

12375
RECORDATION NO. Filed 1425

OCT 30 1980 - 11:30 AM
INTERSTATE COMMERCE COMMISSION
70/30/80
50.00

Interstate Commerce Commission
Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of USC Section 11303 are the original and six counterparts of a Conditional Sale Agreement dated as of August 1, 1980.

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

The names and addresses of the parties are:

Seller under Conditional Sale Agreement:

Continental Illinois National Bank and Trust Company of Chicago, as Agent and Assignee
30 North LaSalle Street
Chicago, Illinois 60695
Attention: Corporate Trust Department

Buyer under Conditional Sale Agreement:

Wisconsin & Southern Railroad Co.
501 East Lake Street
Horicon, Wisconsin 53032

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

Please return the original and five copies of the Conditional Sale Agreement to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

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

Very truly yours,

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Agent and Assignee

By [Signature]
Its TRUST OFFICER

SELLER AS AFORESAID

CT. Kappeler

RECEIVED
OCT 30 1980
CERTIFICATION UNIT
U.S. DEPT. OF COMMERCE

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

10/30/80

OFFICE OF THE SECRETARY

**Gary Green, Esp.
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **10/30/80** at **11:30am**, and assigned re-
recording number(s). **12375**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

12375

RECORDATION NO. Filed 1425

Execution Copy

OCT 30 1980 11 50 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of August 1, 1980

Between

CONTINENTAL ILLINOIS NATIONAL BANK AND
AND TRUST COMPANY OF CHICAGO,
as Agent and Assignee

Seller

and

WISCONSIN & SOUTHERN RAILROAD CO.

Buyer

Re:

\$2,000,700 Maximum Principal Amount
13% Conditional Sale Indebtedness
Due 1981-1996

of

WISCONSIN & SOUTHERN RAILROAD CO.

(W & S No. 80-1)
(78 Boxcars)

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ATTACHMENTS TO CONDITIONAL SALE AGREEMENT:

- Schedule A -- Description of Equipment
- Schedule B -- Description of Assigned Leases
- Exhibit 1 -- Certificate of Acceptance
- Exhibit 2 -- Supplement to Conditional Sale Agreement

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of August 1, 1980 between WISCONSIN & SOUTHERN RAILROAD CO. (the "Railroad") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Agent and Assignee (the "Seller") pursuant to an Agreement and Assignment dated as of February 1, 1978 between the Seller and Evans Transportation Company and a Finance Agreement dated as of February 1, 1978 among the Seller, Pickens Railroad Company, National Railway Utilization Corporation and the investors named in Schedule 1 thereto, and supplemented by a Finance and Agency Agreement dated as of August 1, 1980 (the "Finance Agreement") among the Seller, the investors named in Schedule 1 thereto and the Railroad;

WHEREAS, the Seller is willing to sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment to be sold by the Seller as described in Schedule A attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item");

WHEREAS, the Seller and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Seller and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

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

SECTION 1. SALE OF EQUIPMENT.

Subject to the terms and conditions set forth herein and in the Finance Agreement, the Seller will sell and deliver to the Railroad, and the Railroad will purchase from the Seller and accept delivery of and pay for as hereinafter provided, the Items of Equipment referred to in Schedule A attached hereto.

SECTION 2. DELIVERY.

2.1. The Seller will deliver the various Items of Equipment to the Railroad as set forth in Schedule A attached hereto; provided, however, that the Seller shall have no obligation to deliver any Item of Equipment hereunder if (a) the terms and conditions set forth in the Finance Agreement shall not have been satisfied, or (b) an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. The Seller's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Seller's reasonable control, including, but not limited to, act 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. The Equipment prior to delivery shall be subject to inspection by one or more inspectors or other authorized representatives of the Railroad at the place designated herein for delivery of such Item of Equipment, and, such inspectors or representatives shall execute and deliver to the Seller a certificate or certificates of acceptance substantially in the form attached as Exhibit 1 hereto (hereinafter called the Certificate of Acceptance) stating that such Item of Equipment has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 5.1 hereof. Any Certificate of Acceptance may cover any number of Items of Equipment.

2.4. The Seller shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance by the Railroad. Upon delivery and acceptance by the Railroad of each such Item of Equipment the Railroad shall bear the risk of loss of or damage to such Item.

2.5. The Seller shall on each Closing Date (as hereinafter defined) provide to the Buyer a bill of sale for the Items of Equipment to be sold on such Closing Date substantially in the form required by Section 8(b)(iii) of the Finance Agreement.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, including interest, is as set forth in Schedule A attached hereto and hereinafter referred to as the "Purchase Price".

3.2. The Railroad hereby acknowledges itself to be indebted to the Seller in the amount of, and hereby promises to pay to the Seller at such bank or trust company in the United States as the Seller or its assignee shall designate for payment to it in funds immediately available at such place of payment, the Purchase Price of the Items of Equipment as follows:

(a) On each Closing Date (as hereinafter defined) for an amount equal to 10% of the Purchase Price of the Items of Equipment to be settled for on such date; and

(b) An amount (the "Conditional Sale Indebtedness") equal to the difference between the entire Purchase Price of the Items of Equipment to be settled for on any Closing

Date and the amount paid pursuant to subparagraph (a) above plus interest on the unpaid balance thereof at a rate equal to 13% per annum payable as follows:

(1) One (1) installment of interest only from and including the Closing Date for each Item of Equipment to but not including January 1, 1981, payable on January 1, 1981, followed by

(2) Fourteen (14) equal annual installments of principal and interest at the rate of 13% per annum, the first such installment payable on January 1, 1982 and the remaining such installments to be payable on each January 1 thereafter to and including January 1, 1995, followed by

(3) a final installment, payable on January 1, 1996 in an amount equal to the entire principal of and interest remaining unpaid on the Conditional Sale Indebtedness on said date.

3.3. The term "Closing Date" with respect to any Item of Equipment shall mean not more than three dates, each date not more than ten business days following presentation by the Seller to the Railroad of the invoice, or invoices for such Item and the execution by the Railroad of the Certificate or Certificates of Acceptance with respect to such Item of Equipment, as shall be mutually agreed upon by the Seller and the Railroad.

3.4. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois or Pennsylvania 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 succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

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

3.6. The Railroad will pay interest at the rate of 14% 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.

3.7. All payments provided for in this Agreement shall be made by the Railroad 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.

3.8. Except as provided in Section 6 hereof, the Railroad 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 Seller shall and hereby does retain a security interest in the Equipment until the Railroad 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 Railroad 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 Seller shall have been paid in full the indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Railroad'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 Railroad without further transfer or action on the part of the Seller except that the Seller, if requested by the Railroad so to do, will execute a release of its security interest in the Equipment to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such release to the Railroad 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 Railroad to the Equipment, and will pay to the Railroad any money paid to the Seller, pursuant to Section 6 hereof and not therefore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such releases and other instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such releases and other instruments or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 5. MARKING OF EQUIPMENT.

5.1. The Railroad will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule

A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of the Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interest of the Seller in such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Railroad will not change the road number of any Item of Equipment except with the consent of the Seller and any assignee pursuant to Section 14 hereof and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

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

SECTION 6. CASUALTY OCCURRENCES; INSURANCE.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or 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 original term of this Agreement, 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 Railroad shall, within ten days after it shall have been determined that such Item of Equipment has suffered a Casualty Occurrence, fully inform the Seller in regard thereto. When an Item of Equipment has suffered a Casualty Occurrence, the Railroad shall, within 30 days of such event, pay the Seller a sum equal to the aggregate Casualty Payment (as defined in Section 6.3 hereof) of such Item of Equipment as of the date of such payment and shall file with the Seller a certificate of a Vice President

or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Payment of said Item of Equipment.

6.2. Any money paid to the Seller pursuant to Section 6.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied as Railroad shall direct with respect to replacement Equipment if requirements of \$6 met in whole or in part, as the Railroad shall direct in a written instrument filed with the Seller, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of an Item or Items of Equipment of standard gauge railroad equipment which shall be of the same character as the Equipment described in Schedule A hereto to replace such Item of Equipment having suffered a Casualty Occurrence and which replacement Item or Items of Equipment shall be of a quality and have a value and utility at least equal to such Item of Equipment having suffered a Casualty Occurrence, as the Railroad shall direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the first installment date for the payment of interest due and owing on the Purchase Price of the Equipment next following receipt by the Seller of such written direction, to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the installments of the Purchase Price of the Equipment thereafter falling due whether or not such amount shall be sufficient to prepay the entire amount of the Purchase Price. In case of replacement the amount to be paid by the Seller in respect of any replacing Item shall not exceed the lesser of the cost of such Item or the amount which such Item would have cost if acquired on the earliest date when any of such money was paid to the Seller, and the Railroad shall pay any additional cost of such Item. Under no circumstance shall the Seller be required under this Section 6.2 to make prepayments or to pay for replacements except out of funds paid to the Seller pursuant to Section 6.1 hereof. In the case of any replacement, the Purchase Price of such replacing Item shall for the purpose of this Agreement be the amount of money advanced by the Seller in payment therefor, but shall not include any portion of the cost thereof paid by the Railroad. The amount which any such replacing Item would have cost if acquired on the earliest date when any of such money was paid to the Seller shall be conclusively determined by the certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

6.3. The payment to be made to the Seller 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.

6.4. So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller pursuant to this

Section 6 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (a) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (b) obligations issued or guaranteed by any state of the United States or the District of Columbia or any political subdivision of any such state or district rated "AA" (or the equivalent thereof) or better by Standard & Poor's Corporation or Moody's Investors Service or any successor thereto, or (c) repurchase agreements fully secured by any one or more of the obligations referred to in clause (a) above, or (d) in certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks in the United States of America which are members of the Federal Reserve system having capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Seller on any Investments shall be held by the Seller and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Seller thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Seller for application pursuant to this Section 6, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Seller an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Seller in connection with the purchase and sale of Investments.

6.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 5.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Seller subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with 49 USC Section 11303 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the security interest of the Seller in such replacements. All such replacements shall be warranted in like manner as the Items replaced, and the vendor of the replacements shall duly consent to the subjection thereof

to this Agreement and agree to be bound by all the terms and provisions contained herein in respect of such replacements.

6.6. Whenever the Railroad shall file with the Seller, pursuant to the foregoing provisions of this Section 6, a written direction to apply money to or toward the cost of a replacing any Item of standard gauge railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Item is standard gauge railroad equipment and has been plated or marked as required by the provisions of Section 5.1 and certifying the cost of such replacing Item or Items, the amount which such replacing Item would have cost if acquired on the earliest date when any such money was paid to the Seller and that the cost thereof does not exceed the fair value of such Item and that such replacing Item or Items have a quality and value and utility at least equal to the Item or Items replaced; and

(b) an opinion of counsel for the Railroad that a security interest in each replacing Item is vested in the Seller free and clear of all liens and encumbrances other than the lien of this Agreement and subordinated liens permitted hereunder, and that such Item has come under and become subject to this Agreement.

6.7. In the event that any moneys paid to, or held by, the Seller pursuant to this Section 6 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Seller on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Seller pursuant to this Section 6 shall be applied by the Seller as if such money were money received upon the sale of Equipment pursuant to Section 16 hereof.

6.8. In order to facilitate the sale, or other disposition of any Equipment suffering a Casualty Occurrence, the Seller shall upon request of the Railroad, after deposit by the Railroad of a sum equal to the Casualty Payment of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a release (without warranties) in respect of such Equipment from the lien of this Agreement in such form as may be reasonably requested by the Railroad.

6.9. In the event that prior to the expiration of the term of this Agreement, 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 Railroad's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Railroad 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.

6.10. The Railroad will at all times after delivery and acceptance of each Item of Equipment, and at its own expense, keep or cause to be kept each such Item insured both as to property insurance and public liability insurance by a reputable insurance company or companies in amounts and against risks customarily insured against by other railroad companies on similar equipment and in any event in amounts and against risks insured against by the Railroad in respect of similar equipment owned or leased by it and the benefits thereof shall be payable to the Railroad and the Seller as their interests may appear; provided, however, that so long as any Conditional Sale Indebtedness shall remain unpaid hereunder, the Railroad shall maintain property insurance in an amount not less than the unpaid Conditional Sale Indebtedness. All property insurance shall provide that losses, if any, shall be payable (except as provided below) to the Seller under a standard mortgage loss payable clause. All policies of insurance maintained pursuant to this Section shall provide that 30 days' prior written notice of cancellation or material alteration of coverage shall be given to the Agent. All proceeds of insurance received by the Seller with respect to any Items of Equipment not suffering a Casualty Occurrence shall be paid to the Railroad upon proof satisfactory to the Seller that any damage thereto with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Seller with respect to a Casualty Occurrence shall be credited toward the payment required to be made by the Railroad with respect thereto pursuant to Section 6 hereof.

SECTION 7. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller in respect of the amount of any local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to

the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Seller solely by reason of its holding security title to the Equipment and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Seller or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Seller directly and paid by the Seller, the Railroad shall reimburse the Seller on presentation of an invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Seller for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Seller shall have submitted notice in writing to the Railroad at least five business days in advance of payment thereof.

SECTION 8. REPORTS AND INSPECTIONS.

8.1. On or before April 1 in each year, commencing with the year 1982, the Railroad will furnish to the Seller an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then subject to this Agreement, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Seller may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.1 hereof shall have been preserved or replaced.

8.2. The Seller shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 9. POSSESSION, USE AND MAINTENANCE.

9.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after

delivery of the Equipment by the Seller to the Railroad, to the possession of the Equipment and the use thereof upon the railroad lines owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the railroad lines owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may also be used upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Seller to the Railroad; provided however that such use shall be subject to all the terms and conditions of this Agreement and that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States.

9.2. (a) So long as the Railroad shall not be in default under this Agreement, the Railroad shall be entitled to the possession of the Equipment and shall be entitled, subject to the provisions of paragraph (d) of this Section 9.2, to maintain, amend, terminate and enter into leases of the Equipment and to permit its use by, one or more lessees or users in the United States of America (or any state thereof or the District of Columbia) provided, however, that if the lessee is a railroad or shipper having its principal place of business in Canada or intends to base the Items of Equipment to be leased thereunder in Canada, the lease shall not permit the use of such Equipment (other than occasional and intermittent use) in any Province of Canada except where the Railroad has provided through filing, recordation, registration or other means satisfactory to the Seller adequate protection of the Seller's security interest in such Item of Equipment and in the Seller's first lien and security interest in such lease pursuant to the Assignment (as hereinafter defined) thereof and has provided to the Seller an opinion of counsel satisfactory to the Seller to such effect. Any lease by the Railroad entered into pursuant to this Section 9.2 may provide (and such provision shall be binding upon the Seller) that the lessee so long as it shall not be in default under such lease shall be entitled to the possession of the Items of Equipment included in such lease and the use thereof, and, subject to the provisions of Section 5.1, may provide for lettering or marking upon such Items for convenience of identification of the leasehold interest of such lessee therein, subject to the provisions of Section 5.2. Every such lease shall expressly subject the rights of the lessee under such lease to the rights of the Seller in respect of the Items of Equipment covered by such lease.

(b) As security for the payment and performance of the obligations of the Railroad hereunder, the Railroad hereby grants a security interest in, pledges and assigns to the Seller all of its rights, title and interest in and to all rentals, moneys and proceeds payable to or receivable by the Railroad with respect to any lease of any Item of Equipment existing as of the date hereof or entered into in the future and any guaranty of such lease obligations existing on the date hereof or entered into in

the future (the "Assignment"); provided, however, that (i) so long as no Event of Default shall have occurred and be continuing the Railroad shall be entitled to collect and receive all such rentals, moneys and proceeds, and (ii) during the continuance of any Event of Default, all such rentals, moneys and proceeds shall be paid to the Seller and applied to the payment or prepayment of the Conditional Sale Indebtedness.

The Railroad covenants and agrees that it has caused and shall continue to cause substantially the following clause to be inserted in each lease entered into by it:

"It is understood that some or all of the Units of Equipment furnished the Lessee under this Lease and the Lessor's rights under this Lease may at the time of delivery to the Lessee or at some future time during the term of this Lease be subject to the terms of a mortgage, deed of trust, equipment trust agreement, pledge or assignment or similar security arrangement. The Lessee agrees that the Units may be stenciled or marked to set forth the ownership of any such Units in the name of a mortgagee, trustee, pledgee, assignee or security holder and that this Lease and the Lessee's rights hereunder are and shall at all times be subject and subordinate to any and all rights of any mortgagee, trustee, pledgee, assignee or security holder. As to the Units subject hereto, this Lease and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on each Unit as determined with reference to the filings under Section 11303 of the Interstate Commerce Act, and the Lessee agrees to recognize the rights of such superior lien holder and pay the rentals hereunder to such holder in accordance with the terms of such superior lien; provided that, until notified to the contrary by any person reasonably proving to the Lessee's satisfaction that he is the assignee of this Lease and of the rentals hereunder, the Lessee is to pay all rentals to the order of the Lessor. The Lessee hereby consents to and accepts such assignments. The Lessee agrees that no claim or defense which the Lessee may have against the Lessor shall be asserted or enforced against any assignee of this Lease."

(c) Prior to entering any lease for any Item of Equipment permitted by this Section 9.2, the Railroad shall furnish to the Seller a certificate of its President or any Vice President setting forth the identity of the proposed lessee, the term of and rate of rental payable under such proposed lease, a description of the Items of Equipment subject to such lease, a copy of the form of such lease and such other information regarding the lease and the lessee as the Seller may request.

The Seller shall not be obligated to take any steps necessary to preserve any rights in any lease assigned pursuant to the Assignment against prior parties who may be liable in connection therewith and it is expressly agreed that, anything herein contained to the contrary notwithstanding, the Railroad shall remain liable under such leases to which it is a party to perform all of the obligations assumed or to be assumed by it thereunder, and the Seller shall have no obligations or liability under any such lease by reason of or arising out of this assignment, nor shall the Seller be required or obligated in any manner to perform or fulfill any obligation of the Railroad under or pursuant to any lease, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times, and the Railroad shall and does hereby agree to indemnify and hold the Seller harmless from and against any and all liability, loss or damage which it may or might incur with respect to or arising under any such lease or the Assignment.

(d) The Railroad will maintain the validity and effectiveness of all leases assigned pursuant to the Assignment, will diligently enforce its rights thereunder in accordance with the terms of such leases and will take all such action to that end as from time to time may be requested by the Seller. If any other party to any lease assigned pursuant to the Assignment shall fail to perform any act required to be performed by it thereunder or shall otherwise default in any of its obligations thereunder, the Railroad will give notice of such failure or default to the Seller promptly after obtaining knowledge thereof. The Railroad will not (i) discharge or terminate any lease assigned pursuant to the Assignment or consent to or accept or permit any discharge or termination thereof, (ii) amend, modify or otherwise change any term thereof, (iii) give any waiver, consent or approval thereunder, (iv) assign or pledge any rental or other payment due or to become due thereunder or anticipate any rental or other payment hereunder or (v) take any other action in connection therewith, if, in any such case, the effect thereof would be materially to impair the value of the Seller's interest therein or in its rights thereunder or the value of the rights therein of the Seller resulting from the Assignment created under this Section 9.2.

(e) Immediately upon entering into any lease pursuant to the terms of paragraph (c) of this Section 9.2, the Railroad agrees to execute a supplement in the form attached hereto as Exhibit 2 and to submit such supplement to the Seller for execution. Following such execution the Railroad agrees to comply with the provisions of Section 19 hereof relating to maintaining the security interest of the Seller (including, without limitation, filing with the Interstate Commerce Commission in accordance with 49 USC Section 11303) and to take such other actions as the Seller

may reasonably request to assure the maintenance of such security interest.

(f) The Railroad hereby irrevocably constitutes and appoints the Seller, the attorney-in-fact of the Railroad for the purposes of exercising all rights, with respect to all leases entered into as of the date hereof or in the future with respect to any Item of Equipment, granted under this Section 9.2. Any instrument made, executed and delivered by the Seller on behalf of the Railroad shall be binding upon the Railroad and all parties claiming by, through and under the Railroad, with the same effect as if the Railroad had itself made, executed and delivered the same; provided however, that so long as no Event of Default hereunder or any event which with the lapse of time or the giving of notice or both would constitute such an Event of Default shall have occurred and be continuing the Seller shall take no action with respect to such leases without the consent of the Railroad.

(g) Without limiting the foregoing, the Railroad hereby further covenants that it will, upon the written instruction of the Seller, execute and deliver such further instruments and do and perform such other acts and things as the Seller or its assigns may deem necessary or appropriate to effectively invest in and secure to the Seller and its assigns the interests assigned pursuant to this Section 9.2 or other rights or interests due or hereafter to become due.

(h) The satisfaction or discharge of any part of the obligations or liabilities of the Railroad under this Conditional Sale Agreement shall not in any way satisfy or discharge the Assignment provided for in this Section 9.2, but such Assignment shall remain in full force and effect so long as any amount remains unpaid on any such obligations or liabilities.

9.3. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Seller which approval shall not be unreasonably withheld, provided that no such approval shall be necessary if and to the extent such modification is required by Section 11 hereof. Any parts installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and a security interest therein shall be immediately vested in the Seller, without cost or expense to the Seller.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the

Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security interest of the Seller, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the sole opinion of the Seller, adversely affect the property or rights of the Seller 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, or other liens arising in the ordinary course of business and, mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 11. RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the sole opinion of the Seller, adversely affect the property or rights of the Seller hereunder.

SECTION 12. INDEMNITIES.

12.1. The Railroad agrees to indemnify, protect and hold harmless the Seller against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof (other than as a result of the Seller's gross negligence or wilful misconduct), and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Seller of a security interest in the Equipment, or out of the use and operation thereof during the period when the security interest therein remains in the

Seller. 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.

12.2. The Railroad, 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 of the Equipment.

SECTION 13. DISCLAIMER OF WARRANTIES.

THE SELLER OFFERS THE EQUIPMENT FOR SALE AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, BY THE SELLER, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (C) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE SELLER AND THE RAILROAD, ARE TO BE BORNE BY THE RAILROAD. The Seller hereby appoints and constitutes the Railroad its agent and attorney-in-fact during the term of this Agreement to assert and enforce, from time to time, in the name and for the account of the Seller and the Railroad, as their interests may appear, but in all cases at the sole cost and expense of the Railroad, whatever claims and rights may exert against the manufacturer of the Equipment or any vendor of any part or component constituting a replacement or improvement thereto provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Seller may assert and enforce, at the Railroad's sole cost and expense and for the sole account of the Seller, such claims and rights. The Seller shall have no responsibility or liability to the Railroad or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Railroad's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Railroad and the Seller that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Railroad, and the Railroad will not assert any claim of any nature whatsoever against the Seller based on any of the foregoing matters.

SECTION 14. ASSIGNMENTS.

14.1. Except as otherwise provided in Section 9.1 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Seller; provided, however, the Railroad shall be permitted to (a) make an assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the railroad lines of the Railroad, and which by execution of an appropriate instrument satisfactory in form and substance to the Seller shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder or (b) transfer its ownership interest in the Equipment so long as (i) the Railroad shall remain primarily and fully liable to perform each and all the obligations and covenants of the Railroad hereunder, (ii) any such transfer and the documents or instruments evidencing the same shall by their terms be made expressly subordinate and subject to the right, title and interest of the Seller hereunder, (iii) the terms and conditions of such transfer shall be approved in writing by the Seller which approval shall not be unreasonably withheld if such transfer is made pursuant to transfer documents in all material respects in the form previously provided to the Seller on or before the Closing Date and (iv) the Railroad shall remain in possession of the Equipment except as permitted by Section 9 hereof.

14.2. All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Seller and reassigned by an assignee at any time or from time to time. No such assignment shall relieve the Railroad of its obligations to the Seller hereunder.

14.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Seller'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 Railroad, of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

14.4. In the event of any such assignment or successive assignment by the Seller of its security interest in the Equipment and of the Seller's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment so as to indicate the security interest 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 any successor assignee of the Seller) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor of the Seller) will be borne by the subsequent assignee.

SECTION 15. DEFAULTS.

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

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

(b) The Railroad shall fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or the Finance Agreement on its part to be kept and performed or to make provision satisfactory to the Seller for such compliance for more than 30 days after written notice from the Seller specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Seller or the Investors named in the Finance Agreement pursuant to or in connection with this Agreement or the Finance Agreement proves untrue in any material respect as of the date of issuance or making thereof and continues to be untrue; or

(d) The Railroad commences a voluntary case under any bankruptcy law or similar law for relief of debtors or the Railroad fails to pay its debts as such debts become due or consents to the appointment of a custodian, trustee or receiver for the Railroad or the major part of its property or makes an assignment for the benefit of its creditors, or enters into an agreement of composition with its creditors; or

(e) A custodian, trustee or receiver is appointed for the Railroad or the major part of its property and

is not discharged within 30 days after such appointment;
or

(f) A decree or order for relief by a court having jurisdiction in respect of the Railroad is entered in an involuntary case under any bankruptcy law or similar law for the relief of debtors and such decree or order shall remain unstayed and in effect for 30 days following such entry, or bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Railroad, and if instituted against the Railroad are consented to or are not dismissed within 30 days after such institution; or

(g) The Railroad 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;

then at any time after the occurrence and during the continuance of such an Event of Default the Seller may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Seller, 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 14% per annum, to the extent legally enforceable, and the Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

15.2. The Seller may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver 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 Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

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 Seller 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 Seller, 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 Railroad 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 Railroad and for such purpose may enter upon the premises of the Railroad 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 Railroad, with or without process of law.

16.2. In case the Seller 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 Railroad for the delivery of the Equipment to the Seller, the Railroad 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 Seller and shall there deliver the Equipment or cause it to be delivered to the Seller; and, at the option of the Seller, the Seller may keep the Equipment on any of the railroad lines or premises of the Railroad until the Seller shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Seller 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 Seller shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Seller 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 (unless such declaration has been rescinded and annulled as provided in Section 15.2 hereof), the Seller (after retaking possession of the Equipment as hereinbefore in this Section 16 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid indebtedness in respect of the Purchase Price

thereof, together with interest thereon and all other payments due hereunder and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 21 hereof, and to any other persons to whom the law may require notice, within 30 days after the indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable by the Seller as above provided. In the event that the Seller should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Seller as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 16.3 object in writing to the Seller within 30 days from the receipt of notice of the Seller's election to retain the Equipment, then the Seller may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 16.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller 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 Seller may determine, provided that the Railroad 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 Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Seller may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 16), and in payment of the Purchase Price therefor

the Seller shall be entitled to have credited on account thereof all sums due to the Seller from the Railroad hereunder.

16.5. Each and every power and remedy hereby specifically given to the Seller 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 Seller. 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 Seller 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 Seller under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Seller herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums of money realized by the Seller, there shall remain any amount due to it under the provisions of this Agreement, the Seller may bring suit therefor

and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

16.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Seller in enforcing its remedies under the terms of this Agreement. In the event that the Seller shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Seller 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 Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

17.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell 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 Seller's rights hereunder and any and all rights of redemption.

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

SECTION 19. RECORDING.

The Railroad will cause this Agreement, any 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 Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Seller 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 Seller.

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 the following specified addresses:

(a) to the Railroad: Wisconsin & Southern
Railroad Co., 501 East Lake Street, Horicon,

Wisconsin 53032 with a copy to Funding Systems Railcar, Inc., 1000 RIDC Plaza, Pittsburg, Pennsylvania 15238, Attention: President.

(b) to the Seller: Continental Illinois National Bank and Trust Company of Chicago, 30 North LaSalle Street, Chicago, Illinois 60693, Attention: Corporate Trust Department;

or to any other assignee of the Seller, or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Seller, as the case may be, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

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 Schedules relating hereto, exclusively and completely state the rights and agreements of the Seller and the Railroad 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 Seller and the Railroad.

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 49 USC Section 11303 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. PAYMENT OF EXPENSES.

The Railroad will pay all stamp or other taxes, if any, incident to, and the reasonable cost and expense of, the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement or of any instrument supplemental to or amendatory of this Agreement and of any certificate of the

payment in full of the indebtedness in respect of Purchase Price due hereunder.

SECTION 25. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad shall be a party, or in case of any sale of all or substantially all of the assets of the Railroad or the corporation resulting from such consolidation or merger (if other than the Railroad) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder not then performed by the Railroad and shall become entitled to all rights hereunder of the Railroad.

SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. 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.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO, not
in its individual capacity, but
solely as Agent and Assignee as
aforesaid

(Corporate Seal)

By


Its Vice President

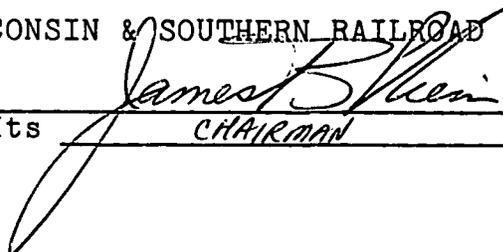
Attest:


Trust Officer

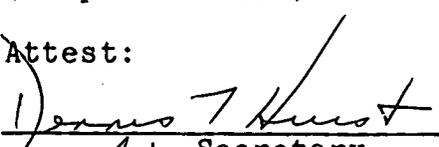
WISCONSIN & SOUTHERN RAILROAD CO.

(Corporate Seal)

By


Its
CHAIRMAN

Attest:


Asst Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 16TH day of OCTOBER, 1980, before me personally appeared M. L. Kruger, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

V. Washington
Notary Public

(Seal)

My Commission Expires: July 2, 1984

STATE OF Illinois)
COUNTY Lake) SS
CITY OF Lake)

On this 23rd day of October, 1980, before me personally appeared JAMES B. SHAW, to me personally known, who, being by me duly sworn, says that he is CHAIRMAN of WISCONSIN & SOUTHERN RAILROAD CO., 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.

Mary K. McCarthy
Notary Public

(Seal)

My Commission Expires:

My Commission Expires Sept. 25, 1983

SCHEDULE A

MANUFACTURER Evans Transportation Company

DESCRIPTION OF EQUIPMENT 50' 6" 70-ton boxcars
bearing numbers WSOR 101494
through WSOR 101572, both
inclusive

BASE PRICE \$28,500 per item (2,223,000
for 78 Items)

DELIVER TO Wisconsin & Southern Railroad
Co.

PLACE OF DELIVERY North Milwaukee, Wisconsin

SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER Evans Transportation Company

DESCRIPTION OF EQUIPMENT 50' 6" 70-ton boxcars
bearing numbers WSOR 101494
through WSOR 101572, both
inclusive

BASE PRICE \$28,500 per item (2,223,000
for 78 items)

DELIVER TO Wisconsin & Southern Railroad
Co.

PLACE OF DELIVERY North Milwaukee, Wisconsin

SCHEDULE B

(to Conditional Sale Agreement)

DESCRIPTION OF LEASES

Name and Address of Lessee:

Date of Lease:

Expiration Date of Lease:

Description of Equipment
(including AAR Designation):

Quantity:

Identifying Mark and Numbers
of Equipment:

Rent Per Car
Per Month:

Railroad Lease No.:

Railroad Rider No.:

ICC Filing Number & Date of Lease:

WISCONSIN & SOUTHERN RAILROAD CO.

CERTIFICATE OF INSPECTION AND ACCEPTANCE

This is to certify that the following Equipment has been inspected, delivered to and fully and finally accepted on behalf of the WISCONSIN & SOUTHERN RAILROAD CO. (the "Railroad"), by the undersigned at the location hereinafter specified:

<u>No. of Units</u>	<u>Description</u>	<u>Railroad's Nos.</u>
	50' 6" 70-ton Boxcars	

and that such Equipment has been completed and delivered in accordance with the terms of the Conditional Sale Agreement dated as of August 1, 1980 between the Continental Illinois National Bank and Trust Company of Chicago, as Agent (the "Agent") and the Railroad and the Finance Agreement among the Railroad, the Agent and the parties named in Schedule 1 thereto.

I further certify that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each unit of the Equipment the following legend in letters not less than one inch in height:

"Unit Subject to Security Interest of the
Agent Bank Under Conditional Sale Agreement
Recorded with the I.C.C."

Authorized Representative

Dated:

Equipment accepted at:

SUPPLEMENT NO. _____
TO
CONDITIONAL SALE AGREEMENT

This Supplement No. _____ is dated as of _____ and is entered into by the CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Agent") and WISCONSIN & SOUTHERN RAILROAD CO. (the "Railroad").

The Agent and the Railroad have entered into a Conditional Sale Agreement dated as of August 1, 1980 (as heretofore supplemented, the "Conditional Sale Agreement").

Unless otherwise defined herein, the capitalized terms used herein are used with the respective meanings specified in the Conditional Sale Agreement.

The Agent and the Railroad now wish to supplement the Conditional Sale Agreement for the purpose of extending the Assignment provided for in Section 9.2 of the Conditional Sale Agreement to the leases described in Schedule 1 hereto (the "Additional Leases"), if any.

NOW THEREFORE, the Railroad and the Agent agree that from and after the date hereof the Conditional Sale Agreement shall be supplemented by the addition to Exhibit B thereof of any Additional Leases described in Schedule 1 hereto.

This Supplement shall be construed in connection with and as a part of the Conditional Sale Agreement, and all terms, conditions and covenants contained in the Conditional Sale Agreement, as hereby supplemented, shall remain in full force and effect.

This Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but altogether one and the same instrument.

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

By _____
Its _____

WISCONSIN & SOUTHERN RAILROAD CO.

By _____
Its _____

DESCRIPTION OF LEASES

Name and Address of Lessee:

Date of Lease:

Expiration Date of Lease:

Description of Equipment
(including AAR Designation):

Quantity:

Identifying Mark and Numbers
of Equipment:

• Rent Per Car
Per Month:

Railroad Lease No.:

Railroad Rider No.:

ICC Filing Number & Date of Lease:



FIRST WISCONSIN CORPORATION

LAW DEPARTMENT

January 15, 1981

Mr. F. Anthony Maio
Foley, Lardner, Hollabaugh & Jacobs
1775 Pennsylvania Avenue, N.W.
Washington, DC 20006

Re: Wisconsin & Southern Railroad Co.

Dear Tony:

Dave Shute suggested contacting you regarding a security filing with the Interstate Commerce Commission. Enclosed is an original and 2 executed copies of a Selective Business Security Agreement with attached Schedule A for filing in accordance with 49 USC 11303 and 49 CFR Part 1116.

After this Security Agreement is filed we expect to be adding additional equipment to Schedule A as such equipment is purchased. I assume that this could be accomplished simply by providing a new Schedule A for filing as an amendment to the original filing.

The primary purpose of this credit is to provide funds for the purchase of 3 used locomotives. Before disbursing these funds we want to be assured that we have a perfected filing with respect to such locomotives. Could you please advise the best way to accomplish this.

In addition to filing the enclosed, please advise us of any other security filings with respect to Wisconsin & Southern Railroad Co. Please call me at (414) 765-5977 if you have any questions.

Very truly yours,

Howard H. Hopwood
Assistant Counsel

HHH:amm
Enclosure