed that the Railroad shall be and is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed in this Section 11.

## SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 8.2 hereof or Section 6.10 of the Trust Agreement, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturer, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturer to any duties, obligations or liabilities whatsoever.

12.2. 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, 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 warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking), or relieve the Vendee of its obligations to the Manufacturer hereunder.

12.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, 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 Manufacturer's right, security title and interest in and to the Equipment, 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 Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice, but unless and until the Vendee shall have received such notification, the Vendee shall be entitled to make all payments hereunder to the Manufacturer.

12.4. The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Vendee 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 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, setoff, 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, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Manufacturer.

12.5. 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 the Assignee or any other such assignee, change the identification to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Railroad, the Vendee will use its best efforts to cause the Railroad pursuant to Section 4 of the Lease to change the identification to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such identification 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 identification for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such identification with respect to the Assignee (or to a successor agent or trustee thereto) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such identification in connection with any subsequent assignment (other than to a successor agent or trustee of the Assignee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment to the Assignee, the Vendee will, in connection with settlement for the Group, deliver to the Assignee, at the time of delivery by the Railroad of notice fixing the Closing Date, all documents reasonably required by the terms of such assignment to be delivered by the Vendee to the Assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the Assignee.

12.7. If this Agreement shall have been assigned to the Assignee by the Manufacturer and the Assignee shall not make payment to the Manufacturer on the Closing Date with respect to the Group for the Items of Equipment therein of an amount equal to the Purchase Price of such Items of Equipment as provided in the Assignment, the Manufacturer will promptly notify the Vendee and the Railroad of such event and such Items of Equipment included in the Group shall be excluded from this Agreement thereupon.

### SECTION 13. LIMITATION OF VENDEE'S OBLIGATIONS.

It is expressly understood and agreed by and between the Vendee, the Trustor under the Trust Agreement and the Manufacturer and their respective successors and assigns that this Agreement is executed by First National Bank and Trust Company of Evanston, 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 First National Bank and Trust Company of Evanston hereby warrants that it possesses full power and authority to enter into and perform this Agreement); and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on First National Bank and Trust Company of Evanston, or on said Trustor individually or personally, to perform any covenant either express 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 First National Bank and Trust Company of Evanston or the Trustor or the Manufacturer, individually or personally are concerned, the Manufacturer and any person claiming by, through or under the Manufacturer shall look 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. Notwithstanding the foregoing, nothing in this Section 13 shall be deemed to prevent enforcement of any claim for damages based upon the gross negligence or willful misconduct of the Trustee or the Trustor. Nothing in this Section 13 shall limit any rights of the Manufacturer under this Agreement against the Railroad.

SECTION 14. DEFAULTS.

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

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for ten days; or

(b) The Vendee 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) Any proceedings shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), 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 Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee 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

(d) 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 Equipment; or

(e) 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 upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, 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 9.5% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled, subject to the provisions and limitations of Section 13 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 Vendee subject to the provisions and limitations of Section 13 hereof.

14.2. In addition to the right of the Vendee to elect to cure a default hereunder as provided in Section 14.4 hereof, and notwithstanding the rights of the Manufacturer otherwise expressed herein, in the case of any default under Section 14.1(a) of the Lease, the Manufacturer shall not, without the prior written consent of the Vendee and the Trustor, 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 Railroad; provided that such right to cure a default arising out of the failure to make a rental payment shall be limited to not more than two consecutive rental payments and in any event to not more than four rental payments in the aggregate. No party exercising the right to cure a default pursuant to this Section 14.2 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 Railroad 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 Railroad under the Lease.

14.3. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee 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. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee 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.

14.4. 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 15.3, 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 15. REMEDIES.

15.1. 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 any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 15 expressly provided, and may remove the same from possession and use of the Vendee (but subject to the then existing rights and interests of the Railroad under the Lease, if any) and for such purpose may enter upon premises where the Equipment may be located without judicial process if this can be done without breach of the peace, 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.

15.2. In case the Manufacturer shall rightly demand possession of the Equipment in pursuance of this Agreement and

shall reasonably designate a point or points on the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Vendee shall use its best efforts to cause the Railroad, at the expense of the Railroad, forthwith and in the usual manner to 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. 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 requiring specific performance hereof. The Vendee hereby expressly waives 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.

15.3. 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 claiming by, through or under the Vendee (but subject to the then existing rights of the Railroad under the Lease, if any), 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.

15.4. 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 shall be given written notice of such sale not less than ten days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee 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 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.

15.5. 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; provided that the Manufacturer agrees that it will not retain the Equipment in satisfaction of the Conditional Sale Indebtedness. 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.

15.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of costs and expenses of suit, if any, and of such sale and of all proper expenses, liabilities and advances, including legal expenses and attorneys' fees incurred or made by the Manufacturer (but only to the extent such costs, expenses, liabilities and advances have not been otherwise paid by the Railroad), 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 13 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.

15.7. The Vendee, subject to the provisions of Section 13 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.

15.8. 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. No remedies herein provided shall be exercised in such manner as to violate any rights of the Railroad under the Lease unless an Event of Default shall have occurred and be continuing under the Lease.

SECTION 16. APPLICABLE STATE LAWS.

16.1. 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.

16.2. 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.

16.3. Nothing in this Section 16 or any other provision of this Agreement shall be deemed to make ineffective, or to modify or waive, the provisions and limitations of Section 13 hereof.

SECTION 17. 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 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 18. RECORDING.

The Vendee will use its best efforts to see that the Railroad causes this Agreement, the Assignment and any

supplements hereto and thereto to be filed, recorded or deposited and refiled, rerecorded or redeposited, 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 to see that the Railroad promptly furnishes to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

SECTION 19. 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: First National Bank and Trust Company of Evanston, 800 Davis Street, Evanston, Illinois 60204, Attention: Vice President - Corporate Trust Department,

(b) to the Railroad: Illinois Terminal Railroad Company, Post Office Box 7282, St. Louis, Missouri 63177, Attention: Mr. L. B. Rudloff, Controller,

(c) to General Motors: General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525, and

(d) to the Assignee: First National Bank of Minneapolis, 120 South Sixth Street, Minneapolis, Minnesota, Attention: Corporate Trust Department, or to any other 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 Railroad, 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 20. HEADINGS.

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

SECTION 21. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedule relating hereto,

together with the Lease exclusively and completely state the rights and agreements of the Manufacturer and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. Except as otherwise provided herein, 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 Manufacturer and the Vendee. 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 13 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 22. 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 23. 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 of the Manufacturer, 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 24. ASSIGNMENT OF LEASE.

As contemplated by the preamble hereto and the provisions of Section 8 hereof, and subject to the limitations of Section 13 hereof, 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, insofar as the same cover or relate to the Equipment built by the Manufacturer (other than payments owing to the Lessor or the Trustor pursuant to Section 6 of 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 built by the Manufacturer, and to enforce compliance by the Lessee with all the terms and provisions of the Lease with respect to said Equipment. The Vendee further agrees to notify promptly the Manufacturer of any Event of Default under the Lease of which it has actual knowledge. 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 Lessee under the Lease, shall be and remain enforceable by the Lessee, its successors and assign 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. 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 in and to the Lease shall revert to the Vendee.

#### SECTION 25. SEVERABILITY.

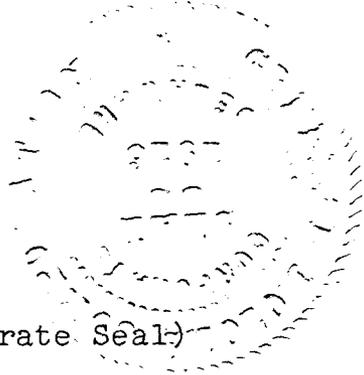
Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions

hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

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.



(Corporate Seal)

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By *P.K. Haglund*  
Its Vice President

Attest:

*W.H. Thomas*  
Assistant Secretary

FIRST NATIONAL BANK AND TRUST  
COMPANY OF EVANSTON, as  
Trustee under Illinois Terminal  
Trust No. 77-1

By *Harvey E. Jones*  
Its Vice President and Trust  
Officer

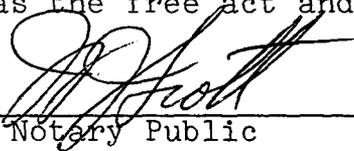
(Corporate Seal)

Attest:

*William E. Blunk*  
Assistant Vice President  
and Trust Officer

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 25<sup>th</sup> day of May, 1977, before me personally appeared P. A. HUGLUND, 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

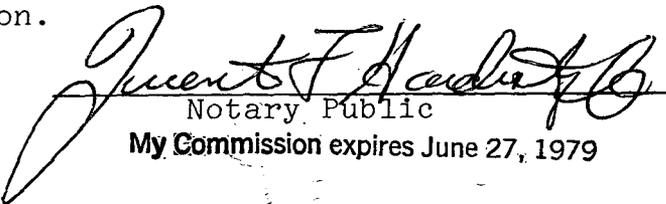
(Seal)

My Commission Expires: January 17, 1979



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 31<sup>st</sup> day of May, 1977, before me personally appeared Warren E. Powers, to me personally known, who being by me duly sworn, says that he is a Vice President and Trust Officer of FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, 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  
My Commission expires June 27, 1979

(Seal)

My Commission Expires:



MANUFACTURER: General Motors Corporation  
(Electro-Motive Division)

PLANT OF MANUFACTURER: McCook, Illinois

DESCRIPTION OF EQUIPMENT: 4 GP-38-2 Diesel Electric Locomotives  
bearing Illinois Terminal Railroad  
Company identifying numbers 2001 to  
2004, both inclusive

SPECIFICATIONS: General Motors No. 8090

BASE PURCHASE PRICE: \$425,000 per Item (\$1,700,000 for  
4 Items)

MAXIMUM PURCHASE PRICE: \$1,877,932.16

DELIVER TO: Illinois Terminal Railroad Company

PLACE OF DELIVERY: McCook, Illinois

ESTIMATED DELIVERY DATES: May, 1977

OUTSIDE DELIVERY DATE: June 30, 1977

LESSEE: Illinois Terminal Railroad Company

ASSIGNEE OF MANUFACTURER: First National Bank of Minneapolis

SCHEDULE A  
(to Conditional Sale Agreement)

AMORTIZATION SCHEDULE

(Payments Required per \$1,000,000 Investment pursuant to Section 3.3(b)(2) of the Conditional Sale Agreement)

| <u>Payment Number</u> | <u>Principal Balance</u> | <u>Payments of Interest</u> | <u>Allocated to Principal</u> | <u>Total Payment</u> |
|-----------------------|--------------------------|-----------------------------|-------------------------------|----------------------|
| 0                     | \$1,000,000.00           | -----                       | -----                         | -----                |
| 1                     | 974,345.56               | \$42,500.00                 | \$25,654.44                   | \$68,154.44          |
| 2                     | 947,600.81               | 41,409.69                   | 26,744.75                     | 68,154.44            |
| 3                     | 919,719.40               | 40,273.03                   | 27,881.41                     | 68,154.44            |
| 4                     | 890,653.03               | 39,088.07                   | 29,066.37                     | 68,154.44            |
| 5                     | 850,351.34               | 37,852.75                   | 30,301.69                     | 68,154.44            |
| 6                     | 828,761.83               | 36,564.93                   | 31,589.51                     | 68,154.44            |
| 7                     | 795,829.77               | 35,222.38                   | 32,932.06                     | 68,154.44            |
| 8                     | 761,498.10               | 33,822.77                   | 34,331.67                     | 68,154.44            |
| 9                     | 725,707.33               | 32,363.67                   | 35,790.77                     | 68,154.44            |
| 10                    | 688,395.45               | 30,842.56                   | 37,311.88                     | 68,154.44            |
| 11                    | 649,497.82               | 29,256.81                   | 38,897.63                     | 68,154.44            |
| 12                    | 608,947.04               | 27,603.66                   | 40,550.78                     | 68,154.44            |
| 13                    | 566,672.85               | 25,880.25                   | 42,274.19                     | 68,154.44            |
| 14                    | 522,602.01               | 24,083.60                   | 44,070.84                     | 68,154.44            |
| 15                    | 479,854.66               | 22,210.59                   | 42,747.35                     | 64,957.94            |
| 16                    | 435,290.54               | 20,393.82                   | 44,554.12                     | 64,957.94            |
| 17                    | 394,720.50               | 18,499.85                   | 40,570.04                     | 59,069.89            |
| 18                    | 352,426.23               | 16,775.62                   | 42,294.27                     | 59,069.89            |
| 19                    | 314,130.83               | 14,978.11                   | 38,295.40                     | 53,273.51            |
| 20                    | 274,207.88               | 13,350.56                   | 39,922.95                     | 53,273.51            |
| 21                    | 238,288.71               | 11,653.83                   | 35,919.17                     | 47,573.00            |
| 22                    | 200,842.98               | 10,127.27                   | 37,445.73                     | 47,573.00            |
| 23                    | 167,406.26               | 8,535.83                    | 33,436.72                     | 41,972.55            |
| 24                    | 132,548.48               | 7,114.77                    | 34,857.78                     | 41,972.55            |
| 25                    | 99,661.16                | 5,633.31                    | 32,887.32                     | 38,520.63            |
| 26                    | 65,376.13                | 4,235.60                    | 34,285.03                     | 38,520.63            |
| 27                    | .00                      | 2,778.31                    | 65,376.13                     | 68,154.44            |

SCHEDULE B  
(to Conditional Sale Agreement)