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14241
RECORDATION NO. Filed 1425

DEC 30 1983 - 10 00 AM
December 30, 1983

INTERSTATE COMMERCE COMMISSION

3-36-FA034
No.

DEC 30 1983
Date

Fee \$ 50.00

ICC Washington, D.C.

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DEC 30 9 51 AM '83
I.C.C.
OPERATION BR.

HAND DELIVER

Interstate Commerce Commission
Constitution Avenue and 12th Street, N.W.
Washington, D.C. 20005

Gentlemen:

Enclosed for filing in your office are three (3) originally executed and notarized Conditional Sale Agreements dated as of November 18, 1983 between General Motors Corporation (Electro-Motive Division) and The Connecticut Bank and Trust Company, National Association, as Trustee under a Trust Agreement and this firm's check in the amount of \$50.00 to cover your office's filing fee therefor. The addresses of the parties to the agreement are as follows:

General Motors Corporation (Electro-Motive Division)
LaGrange, Illinois 60525

The Connecticut Bank and Trust Company,
National Association
1 Constitution Plaza
Hartford, Connecticut 06115
Attention: Corporate Trust Department

The filing in question pertains to the sale on a conditional sale basis of forty (40) Model SD50 diesel-electric locomotives by General Motors Corporation to The Connecticut Bank and Trust Company, National Association.

C. Hamilton
Clare E. Scheetz

Interstate Commerce Commission
Washington, D.C. 20423

12/30/83

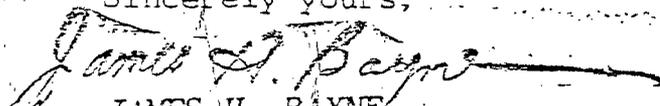
OFFICE OF THE SECRETARY

Carol G. Simcox
Legal Assistant
Pepper, Hamilton & Scheetz
123 South Broad St.
Phila. PA. 19109

Dear **Ms. Simcox**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/30/83** at **10:00am** and assigned re-
recording number(s). **14241 & 14241-A**

Sincerely yours,


JAMES H. BAYNE

Secretary

Enclosure(s)

SE-30
(7/79)

DEC 30 1983 -10 00 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of November 18, 1983

between

**GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)**

and

**The Connecticut Bank and Trust Company, National Association,
as Trustee Under a Trust Agreement**

14% Conditional Sale Indebtedness due July 2, 1999

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on _____, 1983 at _____, recordation number _____, and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada on _____, 1983 at _____.

Conditional Sale Agreement

TABLE OF CONTENTS*

	<u>Page</u>
ARTICLE 1.	Assignment; Definitions..... 1
ARTICLE 2.	Construction and Sale..... 2
ARTICLE 3.	Inspection and Delivery..... 3
ARTICLE 4.	Purchase Price and Payment..... 5
ARTICLE 5.	Security Title to the Equipment..... 9
ARTICLE 6.	Taxes..... 10
ARTICLE 7.	Maintenance; Casualty Occurrences..... 11
ARTICLE 8.	Reports..... 14
ARTICLE 9.	Marking of Equipment..... 14
ARTICLE 10.	Compliance with Laws and Rules 14
ARTICLE 11.	Possession and Use..... 15
ARTICLE 12.	Prohibition Against Liens..... 15
ARTICLE 13.	Indemnities and Warranties..... 16
ARTICLE 14.	Assignments 17
ARTICLE 15.	Defaults..... 19
ARTICLE 16.	Remedies..... 22
ARTICLE 17.	Applicable State Laws..... 26
ARTICLE 18.	Recording..... 27
ARTICLE 19.	Article Headings; Effect and Modification of Agreement..... 27
ARTICLE 20.	Notice..... 27
ARTICLE 21.	Immunities; Satisfaction of Undertakings..... 28
ARTICLE 22.	Law Governing..... 29
ARTICLE 23.	Execution..... 29
SCHEDULE I	Allocation Schedule
ANNEX A	Builder's Warranties
ANNEX B	Specifications

* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of November 18, 1983, between the corporation named in Item 1 of Annex A hereto (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and The Connecticut Bank and Trust Company, National Association, not in its individual capacity but solely as Trustee, except as herein otherwise specifically provided (the "Vendee"), under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp. (the "Beneficiary").

WHEREAS the Builder has agreed to construct, conditionally sell and deliver to the Vendee, and the Vendee has agreed to conditionally purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment"); and

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with Consolidated Rail Corporation (the "Lessee") in the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment so purchased, or such lesser number of units as are delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof), is acting as Agent for investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, the Beneficiary, the Builder and General Motors Acceptance Corporation, a New York corporation (hereinafter called, together with its successors and assigns, the "Investors"), and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement.

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the

balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the Closing Date (as defined in Article 4 hereof) between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment, and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, titles, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit) and will

not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in the Canada Gazette; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); provided, the Builder has a notice thereof; or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may have agreed to pursuant to Article 4) would be exceeded by any subsequent delivery of a unit, or (iii) of its determination that there has been a material adverse change in the business, prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in the Paragraph 4(b) of the Participation Agreement, other than as set forth in the Disclosure Letter referred to in the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a)

of the last sentence in the preceding paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to June 30, 1984, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee and at Lessee's expense for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

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

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee (who may be an employee of the Lessee) for inspection at the place specified for delivery, and if each such unit conforms to the Specifications, requirements and standards applicable

thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule C to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Upon delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit, created in or transferred to or purported to be created in or transferred to the Vendee, shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any given day during the Delivery Period, as defined herein, the aggregate Purchase Price of the Equipment for which delivery and acceptance has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the

Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be delivered and accepted for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for as the unit or units of the Equipment is or are delivered by the Builder to, and accepted by, the Vendee on any day during the period (the "Delivery Period") commencing with and including April 1, 1984 and ending on and including June 30, 1984 (the "Settled Units"). The delivery, inspection and acceptance hereunder of any unit of the Equipment after June 30, 1984 shall be null and void and ineffective to subject such unit of the Equipment to this Agreement or to constitute acceptance thereof on behalf of the Vendee for any purpose whatsoever. The term "Closing Date" shall mean the second business day of July 1984. At least one business day prior to the Closing Date, the Builder will deliver (a) to the Vendee, the Invoices and Certificates of Acceptance for each of such Settled Units of the Equipment; (b) to the Lessee, the Beneficiary and the Agent, a written notice of (a) above; and (c) to the Vendee, the Lessee, the Beneficiary and the Agent, a notice of such Closing Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York and Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted, subject to Maximum Equity Commitment as defined in Paragraph 2 of the Participation Agreement, to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On, but not before, the Closing Date with respect to the Settled Units of the Equipment an amount equal to 39.07939% of the aggregate Purchase Price of the Settled Units of the Equipment; and

(b) in 30 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Settled Units of the Equipment, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on July 2 and January 2 of each year, commencing January 2, 1985, to and including July 2, 1999 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 14% per annum payable on each Payment Date. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

The Builder will receive from the Vendee, and the Vendee will pay to the Builder, on the Closing Date an amount representing interim interest on the aggregate Purchase Price of the Settled Units, which amount is equal to the Interim Rent (as defined in the Lease) paid by the Lessee to the Vendee.

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

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate equal to the lower of (i) 15% per annum; and (ii) maximum rate allowable by law at that time (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of

Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the provision in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's right under this Agreement against the Equipment and to the Vendor's right under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under Section 10 or any other provision of the Lease, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepay-

ments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts excluded from the Lease Assignment pursuant to the first paragraph of Paragraph 1 thereof. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Article 4. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Title to the Equipment. The Vendor shall and hereby does retain a security title and interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (except as otherwise specifically provided in Section 9 of the Lease) shall constitute acccessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and

all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security title to and interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment. The Vendee hereby waives any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment; provided, however, that the Vendee shall not pay, be responsible for or indemnify the Vendor for (i) any impositions imposed on or measured by any fees or compensation received by the Vendor, and (ii) impositions that are measured by net income or impositions that are gross receipts taxes (except gross receipts taxes in the nature of or in lieu of sales or use taxes) or excess profits taxes or similar taxes (each of the foregoing being called an "excluded imposition"); provided, however, that the Vendee shall not be required to pay any imposition if it is contesting the same in the manner provided in the next sentence. The Vendee will also pay promptly all impositions which may be imposed upon the Equip-

ment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except for the excluded impositions) or upon the Vendor solely by reason of its ownership thereof (except for the excluded impositions) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect title or interests of the Vendor or result in lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof. If the Vendor shall obtain a refund of all or any part of such impositions previously reimbursed by the Vendee or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of expenses. The obligations of the Vendee under this Article 6 are subject to the limitations contained in the last paragraph of Article 4 hereof and in Article 21 hereof.

ARTICLE 7. Maintenance; Casualty Occurrences. The Vendee shall, at its own expense and in a manner no less thorough and complete than is the prudent industry standard for Class I line-haul railroads, will maintain, service and adhere to a preventive maintenance schedule with respect to each unit of Equipment which will include testing, repair and overhaul of each unit of Equipment so that each unit of Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate purchase or lease and immediate regular use in main line freight service by a Class I line-haul railroad (not then a debtor in any insolvency, bankruptcy or reorganization proceedings). In no event shall any unit of the Equipment be maintained or serviced on a basis less frequent than the maintenance standard or main-

tenance or service scheduling basis employed as of any given time during this Lease by the Lessee for any similar equipment owned or leased by it at such given time.

In the event that any unit of the Equipment shall be or become lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision hereof, or taken or requisitioned by condemnation or otherwise by the United States Government, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days, or any unit shall have been deemed to have suffered a Casualty Occurrence as specified in Section 7 of the Lease (any and all such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. By the later of: (i) the Rental Payment Date (such term as used herein shall mean Basic Rental Payment Date (as defined in the Lease) or Closing Date) next succeeding such event and (ii) the 90th day following such event, provided any such loss, return, taking or requisition shall be continued for at least 90 consecutive days (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit as of the Rental Payment Date on or next succeeding the date of such Casualty Occurrence together with, if such payment is made pursuant to clause (ii) above, interest on the Casualty Value payment from the Rental Payment Date preceding such 90th day to such 90th day, at a rate equal to the higher of 14% or the "prime" rate of interest as announced from time to time by Morgan Guaranty Trust Company of New York and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on any of the CSA Indebtedness due on such date) to prepay without penalty or premium the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit

shall continue to the same extent as if such requisition had not occurred.

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

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Casualty Payment Date (after taking into account the scheduled payment of interest and principal on such date) with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Casualty Payment Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Vendee will cause the Equipment to be insured as provided in the last paragraph of Section 7 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports. On or before the dates specified in Section 8 of the Lease, the Vendee shall cause to be furnished to the Vendor the certificates required by Section 8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in Section 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee thereof or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of America Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission 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 title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good

faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, subject to the provision of Sections 1, 4 and 12 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all taxes and sums claimed by any party from, through or under the Vendee, the Beneficiary or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder, and will promptly discharge any such lien, charge or security interest which arises, 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof;

provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or (to the extent it receives funds for such purpose) the Beneficiary or their respective successors or assigns, not arising out of the transactions contemplated hereby (but including (to the extent it receives funds for such purpose) income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, (i) might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder or (ii) would result in the bankruptcy or reorganization of the Vendee or the Beneficiary; but the Vendee 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort or strict liability by the Builder, breach of warranty or failure to perform any covenant hereunder by the Builder and except Taxes (as defined in the Lease) measured by net income and any matter covered by the

Builder's warranty or patent indemnification as set forth in Items 3 and 4 of Annex A hereto. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

None of the indemnities in this Article shall be deemed to create any right of subrogation in any insurer or third party against the Vendee, therefor, from or under the Vendor, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except as provided in the Trust Agreement.

So long as no event of default exists hereunder, all or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, shall not be assignable in whole or in part by the Vendor or any affiliated company of the Vendor without the written consent of the Lessee, which consent shall not be unreasonably withheld, provided, however, that the Lessee's consent shall not be required for any assignment to an affiliated company of the Vendor. Upon the written notice by the Vendor to the Lessee of the request for assignment, the Lessee will have 10 business days to respond to such request, provided, however, that no response within 10 business days shall be deemed to be approval. If the Lessee will not permit such assignment, the Lessee shall provide the Vendor with a written statement describing in reasonable detail the reasons for such denial. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, the assignor shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. 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 Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the 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 Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in any agreement entered into concurrently herewith relating to the financing of the Equipment (other than the Lease), and such default shall continue for 30 days after written notice from the Vendor to the Vendee and the Lessee specifying the default and demanding that the same be remedied; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Lessee under the Lease 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 appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed, and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any proceeding other than referred to in (c) above shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease 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 readjustments of such obligations), 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 or of the Lessee under the Lease, as the case may be, 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 the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for

more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) if an Event of Default shall have occurred under the Lease; provided, however, that any Event of Default under clause (A) of Section 10 of the Lease shall not be deemed to be an event of default hereunder if (i) within the 10 business days' period provided by subparagraph (a) of this Article 15, the Vendee shall make payment of all amounts in default under said subparagraph (a), and (ii) not more than six such Events of Default shall have occurred and not more than three Events of Default shall have occurred on consecutive dates;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of Section 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under Sections 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable as therein provided and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, subject to the provisions of Paragraph 1 of the Lease Assignment, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice

of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly 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.

ARTICLE 16. Remedies. Subject to the Lessee's rights under Sections 1, 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad

operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure (to the same extent as provided in Section 7 of the Lease), maintain and keep each such unit in good order and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Beneficiary and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 60 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 60-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 60-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, 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 Vendee; provided, further, however, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 60 days from the receipt of notice of

the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall 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 Article 16.

Subject to the Lessee's rights under Sections 1, 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice (which shall not be less than 10 days) to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York or Philadelphia, Pennsylvania at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a

commercially reasonable manner. The Vendor, the Vendee or the Beneficiary may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. If an event which constitutes the event of default according to the CSA (except if such event also constitutes the Event of Default under the Lease) shall occur and be continuing, the Lessee may bid for and become the purchaser of the Equipment. The Vendee, the Lessee and the Beneficiary shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee, the Vendee and the Beneficiary to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

Subject to the third paragraph of this Article 16, if, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitation of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

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

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the 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 or lease the Equipment, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in the Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly made if delivered or mailed to it by registered mail (unless otherwise specifically required herein), postage prepaid, at the following addresses:

(a) to the Vendee, The Connecticut Bank and Trust Company, National Association, 1 Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department,

(b) to the Lessee, Consolidated Rail Corporation, 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer - Financing,

(c) to the Builder at its address specified in Item 1 of Annex A hereto,

(d) to the Assignee, Mercantile Safe Deposit and Trust Company, 2 Hopkins Plaza, P.O. Box 2258, Baltimore, Maryland 21203,

(e) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. Immunities; Satisfaction of Undertakings. The obligations of the Vendee under the second and eighth paragraphs of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof, which are subject to the provisions of the last paragraph of Article 4), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 hereof.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, National Association, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as Trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary (except as provided in the last paragraph of Article 12 hereof and Section 1.03 and the last sentence of Section 3.04 of the

Trust Agreement) on account of any representation, undertaking or agreement hereunder of the said bank acting in its capacity as Trustee or the Beneficiary (except as provided in the last paragraph of Article 12 hereof and Section 1.03 and the last sentence of Section 3.04 of the Trust Agreement), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

The Vendee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited and any rights arising out of the marking on the units of Equipment.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by both the Vendee and the Builder so long as each such party has executed and delivered to the other one counterpart hereof. Although for convenience this Agreement is dated 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 executed or caused this instrument to be executed all as of the date first above written.

[Corporate Seal]

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

PK *Handwritten*
By *A. Deleh* Attorney in Fact

Attest:

Peter DeSly

The Connecticut Bank and Trust Company, National Association not individually but solely as Trustee, except as otherwise hereinabove specifically provided,

[Corporate Seal]

By *[Signature]*

VICE PRESIDENT

Attest:

[Signature]

STATE OF ^{New York} ILLINOIS, }
COUNTY OF ^{New York} COOK, } ss.:

On this 20 day of December, 1983, before me personally appeared _____ Henry D. Edelman to me personally known, who, being by me duly sworn, says that he is a Dia. of Corp. Finance + Divisions of GENERAL MOTORS CORPORATION (~~ELECTRO-MOTIVE DIVISION~~) that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Helen E. Ferguson
HELEN E. FERGUSON
Notary Public, State of New York
No. 31-4752849
Qualified in New York County
Commission Expires March 30 1985

STATE OF NEW YORK, }
COUNTY of NEW YORK, } ss.:

On this 20 day of December, 1983, before me personally appeared _____ CLARK M. WHITCOMB, to me personally known, who, being by me duly sworn, says that he is an VICE PRESIDENT of The Connecticut Bank and Trust Company, National Association, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said ASSOCIATION, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[Notarial Seal]

Helen E. Ferguson
HELEN E. FERGUSON
Notary Public, State of New York
No. 31-4752849
Qualified in New York County
Commission Expires March 30, 1985

SCHEDULE I

Allocation Schedule of Each \$10,000,000 of 14% CSA Indebtedness

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Ending Principal Balance</u>
July 2, 1984	\$ 0.00 *	\$ 0.00 *	\$ 0.00 *	\$ 10000000.00
January 2, 1985	938524.75	700000.00	238524.75	9761475.25
July 2, 1985	938524.75	683303.27	255221.48	9506253.78
January 2, 1986	938524.75	665437.76	273086.98	9233166.80
July 2, 1986	938524.75	646321.68	292203.07	8940963.73
January 2, 1987	938524.75	625867.46	312657.28	8628306.44
July 2, 1987	938524.75	603981.45	334543.29	8293763.15
January 2, 1988	938524.75	580563.42	357961.33	7935801.82
July 2, 1988	938524.75	555506.13	383018.62	7552783.20
January 2, 1989	938524.75	528694.82	409829.92	7142953.28
July 2, 1989	784123.34	500006.73	284116.61	6858836.67
January 2, 1990	737757.64	480118.57	257639.07	6601197.60
July 2, 1990	754528.95	462083.83	292445.12	6308752.48
January 2, 1991	694494.43	441612.67	252881.76	6055870.72
July 2, 1991	725339.92	423910.95	301428.97	5754441.75
January 2, 1992	651031.62	402810.92	248220.69	5506221.06
July 2, 1992	695994.84	385435.47	310559.37	5195661.69
January 2, 1993	607352.76	363696.32	243656.44	4952005.25
July 2, 1993	666484.92	346640.37	319844.55	4632160.70
January 2, 1994	563445.70	324251.25	239194.45	4392966.25
July 2, 1994	636800.87	307507.64	329293.23	4063673.02
January 2, 1995	519297.57	284457.11	234840.46	3828832.56
July 2, 1995	606932.88	268018.28	338914.60	3489917.96
January 2, 1996	474894.80	244294.26	230600.54	3259317.42
July 2, 1996	576870.60	228152.22	348718.38	2910599.03
January 2, 1997	434807.03	203741.93	231065.10	2679533.94
July 2, 1997	551187.06	187567.38	363619.69	2315914.25
January 2, 1998	402308.74	162114.00	240194.75	2075719.50
July 2, 1998	529385.71	145300.37	384085.35	1691634.16
January 2, 1999	932922.62	118414.39	814508.23	877125.93
July 2, 1999	938524.75	61398.82	877125.93	0.00
TOTALS	<u>21931209.46</u> =====	<u>11931209.46</u> =====	<u>10000000.00</u> =====	

* Interest only shall be payable to the extent accrued on this date.

Annex A

to

Conditional Sale Agreement

- Item 1: General Motors Corporation (Electro-Motive Division) (hereinafter in this Annex called "GM"), La Grange, Illinois 60525.
- Item 2. The Equipment shall be settled for in unit or units delivered to and accepted by the Vendee as shall be agreed to by the parties hereto.
- Item 3: GM warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F. O. B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialities not of its own specification or design to the same extent that the suppliers of such specialities warrant such items to GM. GM further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

- Item 4: GM shall defend any suit or proceeding brought against the Vendee, the Lessee and/or each assignee of GM's rights under this Agreement so far as the same is based

on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Vendee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Vendee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.

GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$43,501,191.

Annex B
to
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifi- cations</u>	<u>Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
General Motors Corporation (Electro-Motive Division)	SD50		La Grange Illinois	40		\$1,052,723.63 (per unit)	prior to July 1, 1984

AGREEMENT AND ASSIGNMENT

Dated as of _____, 1984

between

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent

Filed with the Interstate Commerce Commission
pursuant to 49 U.S.C. § 11303 on _____ at _____, recordation
number _____, and deposited in the office of the Registrar
General of Canada pursuant to Section 86 of the Railway Act
of Canada on _____ at _____.

AGREEMENT AND ASSIGNMENT dated as of
, between GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION) (hereinafter called the
"Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent (the "Assignee") under a Par-
ticipation Agreement dated as of November 18, 1983
(the "Participation Agreement").

WHEREAS the Builder and The Connecticut Bank and
Trust Company, National Association, acting as Trustee (the
"Vendee") under a Trust Agreement dated as of November 18,
1983 (the "Trust Agreement"), with J. P. Morgan Interfunding
Corp., have entered into a Conditional Sale Agreement dated
as of November 18, 1983 (the "CSA") providing for the con-
struction, conditional sale and delivery on the conditions
therein set forth, by the Builder and the conditional pur-
chase by the Vendee of the railroad equipment described in
Annex B to the CSA (the "Equipment"); and

WHEREAS the Vendee and Consolidated Rail Cor-
poration (the "Lessee") have entered into a Lease of Railroad
Equipment dated as of November 18, 1983 (the "Lease") provid-
ing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this
"Assignment") WITNESSETH: That in consideration of the sum
of \$1.00 and other good and valuable consideration paid by
the Assignee to the Builder, the receipt of which is hereby
acknowledged, as well as of the mutual covenants herein
contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of the
Builder in and to each unit of its Equipment when
and as severally delivered to and accepted by the
Vendee, subject to payment by the Assignee to the
Builder of the amount required to be paid pursuant
to Section 4 hereof and of the amounts due from the
Vendee to the Builder under subparagraph (a) of the
third paragraph of Article 4 of the CSA and the
Interim Rent;

(b) all the right, title and interest of the
Builder in and to the CSA (except the right to
construct and deliver the Equipment and the right

to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect to the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver its Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth

to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder.

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

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or pur-

ported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The indemnities contained in this Section 3 shall survive the expiration or termination of this Assignment with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, the Assignee. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on the Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of subparagraph (b) of the third paragraph of said Article 4 of the CSA, is payable in installments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Ober, Kaler, Grimes & Shriver, special counsel to the Assignee:

(a) a bill or bills of sale from the Builder to the Assignee dated the date of delivery thereof and transferring to the Assignee the Builder's security title to and its security interest in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature

except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the CSA and Section 2 of the Lease;

(c) an invoice of the Builder for the units of Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof if the Purchase Price is other than the base price or prices set forth in Annex B to the CSA;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee, the Beneficiary and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the Builder's security title to and its security interest in its units of Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee) required to be made on such Closing Date to the Builder with respect to its Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any units of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse

to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms, that it is now in force without amendment thereto and that no authorization or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by the Builder of the CSA;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or

any other instrument evidencing any interest of the Builder therein or in its Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. It shall not be necessary that any counterpart be signed by both the Assignee and the Builder so long as each such party has executed and delivered to the other one counterpart hereof. Although for convenience this Assignment is dated 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, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION),

[Corporate Seal]

by _____

Attest:

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,
as Agent,

[Corporate Seal]

by _____

Attest:

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assign-
ment made by, the foregoing Agreement and Assignment is
hereby acknowledged as of .

[Corporate Seal]

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,
not individually but solely
as Trustee.

Attest:

by _____

EXHIBIT C

CONSOLIDATED RAIL CORPORATION
14% CONDITIONAL SALE INDEBTEDNESS DUE

CERTIFICATE OF INTEREST

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (the
"Agent"), hereby acknowledges receipt from

(the "Investor") of

(\$ _____),
such sum having been paid by the Investor under and pursuant
to the terms and conditions of a Participation Agreement
dated as of November 18, 1983 (the "Participation Agree-
ment"), among Consolidated Rail Corporation (the "Lessee"),
The Connecticut Bank and Trust Company, National Association,
as Trustee (the "Vendee"), J. P. Morgan Interfunding Corp.,
as Beneficiary, the Agent, General Motor Corporation (the
"Vendor") and General Motors Acceptance Corporation (together
with its successors and assigns, as Investors). By reason
of such payment the Investor has an interest in a principal
amount equal to such sum in (i) the CSA Indebtedness (as
defined in the Conditional Sale Agreement hereinafter men-
tioned) and in and to the Conditional Sale Agreement (the
"CSA") between the Vendee and General Motors Corporation
(Electro-Motive Division) (the "Builder"), (ii) the Agreement
and Assignment dated as of _____, between the
Builder and the Agent, (iii) the right, security title and
interest of the Agent in and to the Lease of Railroad Equip-
ment dated as of November 18, 1983, between the Lessee and
the Vendee, and the railroad equipment covered by the CSA,
and (iv) all cash and other property from time to time held
by the Agent under the Participation Agreement, except to the
extent that installments of such principal amount shall have
been paid.

Under the terms of the CSA, subject to the rights
of prepayment contained therein, and the Participation Agree-
ment (i) such principal amount is payable in installments on
July 2 and January 2 of each year, commencing January 2, 1985

(each such date being hereinafter called a "Payment Date"), calculated as provided in the CSA, (ii) such principal amount bears interest on the unpaid portion thereof from time to time outstanding at the rate of 14% per annum payable on January 2, 1985, and on each Payment Date until such principal amount shall have become due and payable and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest, to the extent legally enforceable, at the rate of 15% per annum. The Agent has furnished or promptly will furnish to the Investor a schedule of payments reflecting the dates and amounts of principal and interest payments to be made in respect of the interests of the Investor. All payments received by the Agent in accordance with the terms of the Participation Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Participation Agreement.

Dated:
[Corporate Seal]

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,
as Agent under the Participation
Agreement,

Attest:

By _____
Authorized Officer

INQUIRY SHOULD BE MADE OF THE AGENT
IF CERTIFICATION AS TO BALANCE
DUE HEREUNDER IS REQUIRED