

Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

ROBERT J. MCLEAN
EXECUTIVE VICE PRESIDENT-FINANCE
BRUCE G. MCPHEE
ASSISTANT VICE PRESIDENT AND TREASURER
D. E. ENRIGHT
ASSISTANT TREASURER
E. F. GRADY
ASSISTANT TREASURER

RECORDATION NO. 11757/A
MAY 1 1980 - 3 52 PM
APR 30, 1980

MAY 1 1980 - 3 52 PM

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue
Washington, D.C. 20423

No. 0-122A110

Date MAY 1 1980

Fee \$ 50.00

ICC Washington, D. C.

11757
RECORDATION NO. Filed 1425

MAY 1 1980 - 3 52 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAY 1 3 48 PM '80
I.C.C.
FEE OPERATION BR.

Re: Southern Pacific Transportation Company
Conditional Sale Agreement
Dated as of April 15, 1980

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a), I enclose herewith on behalf of Southern Pacific Transportation Company, for filing and recordation, counterparts of the following:

(1) Conditional Sale Agreement dated as of April 15, 1980, between each of General Motors Corporation (Electro-Motive Division) and ACF Industries, Incorporated, and Southern Pacific Transportation Company; and

(2) Agreement and Assignment dated as of April 15, 1980, between First Pennsylvania Bank N.A., as Agent and each of General Motors Corporation (Electro-Motive Division) and ACF Industries, Incorporated.

The addresses of the parties to these agreements are:

Builders (Vendors):

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

ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017

Railroad (Purchaser):

Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105

C. J. Koppelen

Ms. Agatha L. Mergenovich
Page Two
April 30, 1980

Agent (Assignee, Vendor):

First Pennsylvania Bank N.A.
15th and Chestnut Streets
Philadelphia, Pennsylvania 19101

The equipment covered by these agreements consists of 24 GP-38-2, 2,000 h.p. diesel electric locomotive (AAR designation B-B), bearing road numbers SP 4818-4841; 22 SD-40-2, 3,000 h.p. diesel electric locomotives (AAR designation C-C), bearing road numbers SP 8256-8277; one GP-40-2, 3,000 h.p. diesel electric locomotive (AAR designation B-B), bearing road number SP 7959; and 155 100-ton, 4,650 cubic foot covered hopper cars (AAR designation L0), bearing road numbers SP 496545-496699. Each unit of such equipment bears the legend "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission".

Please accept for recordation one complete counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number, and return them to the delivering messenger.

Very truly yours,



BRUCE G. MCPHEE
Assistant Vice President
and Treasurer

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

5/1/80

OFFICE OF THE SECRETARY

Bruce G. McPhee
Assist. Vice President & Treasurer
Southern Pacific Transp. Co.
Southern Pacific Building
One Market Plaza
San Francisco, Calif. 94105
Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/1/80 at 3:55pm, and assigned re-
recording number(s). 11757 & 11757-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

11757

RECORDATION NO. Filed 1425

MAY 1 1980 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of

April 15, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

ACF INDUSTRIES, INCORPORATED,

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

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CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of April 15, 1980 between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and ACF INDUSTRIES, INCORPORATED (each the "Builder" and together the "Builders", or, as the context may require, as more particularly set forth in section 1, the "Seller") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad").

RECITALS

The Builders have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule II to this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

The term "Seller", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the respective corporations named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses, 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Seller",

"such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule I hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided..

For all purposes of this Agreement, the following terms shall have the following meanings:

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Philadelphia, Pennsylvania or New York, New York are required or authorized by law to be closed.

Casualty Occurrence: as defined in section 8.1(a).

Casualty Value: as defined in section 8.1(c).

3.1. Certificate of Acceptance: as defined in section

Closing Date: as defined in section 4.4.

Conditional Sale Indebtedness: in the aggregate, the amount of the indebtedness of the Railroad to the Seller under section 4.6(a).

16. Declaration of Default: as defined in section

Delivery Period: as defined in section 4.4.

Equipment: collectively, the equipment listed in Schedule II to this Agreement (including, unless the context otherwise requires, any Replacement Unit) and any additions, modifications or improvements thereto as provided in section 5.

Event of Default: as defined in section 16.

Group: as defined in section 4.4.

Investments: as defined in section 8.2(d).

4.1. Invoiced Purchase Price: as defined in section

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Maximum Installment Price: as defined in section 4.2.

Payment Date: as defined in section 4.7.

Potential Event of Default: any event or condition which after the making of a demand or the lapse of time or both would become an Event of Default.

Purchase Price: as defined in section 4.1.

Replacement Unit: as defined in section 8.2(a).

Specifications: as defined in section 2.

SECTION 2. CONSTRUCTION AND SALE OF EQUIPMENT.

Pursuant to this Agreement each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule II hereto (such units of Equipment with respect to such Builder being hereinafter called its Equipment) at its plant set forth in such Schedule II and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in such Schedule II and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment.

SECTION 3. INSPECTION AND DELIVERY.

3.1. Inspection; Certificate of Acceptance. During the construction of any unit of the Equipment such unit

shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with section 7, provided that such Builder shall not thereby be relieved of its warranty referred to in section 14.

3.2. Delivery. (a) Each Builder will deliver the units of its Equipment to the Railroad at the place specified in Schedule II to this Agreement or at such other place or places as the Railroad and such Builder may agree, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule III to this Agreement, provided that no Builder shall have any obligation to deliver any unit of its Equipment under this Agreement if a Potential Event of Default or an Event of Default shall have occurred.

(b) A Builder shall not be in default under this Agreement, nor shall such Builder have any liability in damages or for specific performance for the failure to make deliveries 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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

(c) Notwithstanding the provisions of sections 3.2(a) and (b), any Equipment not delivered, accepted and settled for pursuant to section 4 on or before November 25, 1980 shall be excluded herefrom. If any

unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in section 3.2(b), the Railroad shall nevertheless be obligated to accept such Equipment and pay the full Purchase Price therefor, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

(d) On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit, provided that such delivery shall not thereby relieve each Builder of its warranty referred to in section 14.

SECTION 4. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

4.1. Purchase Price; Invoiced Purchase Price. "Purchase Price" shall mean, with respect to any unit of the Equipment, the base price or prices set forth for such unit in Schedule II to this Agreement as such price may be increased or decreased by agreement between the Railroad and the Builder thereof, including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in section 4.5, plus off-line charges, if any. "Invoiced Purchase Price" shall mean, with respect to each unit of the Equipment, the Purchase Price of such unit as set forth in the invoices delivered with respect to such unit pursuant to sections 4.4 and 4.5.

4.2. Maximum Installment Price. "Maximum Installment Price" shall mean (a) if the Railroad has not given notice to the Seller pursuant to the next sentence of this section 4.2, \$40,000,000, or (b) if the Railroad has given such notice, the amount set forth therein. If in the

good faith judgment of the Railroad the aggregate Purchase Price of all units of the Equipment is, at any time, estimated to exceed \$40,000,000, the Railroad may, at its option, by delivery of written notice to the Seller not later than June 10, 1980, increase the Maximum Installment Price of the Equipment to an amount not in excess of the lesser of (a) \$42,000,000 and (b) the estimated aggregate Purchase Price of the Equipment.

4.3. Exclusion of Units. If the aggregate Purchase Price of Equipment for which settlement has been made or is then proposed to be made under this Agreement is in an amount in excess of the Maximum Installment Price, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder or Builders (and any assignee of the Builders) shall, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Installment Price and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder thereof in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

4.4. Delivery Period. For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group a "Group"), for which an invoice or invoices and the Certificate or Certificates of Acceptance are presented by such Builder during a Delivery Period. The period from May 1, 1980 through June 10, 1980, inclusive, shall constitute the first Delivery Period. With respect to the Equipment built by General Motors Corporation (Electro-Motive Division) the period between the 11th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery

Period. With respect to the Equipment built by ACF Industries, Incorporated, the period between the 11th and 25th of any calendar month (beginning June 1980) or between the 26th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery Period.

With respect to any Group of the Equipment built by General Motors Corporation (Electro-Motive Division), the 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. With respect to any Group of the Equipment built by ACF Industries, Incorporated, the 10th or 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. A Closing Date shall not in any event occur prior to June 25, 1980 or after November 25, 1980.

4.5. Supplemental Invoices. In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 15 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price. Each Builder understands and agrees that any preliminary invoice or invoices presented by such Builder in respect of any Group shall be in an amount not in excess of the final Purchase Price of such Group.

4.6. Payment of Invoiced Purchase Price. The Railroad hereby acknowledges itself to be indebted to the Seller for, and hereby promises to pay to the Seller, in immediately available funds at such place as the Seller may designate, the Invoiced Purchase Price of the Equipment as follows:

(a) in 15 consecutive equal annual installments, in the manner and at the times provided in section 4.7,

an amount (which amount shall constitute "Conditional Sale Indebtedness") equal to the lesser of (i) the aggregate of the Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made and (ii) the Maximum Installment Price; and

(b) on each Closing Date, the amount, if any, by which (i) the aggregate Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made exceeds (ii) the sum of (x) the Maximum Installment Price and (y) any amount or amounts previously paid or payable with respect to the Invoiced Purchase Price pursuant to this section 4.6(b).

4.7. Payment of Conditional Sale Indebtedness.

The installments of Conditional Sale Indebtedness shall be paid annually in each year, commencing on June 15, 1981 and on each June 15 thereafter, to and including June 15, 1995. The unpaid balance of any Conditional Sale Indebtedness shall bear interest from the Closing Date upon which any such Conditional Sale Indebtedness was incurred at the rate of 14.25% per annum, and such interest shall be payable, to the extent accrued, on December 15, 1980, and on June 15 and December 15 in each year thereafter until the Conditional Sale Indebtedness shall be paid in full (each such June 15 and December 15, a "Payment Date").

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

The Railroad will pay on demand interest at the rate of 15.25% per annum upon all amounts of principal and, to the extent legally enforceable, interest remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

Except as provided in section 8.2, the Railroad shall not have the privilege of prepaying any portion of its indebtedness under this Agreement prior to the date it becomes due. 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. If any date on which any payment becomes due falls on a day that is not

a Business Day, then the payment due on such date shall be made on the next succeeding Business Day.

In the event the Seller, pursuant to section 15, assigns the right to receive the payments to be made by the Railroad under this Agreement, the assignee thereof may request the Railroad to make, and the Railroad shall make, such payments to it at the address supplied to the Railroad by such assignee.

SECTION 5. TITLE TO THE EQUIPMENT.

The Seller shall and hereby does retain title to and a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions, modifications or improvements to the Equipment and any and all replacements of the Equipment and of parts thereof and additions, modifications or improvements thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in section 8.1, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Seller. However, the Seller, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all Liens created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in section 21, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the

Equipment and (c) pay to the Railroad any money paid to the Seller pursuant to section 8 and not theretofore applied as provided in such section. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 6. TAXES.

All payments to be made by the Railroad under this Agreement will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties now or hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title or any interest in the Equipment under the terms of this Agreement (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness and all other amounts payable by the Railroad under this Agreement. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment or any unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof 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 the title of the Seller or result in a Lien upon all or any part of the Equipment, provided that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in

the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Seller directly and paid by the Seller, the Railroad shall reimburse the Seller upon presentation of an invoice therefor, and any amounts so paid by the Seller shall be secured by and under this Agreement, provided that the Railroad shall not be obligated to reimburse the Seller for any Imposition so paid unless the Seller shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Seller) or unless the Railroad shall have approved the payment thereof. All amounts paid by the Railroad pursuant to this section 6 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required under this Agreement.

SECTION 7. MARKING OF EQUIPMENT.

7.1. Required Markings. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule II to this Agreement, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend: "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings approved by the Seller, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Seller's title to and security interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such legend which may be removed, obliterated, defaced or destroyed. The Railroad will not change the identifying number of any unit of the Equipment except in accordance with a statement of a new number or numbers to be substi-

tuted therefor, which statement previously shall have been filed with the Seller by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

7.2. Permitted Markings. Except as provided in section 7.1, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership, provided that the Railroad may allow the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

SECTION 8. CASUALTY OCCURRENCES; REPLACEMENTS AND PRE-PAYMENTS; INSURANCE

8.1. Casualty Occurrences. (a) In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence, together with any occurrence of the type described in section 8.2(e), being referred to herein as a "Casualty Occurrence"), the Railroad shall within 30 days after it has knowledge of such Casualty Occurrence fully inform the Seller in regard thereto.

(b) On the next succeeding Payment Date after the Railroad shall have knowledge that the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Seller pursuant to this section 8.1) hereunder shall exceed \$400,000 (or such lesser amount as the Railroad may elect), the Railroad shall pay to the Seller a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Seller a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

(c) The "Casualty Value" (a) of each unit of the Equipment suffering a Casualty Occurrence (other than a Replacement Unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof

as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness, and (b) of each Replacement Unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Seller as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Seller of such Replacement Unit.

(d) In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Seller shall, upon request of the Railroad, after payment by the Railroad to the Seller of a sum equal to the Casualty Value of such Equipment execute and deliver to the Railroad, or to the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

8.2. Replacement Units; Prepayment of Conditional Sale Indebtedness. (a) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller pursuant to section 8.1(b) shall be applied, as the Railroad shall direct in a written instrument filed with the Seller, in whole or in part, to prepay, on the Payment Date on which such money was paid to the Seller, installments of Conditional Sale Indebtedness or (but subject to compliance with the provisions of section 8.2(c)) toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980 (a "Replacement Unit"), to replace units suffering a Casualty Occurrence, and the Railroad shall pay the balance of such cost of a Replacement Unit in addition to the Casualty Value payment provided above. Any Replacement Unit shall have a remaining useful life (as evidenced by a certificate of an operating officer or the

Treasurer or an Assistant Treasurer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such Replacement Unit shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Seller a certificate of an officer of the Railroad that the cost of such Replacement Unit to the Seller does not exceed the lesser of (i) the fair value thereof and (ii) the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service. In case any money which was to be applied toward the cost of Replacement Units has not been so applied within two years from the date such money was paid to the Seller pursuant to section 8.1(b), such money shall be applied by the Seller to prepay, on the Payment Date which is the second anniversary of the date such money was paid to the Seller, installments of Conditional Sale Indebtedness. In case any money is applied pursuant to this section 8.2 to prepay installments of Conditional Sale Indebtedness, it shall be applied to the payment of the installments of Conditional Sale Indebtedness thereafter becoming due in the inverse order of maturity of such installments.

(b) The Railroad will cause any Replacement Unit or Units to be marked as provided in section 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement, provided that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any Replacement Unit or Units not manufactured by it. Title to all such Replacement Units shall be free and clear of all Liens except the Liens permitted by section 12 and shall be taken initially and shall remain in the name of the Seller subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such Replacement Units to come under and be subject to this Agreement. All such Replacement Units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

(c) Whenever the Railroad shall file with the Seller a written direction to apply amounts toward the cost

of any Replacement Unit or Units, the Seller shall so apply such amounts only if the Railroad shall file therewith any settlement documents which may be required pursuant to the second paragraph of section 15.3 and in addition:

(i) a certificate of an operating officer or the Treasurer or an Assistant Treasurer of the Railroad certifying that such Replacement Unit is standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980, and has been marked as required by the provisions of section 8.2(b) and certifying, in the event such Replacement Unit is new equipment, the cost of such Replacement Unit and, in the event such Replacement Unit shall be equipment theretofore used in railroad service, that the cost thereof to the Seller does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service, and that such Replacement Unit has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(ii) an opinion of counsel for the Railroad that (x) the Seller has a valid and perfected security interest in each such Replacement Unit, free and clear from all Liens except the rights of the Railroad under this Agreement, and that all filings and recordations required by section 19 with respect to each such Replacement Unit have been effected, (y) in the event the Railroad should become a debtor under Chapter 11 of the Bankruptcy Code (11 U.S.C. Chapter 11), the interests of the Seller in each such Replacement Unit are such that the Seller would be entitled to the benefits of section 1168 of the Bankruptcy Code (11 U.S.C. §1168) with respect to each such Replacement Unit, and (z) each such unit has come under and become subject to this Agreement.

(d) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller

pursuant to section 8.1(b) shall, if the Railroad shall in writing so direct, be invested, pending its application as provided in section 8.2(a), in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating given by Standard & Poor's Corporation or NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic offices of commercial banks in the United States of America having a combined capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Seller on any Investments shall be held by the Seller and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Seller thereon, up to the cost (including accrued interest) thereof, shall be held by the Seller for application pursuant to section 8.2(a), and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Seller an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Seller in connection with the purchase and sale of Investments.

(e) If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Seller, constitute a Casualty Occurrence subject to the provisions of section 8.1 and this section 8.2, provided that, notwithstanding any other provisions of this section 8, the Railroad shall direct any money paid to the Seller in respect thereof to be applied only toward the cost of Replacement Units and not to prepay any installment of Conditional Sale Indebtedness.

(f) If one or more Events of Default shall have occurred and be continuing, all money held by the Seller pursuant to this section 8.2 (including, for this purpose,

Investments) shall be applied by the Seller as if such money were money received upon the sale of Equipment pursuant to section 17.

8.3. Insurance. The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

SECTION 9. MAINTENANCE; COMPLIANCE WITH LAWS AND RULES.

9.1. Maintenance of Equipment. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

9.2. Compliance with Laws and Rules. During the term of this Agreement, the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 or addition of any part on any unit of the Equipment, the Railroad will conform therewith at its own expense, provided that the Railroad may, in good faith and after giving written notice to the Seller, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Seller, adversely affect the property or rights of the Seller under this Agreement.

SECTION 10. REPORTS AND INSPECTIONS.

On or before March 31 in each year, commencing with the calendar year 1981, the Railroad shall furnish to the Seller an accurate statement signed by an officer of the Railroad (a) setting forth as of the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs), and such other information regarding the condition and state of repair of the Equipment as the Seller may reasonably request and (b) stating that, in the case of all Equipment repaired, modified or repainted during the period covered by such statement, the numbers and markings required by section 7.1 have been preserved or replaced. The Seller shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Seller may request during the continuance of this Agreement.

SECTION 11. POSSESSION AND USE.

The Railroad, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Equipment and the Railroad and any affiliate shall have the full right of use thereof by lease or otherwise upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any affiliate, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder thereof to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, provided that the Railroad agrees not to use, assign or permit the assignment of any unit of Equipment to service involving the regular operation and maintenance thereof outside the United States of America and agrees that any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico. The word "affiliate", as used in this section 11 and in section 7.2, shall mean Pacific Fruit Express Company, Evergreen Freight Car

Corporation and any other railroad corporation organized under the laws of the United States of America or of any state thereof or of the District of Columbia which, directly or indirectly controls, or is controlled by, or is under common control with, the Railroad.

SECTION 12. PROHIBITION AGAINST LIENS.

(a) The Railroad will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a Lien on the Equipment, or any unit or part thereof, and will promptly discharge any such Lien which arises, provided that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or such unit or part thereof or otherwise under this Agreement. The Seller may, in its discretion, discharge any Liens on or with respect to the Equipment which have arisen in breach of this section 12(a), and the Railroad shall reimburse the Seller for any amounts paid by the Seller to discharge such Liens, such obligation of the Railroad to be secured by and under this Agreement.

(b) The covenant in section 12(a) to discharge Liens will not be deemed breached by reason of the non-discharge 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.

SECTION 13. RAILROAD'S INDEMNITIES.

The Railroad agrees to indemnify, protect and hold harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to reasonable counsel fees arising out of the retention by the

Seller of title to the Equipment, use and operation thereof during the period when title thereto remains in the Seller, or the transfer of title to the Equipment by the Seller pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and of all other sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

SECTION 14. PATENT INDEMNITIES; EACH BUILDER'S WARRANTY OF MATERIAL AND WORKMANSHIP.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, its assigns or the users of the Equipment of such Builder because of the use in or about the construction or operation of any of such 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 Railroad likewise will indemnify, protect and hold harmless the Seller 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 Seller because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder of such Equipment or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder

has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment of such Builder on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment of such Builder all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to such Builder of any claim known to the Railroad from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule I to this Agreement.

SECTION 15. ASSIGNMENTS.

15.1. By the Railroad. The Railroad will not, whether by merger, consolidation, or sale or lease of all or any portion of its assets, sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in section 11, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Seller. A sale, assignment, transfer or disposition to a solvent Class 1 railroad company organized under the laws of the United States of America or any of the states thereof or the District of Columbia which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

15.2. By the Seller, etc. All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Seller and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of any such Builder to construct and deliver its Equipment in accordance herewith or to respond to its respective warranties and indemnities contained or referred to in section 14 or relieve the Railroad of its obligations to the Builder under section 2, 3, 4, 6, 13 or 14 or this section 15 or Schedule I to this Agreement or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

15.3. Contemplated Assignment. The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Seller hereunder, is contemplated. The Railroad expressly represents and agrees, 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 Seller hereunder and for the purposes of inducing such acquisition, that, in the event of such assignment by the Seller as hereinbefore provided, (a) any obligation of the Railroad to such assignee contained in any agreement entered into concurrently herewith relating to the financing of the Equipment shall be secured by this Agreement, and (b) the rights of such assignee to the entire unpaid indebtedness in respect of the

Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder and any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five Business Days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, except for the opinion or opinions of counsel for the assignee or for any investors for whom such assignee may be acting as agent or trustee, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Seller as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of such Builder, enter into an appropriate written agreement with such Builder excluding from this Agreement those units of Equipment of such Builder for which the aggregate Purchase Price shall not have been received, but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of the Equipment of such Builder, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged on the date such payment was due by any of the four largest (as measured by total assets) New York City banks.

SECTION 16. EVENTS OF DEFAULT.

If any one or more of the following events or conditions ("Events of Default") shall occur and be continuing:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

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

(c) the Railroad shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated a bankrupt or insolvent, or (vi) take corporate action for the purpose of any of the foregoing; or

(d) a court or governmental authority of competent jurisdiction shall enter or order, appointing, without consent by the Railroad, a custodian, receiver, trustee or other officer with similar powers with respect to the Railroad or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the

dissolution, winding-up or liquidation of the Railroad, or if any such petition shall be filed against the Railroad and such petition shall not be dismissed within 30 days; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment, or shall permit any Lien to arise with respect to any unit of the Equipment in contravention of the provisions of section 12; or

(f) any representation or warranty made by the Railroad under this Agreement or under any agreement entered into concurrently herewith relating to the financing of the Equipment or by any officer or representative of the Railroad in any document or certificate furnished to the Seller in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of an Event of Default the Seller may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Seller declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Seller of any event which has come to its attention which constitutes a Potential Event of Default or an Event of Default.

The Seller may, at its election, waive any Event of Default and its consequences and rescind and annul any

Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if such Event of Default had not occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

(a) At any time during the continuance of a Declaration of Default, the Seller may, upon such further notice and action, 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 Seller, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this section 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the premises of the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

(b) In case the Seller shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points upon the premises of the Railroad for the delivery of the Equipment to the Seller, the Railroad shall, at its own expense and risk forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Seller and shall there deliver the Equipment or cause it to be delivered to the Seller and (b) the Equipment to be moved to such interchange point or points

of the Railroad as shall be designated by the Seller upon any sale, lease or other disposal of all or any part of the Equipment by the Seller. At the option of the Seller, the Seller may keep the Equipment on any of the lines or premises of the Railroad until the Seller shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Seller reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Seller, the Seller's representatives and prospective purchasers 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 in the premises, the Seller shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Seller and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of a Declaration of Default, the Seller (after retaking possession of the Equipment as hereinbefore in this section 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in section 21, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Seller should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the further proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Seller as compensation for the use of the Equipment, provided that if the Railroad, before the expiration of the 30-day period described in the further proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under

this Agreement as well as expenses of the Seller in retaking possession of, removing and storing the Equipment and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad, provided further that if the Railroad or any other persons notified under the terms of this section 17(c) objects in writing to the Seller within 30 days from the receipt of notice of the Seller's election to retain the Equipment, then the Seller may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall have given no notice of intention to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this section 17.

(d) At any time during the continuance of a Declaration of Default, the Seller, with or without retaking possession of any Equipment, at its election and upon reasonable notice to the Railroad 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 Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, provided that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale or other disposition shall be applied as set forth in section 17(g).

(e) Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in

separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine. The Seller or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail, addressed as provided in section 21. 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 right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Seller shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as provided in section 17(g)), and in payment of the purchase price therefor the Seller shall be entitled to have credited on account thereof all sums due to the Seller under this Agreement. From and after the date of any such sale, the Railroad shall pay to the Seller the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

(f) Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby specifically given to the Seller or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement 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 under this Agreement or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Seller's rights or the Railroad's obligations under this Agreement. The

Seller's acceptance of any payment after it shall have become due under this Agreement shall not be deemed to alter or affect the Railroad's obligations or the Seller's rights under this Agreement with respect to any subsequent payments or defaults.

(g) All sums of money realized by the Seller under the remedies provided in this section 17 or which are otherwise held by the Seller during the continuance of a Declaration of Default shall be applied as follows:

first, to the payment of any reasonable costs and expenses of the Seller in its retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale of the Equipment and the Seller's reasonable attorneys' fees and legal expenses, and any taxes, assessments or charges on the Equipment prior to the Seller's title which the Seller may consider necessary or desirable to pay;

second, to the payment of the aggregate unpaid principal amount of Conditional Sale Indebtedness then due and payable, plus the accrued but unpaid interest due thereon to the date of distribution (including interest on overdue principal and interest to the extent permitted under applicable law at the rate of 15.25% per annum), and in case such moneys shall be insufficient to pay in full all such amounts at any time due and payable, then, first, to the payment of all amounts of interest at the time due and payable and, second, to the payment of all unpaid principal amounts of Conditional Sale Indebtedness at the time due and payable; and

third, to the payment of any other indebtedness owing to the Seller and secured by this Agreement and at the time due and payable.

If, after applying all sums of money realized by the Seller under the remedies provided in this section 17, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Seller upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming

due and payable. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

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

(i) The foregoing provisions of this section 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS; WAIVERS

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, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

SECTION 19. RECORDING; FURTHER ASSURANCES.

(a) The Railroad 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 the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its interest in the Equipment (including any Replacement Unit) and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Seller certificates or other evidence satisfactory to the Seller of such filing, registering, depositing and recording.

(b) The Railroad will furnish to the Seller, not more than three months after the anniversary in each year, commencing with the year 1981, of the first filing, registering or recording of this Agreement, an opinion of counsel satisfactory to the Seller stating that, in the opinion of such counsel, either (i) such action has been taken with respect to the filing or recording or the refiling or rerecording of this Agreement and each supplement and amendment hereto and each assignment hereof and each other instrument as is necessary for the proper perfection and protection in the United States of the Seller's interest in the Equipment and its rights under this Agreement and reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

SECTION 20. PAYMENT OF EXPENSES.

The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for each Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and of counsel for any person acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any person of interests acquired in such first assignment.

SECTION 21. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of

this Agreement shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fourth Business Day after deposit thereof in the United States mails, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Railroad:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Executive Vice President-
Finance

If to a Builder:

At the address specified in Item I of
Schedule I to this Agreement

If to any assignee of the
Seller or of the Railroad:

At the address supplied pursuant to
section 15 of this Agreement

or, as to any such person or any assignee of any such person, to such other address as such person or such assignee may from time to time specify to the other such persons in writing.

SECTION 22. MISCELLANEOUS.

22.1. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

22.2. Waivers; Modifications. This Agreement, including the Schedules hereto, exclusively states the rights of the Seller and the Railroad with respect to the

Equipment and supersedes all other agreements, oral and written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Railroad.

22.3. Binding Effect; Successors and Assigns. The terms and provisions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Agreement) assigns.

22.4. Captions; References. The captions in this Agreement and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections without reference to the document in which they are contained are references to this Agreement.

22.5. Governing Law. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided 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, or in which any unit of the Equipment shall be located and any rights arising out of the markings of the units of Equipment provided for in section 7.

22.6. Execution; Original Counterpart. 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 all the parties, but may consist of a number of copies each signed by fewer than all, but together signed by all the parties hereto. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date

first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed. To the extent, if any, this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the secured party on or immediately following the signature page hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[Corporate Seal]

Attest:


Assistant Secretary

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By


Vice President

[Corporate Seal]

Attest:

Assistant Secretary

ACF INDUSTRIES, INCORPORATED

By

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By

Assistant Vice President
and Treasurer

ALL RIGHT, TITLE AND INTEREST (EXCEPT AS SPECIFICALLY EXCEPTED) OF THE BUILDERS IN AND TO THIS CONDITIONAL SALE AGREEMENT, AS IT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE FIRST PENNSYLVANIA BANK N.A., AS AGENT. AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS AGREEMENT HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 22.6, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING A RECEIPT THEREFOR EXECUTED BY SUCH AGENT ON THIS PAGE.

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this 30th day of April 1980, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. K. Jarecki
Notary Public

My Commission Expires September 18, 1983

[NOTARIAL SEAL]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the _____ day of April, in the year 1980, before me personally appeared _____ to me known, who being by me duly sworn, did depose and say that he is Vice President of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

[NOTARIAL SEAL]

STATE OF CALIFORNIA)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO)

On this ____ day of April 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Notary Public

[NOTARIAL SEAL]

SCHEDULE I

- Item 1: (a) General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525
- (b) ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017
- Item 2: (a) General Motors Corporation (Electro-Motive Division ("GM") warrants that its Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications therefor referred to in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of its 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 its satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of its obligation with respect to such defect under this warranty.

GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrants such items to GM.

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

GM further agrees with the railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

- (b) ACF Industries, Incorporated ("ACF"), warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by ACF) and workmanship under normal use and service, ACF's obligation under this Item 2(b) being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within two years after the delivery of such unit to the Railroad, be returned to ACF with transportation charges prepaid and which ACF's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warranty of ACF is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of ACF, except for its obligations under sections 2, 3, 4 and 14 of the CSA, and ACF neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event

shall ACF be liable for indirect or consequential damages of any kind.

ACF further agrees with the Railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(b).

SCHEDULE II

| <u>Builder</u> | <u>Type</u> | <u>AAR Mechanical Designation</u> | <u>Builder's Specifications</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Unit Base Price</u> | <u>Total Base Price</u> | <u>Road Number (Inclusive)</u> |
|---|--|---|-------------------------------------|----------------------------|-----------------|----------------------------|-----------------------------|------------------------------------|
| General Motors Corporation (Electro-Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | B-B | 8090 | McCook, Ill. | 24 | \$624,825 | \$14,995,800 | SP 4818-4841 |
| General Motors Corporation (Electro-Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | C-C | 8087 | McCook, Ill. | 22 | 800,000 | 17,600,000 | SP 8256-8277 |
| General Motors Corporation (Electro-Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | B-B | 8091 | McCook, Ill. | 1 | 706,880 | 706,880 | SP 7959 |
| ACF Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | LO | 79-OAO-092 | Huntington W. Virginia | 155 | 42,000 | 6,510,000 | SP 496545-496699 |
| | | | | | <u>202</u> | | <u>\$39,812,680</u> | |

SCHEDULE III

Delivery Schedule

| <u>Builder</u> | <u>Type</u> | <u>Estimated Delivery Dates</u> |
|---|--|---|
| General Motors Corporation (Electro- Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | 14 units, May 1980 10 units, June 1980 |
| General Motors Corporation (Electro- Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| General Motors Corporation (Electro- Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| ACG Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | 1 unit, July 1980 154 units, August 1980 |

11757

RECORDATION NO. Filed 1425

MAY 1 1980 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of
April 15, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

ACF INDUSTRIES, INCORPORATED,

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

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CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of April 15, 1980 between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and ACF INDUSTRIES, INCORPORATED (each the "Builder" and together the "Builders", or, as the context may require, as more particularly set forth in section 1, the "Seller") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad").

RECITALS

The Builders have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule II to this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

The term "Seller", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the respective corporations named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses, 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Seller",

"such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule I hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

For all purposes of this Agreement, the following terms shall have the following meanings:

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Philadelphia, Pennsylvania or New York, New York are required or authorized by law to be closed.

Casualty Occurrence: as defined in section 8.1(a).

Casualty Value: as defined in section 8.1(c).

3.1. Certificate of Acceptance: as defined in section

Closing Date: as defined in section 4.4.

Conditional Sale Indebtedness: in the aggregate, the amount of the indebtedness of the Railroad to the Seller under section 4.6(a).

16. Declaration of Default: as defined in section

Delivery Period: as defined in section 4.4.

Equipment: collectively, the equipment listed in Schedule II to this Agreement (including, unless the context otherwise requires, any Replacement Unit) and any additions, modifications or improvements thereto as provided in section 5.

Event of Default: as defined in section 16.

Group: as defined in section 4.4.

Investments: as defined in section 8.2(d).

4.1. Invoiced Purchase Price: as defined in section

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Maximum Installment Price: as defined in section 4.2.

Payment Date: as defined in section 4.7.

Potential Event of Default: any event or condition which after the making of a demand or the lapse of time or both would become an Event of Default.

Purchase Price: as defined in section 4.1.

Replacement Unit: as defined in section 8.2(a).

Specifications: as defined in section 2.

SECTION 2. CONSTRUCTION AND SALE OF EQUIPMENT.

Pursuant to this Agreement each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule II hereto (such units of Equipment with respect to such Builder being hereinafter called its Equipment) at its plant set forth in such Schedule II and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in such Schedule II and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment.

SECTION 3. INSPECTION AND DELIVERY.

3.1. Inspection; Certificate of Acceptance. During the construction of any unit of the Equipment such unit

shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with section 7, provided that such Builder shall not thereby be relieved of its warranty referred to in section 14.

3.2. Delivery. (a) Each Builder will deliver the units of its Equipment to the Railroad at the place specified in Schedule II to this Agreement or at such other place or places as the Railroad and such Builder may agree, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule III to this Agreement, provided that no Builder shall have any obligation to deliver any unit of its Equipment under this Agreement if a Potential Event of Default or an Event of Default shall have occurred.

(b) A Builder shall not be in default under this Agreement, nor shall such Builder have any liability in damages or for specific performance for the failure to make deliveries 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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

(c) Notwithstanding the provisions of sections 3.2(a) and (b), any Equipment not delivered, accepted and settled for pursuant to section 4 on or before November 25, 1980 shall be excluded herefrom. If any

unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in section 3.2(b), the Railroad shall nevertheless be obligated to accept such Equipment and pay the full Purchase Price therefor, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

(d) On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit, provided that such delivery shall not thereby relieve each Builder of its warranty referred to in section 14.

SECTION 4. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

4.1. Purchase Price; Invoiced Purchase Price. "Purchase Price" shall mean, with respect to any unit of the Equipment, the base price or prices set forth for such unit in Schedule II to this Agreement as such price may be increased or decreased by agreement between the Railroad and the Builder thereof, including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in section 4.5, plus off-line charges, if any. "Invoiced Purchase Price" shall mean, with respect to each unit of the Equipment, the Purchase Price of such unit as set forth in the invoices delivered with respect to such unit pursuant to sections 4.4 and 4.5.

4.2. Maximum Installment Price. "Maximum Installment Price" shall mean (a) if the Railroad has not given notice to the Seller pursuant to the next sentence of this section 4.2, \$40,000,000, or (b) if the Railroad has given such notice, the amount set forth therein. If in the

good faith judgment of the Railroad the aggregate Purchase Price of all units of the Equipment is, at any time, estimated to exceed \$40,000,000, the Railroad may, at its option, by delivery of written notice to the Seller not later than June 10, 1980, increase the Maximum Installment Price of the Equipment to an amount not in excess of the lesser of (a) \$42,000,000 and (b) the estimated aggregate Purchase Price of the Equipment.

4.3. Exclusion of Units. If the aggregate Purchase Price of Equipment for which settlement has been made or is then proposed to be made under this Agreement is in an amount in excess of the Maximum Installment Price, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder or Builders (and any assignee of the Builders) shall, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Installment Price and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder thereof in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

4.4. Delivery Period. For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group a "Group"), for which an invoice or invoices and the Certificate or Certificates of Acceptance are presented by such Builder during a Delivery Period. The period from May 1, 1980 through June 10, 1980, inclusive, shall constitute the first Delivery Period. With respect to the Equipment built by General Motors Corporation (Electro-Motive Division) the period between the 11th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery

Period. With respect to the Equipment built by ACF Industries, Incorporated, the period between the 11th and 25th of any calendar month (beginning June 1980) or between the 26th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery Period.

With respect to any Group of the Equipment built by General Motors Corporation (Electro-Motive Division), the 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. With respect to any Group of the Equipment built by ACF Industries, Incorporated, the 10th or 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. A Closing Date shall not in any event occur prior to June 25, 1980 or after November 25, 1980.

4.5. Supplemental Invoices. In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 15 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price. Each Builder understands and agrees that any preliminary invoice or invoices presented by such Builder in respect of any Group shall be in an amount not in excess of the final Purchase Price of such Group.

4.6. Payment of Invoiced Purchase Price. The Railroad hereby acknowledges itself to be indebted to the Seller for, and hereby promises to pay to the Seller, in immediately available funds at such place as the Seller may designate, the Invoiced Purchase Price of the Equipment as follows:

(a) in 15 consecutive equal annual installments, in the manner and at the times provided in section 4.7,

an amount (which amount shall constitute "Conditional Sale Indebtedness") equal to the lesser of (i) the aggregate of the Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made and (ii) the Maximum Installment Price; and

(b) on each Closing Date, the amount, if any, by which (i) the aggregate Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made exceeds (ii) the sum of (x) the Maximum Installment Price and (y) any amount or amounts previously paid or payable with respect to the Invoiced Purchase Price pursuant to this section 4.6(b).

4.7. Payment of Conditional Sale Indebtedness.

The installments of Conditional Sale Indebtedness shall be paid annually in each year, commencing on June 15, 1981 and on each June 15 thereafter, to and including June 15, 1995. The unpaid balance of any Conditional Sale Indebtedness shall bear interest from the Closing Date upon which any such Conditional Sale Indebtedness was incurred at the rate of 14.25% per annum, and such interest shall be payable, to the extent accrued, on December 15, 1980, and on June 15 and December 15 in each year thereafter until the Conditional Sale Indebtedness shall be paid in full (each such June 15 and December 15, a "Payment Date").

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

The Railroad will pay on demand interest at the rate of 15.25% per annum upon all amounts of principal and, to the extent legally enforceable, interest remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

Except as provided in section 8.2, the Railroad shall not have the privilege of prepaying any portion of its indebtedness under this Agreement prior to the date it becomes due. 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. If any date on which any payment becomes due falls on a day that is not

a Business Day, then the payment due on such date shall be made on the next succeeding Business Day.

In the event the Seller, pursuant to section 15, assigns the right to receive the payments to be made by the Railroad under this Agreement, the assignee thereof may request the Railroad to make, and the Railroad shall make, such payments to it at the address supplied to the Railroad by such assignee.

SECTION 5. TITLE TO THE EQUIPMENT.

The Seller shall and hereby does retain title to and a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions, modifications or improvements to the Equipment and any and all replacements of the Equipment and of parts thereof and additions, modifications or improvements thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in section 8.1, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Seller. However, the Seller, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all Liens created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in section 21, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the

Equipment and (c) pay to the Railroad any money paid to the Seller pursuant to section 8 and not theretofore applied as provided in such section. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 6. TAXES.

All payments to be made by the Railroad under this Agreement will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties now or hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title or any interest in the Equipment under the terms of this Agreement (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness and all other amounts payable by the Railroad under this Agreement. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment or any unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof 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 the title of the Seller or result in a Lien upon all or any part of the Equipment, provided that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in

the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Seller directly and paid by the Seller, the Railroad shall reimburse the Seller upon presentation of an invoice therefor, and any amounts so paid by the Seller shall be secured by and under this Agreement, provided that the Railroad shall not be obligated to reimburse the Seller for any Imposition so paid unless the Seller shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Seller) or unless the Railroad shall have approved the payment thereof. All amounts paid by the Railroad pursuant to this section 6 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required under this Agreement.

SECTION 7. MARKING OF EQUIPMENT.

7.1. Required Markings. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule II to this Agreement, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend: "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings approved by the Seller, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Seller's title to and security interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such legend which may be removed, obliterated, defaced or destroyed. The Railroad will not change the identifying number of any unit of the Equipment except in accordance with a statement of a new number or numbers to be substi-

tuted therefor, which statement previously shall have been filed with the Seller by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

7.2. Permitted Markings. Except as provided in section 7.1, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership, provided that the Railroad may allow the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

SECTION 8. CASUALTY OCCURRENCES; REPLACEMENTS AND PRE-PAYMENTS; INSURANCE

8.1. Casualty Occurrences. (a) In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence, together with any occurrence of the type described in section 8.2(e), being referred to herein as a "Casualty Occurrence"), the Railroad shall within 30 days after it has knowledge of such Casualty Occurrence fully inform the Seller in regard thereto.

(b) On the next succeeding Payment Date after the Railroad shall have knowledge that the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Seller pursuant to this section 8.1) hereunder shall exceed \$400,000 (or such lesser amount as the Railroad may elect), the Railroad shall pay to the Seller a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Seller a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

(c) The "Casualty Value" (a) of each unit of the Equipment suffering a Casualty Occurrence (other than a Replacement Unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof

as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness, and (b) of each Replacement Unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Seller as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Seller of such Replacement Unit.

(d) In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Seller shall, upon request of the Railroad, after payment by the Railroad to the Seller of a sum equal to the Casualty Value of such Equipment execute and deliver to the Railroad, or to the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

8.2. Replacement Units; Prepayment of Conditional Sale Indebtedness. (a) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller pursuant to section 8.1(b) shall be applied, as the Railroad shall direct in a written instrument filed with the Seller, in whole or in part, to prepay, on the Payment Date on which such money was paid to the Seller, installments of Conditional Sale Indebtedness or (but subject to compliance with the provisions of section 8.2(c)) toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980 (a "Replacement Unit"), to replace units suffering a Casualty Occurrence, and the Railroad shall pay the balance of such cost of a Replacement Unit in addition to the Casualty Value payment provided above. Any Replacement Unit shall have a remaining useful life (as evidenced by a certificate of an operating officer or the

Treasurer or an Assistant Treasurer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such Replacement Unit shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Seller a certificate of an officer of the Railroad that the cost of such Replacement Unit to the Seller does not exceed the lesser of (i) the fair value thereof and (ii) the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service. In case any money which was to be applied toward the cost of Replacement Units has not been so applied within two years from the date such money was paid to the Seller pursuant to section 8.1(b), such money shall be applied by the Seller to prepay, on the Payment Date which is the second anniversary of the date such money was paid to the Seller, installments of Conditional Sale Indebtedness. In case any money is applied pursuant to this section 8.2 to prepay installments of Conditional Sale Indebtedness, it shall be applied to the payment of the installments of Conditional Sale Indebtedness thereafter becoming due in the inverse order of maturity of such installments.

(b) The Railroad will cause any Replacement Unit or Units to be marked as provided in section 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement, provided that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any Replacement Unit or Units not manufactured by it. Title to all such Replacement Units shall be free and clear of all Liens except the Liens permitted by section 12 and shall be taken initially and shall remain in the name of the Seller subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such Replacement Units to come under and be subject to this Agreement. All such Replacement Units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

(c) Whenever the Railroad shall file with the Seller a written direction to apply amounts toward the cost

of any Replacement Unit or Units, the Seller shall so apply such amounts only if the Railroad shall file therewith any settlement documents which may be required pursuant to the second paragraph of section 15.3 and in addition:

(i) a certificate of an operating officer or the Treasurer or an Assistant Treasurer of the Railroad certifying that such Replacement Unit is standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980, and has been marked as required by the provisions of section 8.2(b) and certifying, in the event such Replacement Unit is new equipment, the cost of such Replacement Unit and, in the event such Replacement Unit shall be equipment theretofore used in railroad service, that the cost thereof to the Seller does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service, and that such Replacement Unit has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(ii) an opinion of counsel for the Railroad that (x) the Seller has a valid and perfected security interest in each such Replacement Unit, free and clear from all Liens except the rights of the Railroad under this Agreement, and that all filings and recordations required by section 19 with respect to each such Replacement Unit have been effected, (y) in the event the Railroad should become a debtor under Chapter 11 of the Bankruptcy Code (11 U.S.C. Chapter 11), the interests of the Seller in each such Replacement Unit are such that the Seller would be entitled to the benefits of section 1168 of the Bankruptcy Code (11 U.S.C. §1168) with respect to each such Replacement Unit, and (z) each such unit has come under and become subject to this Agreement.

(d) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller

pursuant to section 8.1(b) shall, if the Railroad shall in writing so direct, be invested, pending its application as provided in section 8.2(a), in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating given by Standard & Poor's Corporation or NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic offices of commercial banks in the United States of America having a combined capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Seller on any Investments shall be held by the Seller and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Seller thereon, up to the cost (including accrued interest) thereof, shall be held by the Seller for application pursuant to section 8.2(a), and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Seller an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Seller in connection with the purchase and sale of Investments.

(e) If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Seller, constitute a Casualty Occurrence subject to the provisions of section 8.1 and this section 8.2, provided that, notwithstanding any other provisions of this section 8, the Railroad shall direct any money paid to the Seller in respect thereof to be applied only toward the cost of Replacement Units and not to prepay any installment of Conditional Sale Indebtedness.

(f) If one or more Events of Default shall have occurred and be continuing, all money held by the Seller pursuant to this section 8.2 (including, for this purpose,

Investments) shall be applied by the Seller as if such money were money received upon the sale of Equipment pursuant to section 17.

8.3. Insurance. The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

SECTION 9. MAINTENANCE; COMPLIANCE WITH LAWS AND RULES.

9.1. Maintenance of Equipment. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

9.2. Compliance with Laws and Rules. During the term of this Agreement, the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 or addition of any part on any unit of the Equipment, the Railroad will conform therewith at its own expense, provided that the Railroad may, in good faith and after giving written notice to the Seller, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Seller, adversely affect the property or rights of the Seller under this Agreement.

SECTION 10. REPORTS AND INSPECTIONS.

On or before March 31 in each year, commencing with the calendar year 1981, the Railroad shall furnish to the Seller an accurate statement signed by an officer of the Railroad (a) setting forth as of the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs), and such other information regarding the condition and state of repair of the Equipment as the Seller may reasonably request and (b) stating that, in the case of all Equipment repaired, modified or repainted during the period covered by such statement, the numbers and markings required by section 7.1 have been preserved or replaced. The Seller shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Seller may request during the continuance of this Agreement.

SECTION 11. POSSESSION AND USE.

The Railroad, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Equipment and the Railroad and any affiliate shall have the full right of use thereof by lease or otherwise upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any affiliate, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder thereof to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, provided that the Railroad agrees not to use, assign or permit the assignment of any unit of Equipment to service involving the regular operation and maintenance thereof outside the United States of America and agrees that any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico. The word "affiliate", as used in this section 11 and in section 7.2, shall mean Pacific Fruit Express Company, Evergreen Freight Car

Corporation and any other railroad corporation organized under the laws of the United States of America or of any state thereof or of the District of Columbia which, directly or indirectly controls, or is controlled by, or is under common control with, the Railroad.

SECTION 12. PROHIBITION AGAINST LIENS.

(a) The Railroad will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a Lien on the Equipment, or any unit or part thereof, and will promptly discharge any such Lien which arises, provided that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or such unit or part thereof or otherwise under this Agreement. The Seller may, in its discretion, discharge any Liens on or with respect to the Equipment which have arisen in breach of this section 12(a), and the Railroad shall reimburse the Seller for any amounts paid by the Seller to discharge such Liens, such obligation of the Railroad to be secured by and under this Agreement.

(b) The covenant in section 12(a) to discharge Liens will not be deemed breached by reason of the non-discharge 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.

SECTION 13. RAILROAD'S INDEMNITIES.

The Railroad agrees to indemnify, protect and hold harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to reasonable counsel fees arising out of the retention by the

Seller of title to the Equipment, use and operation thereof during the period when title thereto remains in the Seller, or the transfer of title to the Equipment by the Seller pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and of all other sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

SECTION 14. PATENT INDEMNITIES; EACH BUILDER'S WARRANTY OF MATERIAL AND WORKMANSHIP.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, its assigns or the users of the Equipment of such Builder because of the use in or about the construction or operation of any of such 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 Railroad likewise will indemnify, protect and hold harmless the Seller 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 Seller because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder of such Equipment or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder

has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment of such Builder on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment of such Builder all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to such Builder of any claim known to the Railroad from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule I to this Agreement.

SECTION 15. ASSIGNMENTS.

15.1. By the Railroad. The Railroad will not, whether by merger, consolidation, or sale or lease of all or any portion of its assets, sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in section 11, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Seller. A sale, assignment, transfer or disposition to a solvent Class 1 railroad company organized under the laws of the United States of America or any of the states thereof or the District of Columbia which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

15.2. By the Seller, etc. All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Seller and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of any such Builder to construct and deliver its Equipment in accordance herewith or to respond to its respective warranties and indemnities contained or referred to in section 14 or relieve the Railroad of its obligations to the Builder under section 2, 3, 4, 6, 13 or 14 or this section 15 or Schedule I to this Agreement or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

15.3. Contemplated Assignment. The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Seller hereunder, is contemplated. The Railroad expressly represents and agrees, 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 Seller hereunder and for the purposes of inducing such acquisition, that, in the event of such assignment by the Seller as hereinbefore provided, (a) any obligation of the Railroad to such assignee contained in any agreement entered into concurrently herewith relating to the financing of the Equipment shall be secured by this Agreement, and (b) the rights of such assignee to the entire unpaid indebtedness in respect of the

Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder and any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five Business Days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, except for the opinion or opinions of counsel for the assignee or for any investors for whom such assignee may be acting as agent or trustee, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Seller as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of such Builder, enter into an appropriate written agreement with such Builder excluding from this Agreement those units of Equipment of such Builder for which the aggregate Purchase Price shall not have been received, but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of the Equipment of such Builder, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged on the date such payment was due by any of the four largest (as measured by total assets) New York City banks.

SECTION 16. EVENTS OF DEFAULT.

If any one or more of the following events or conditions ("Events of Default") shall occur and be continuing:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

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

(c) the Railroad shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated a bankrupt or insolvent, or (vi) take corporate action for the purpose of any of the foregoing; or

(d) a court or governmental authority of competent jurisdiction shall enter or order, appointing, without consent by the Railroad, a custodian, receiver, trustee or other officer with similar powers with respect to the Railroad or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the

dissolution, winding-up or liquidation of the Railroad, or if any such petition shall be filed against the Railroad and such petition shall not be dismissed within 30 days; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment, or shall permit any Lien to arise with respect to any unit of the Equipment in contravention of the provisions of section 12; or

(f) any representation or warranty made by the Railroad under this Agreement or under any agreement entered into concurrently herewith relating to the financing of the Equipment or by any officer or representative of the Railroad in any document or certificate furnished to the Seller in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of an Event of Default the Seller may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Seller declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Seller of any event which has come to its attention which constitutes a Potential Event of Default or an Event of Default.

The Seller may, at its election, waive any Event of Default and its consequences and rescind and annul any

Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if such Event of Default had not occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

(a) At any time during the continuance of a Declaration of Default, the Seller may, upon such further notice and action, 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 Seller, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this section 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the premises of the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

(b) In case the Seller shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points upon the premises of the Railroad for the delivery of the Equipment to the Seller, the Railroad shall, at its own expense and risk forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Seller and shall there deliver the Equipment or cause it to be delivered to the Seller and (b) the Equipment to be moved to such interchange point or points

of the Railroad as shall be designated by the Seller upon any sale, lease or other disposal of all or any part of the Equipment by the Seller. At the option of the Seller, the Seller may keep the Equipment on any of the lines or premises of the Railroad until the Seller shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Seller reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Seller, the Seller's representatives and prospective purchasers 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 in the premises, the Seller shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Seller and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of a Declaration of Default, the Seller (after retaking possession of the Equipment as hereinbefore in this section 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in section 21, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Seller should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the further proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Seller as compensation for the use of the Equipment, provided that if the Railroad, before the expiration of the 30-day period described in the further proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under

this Agreement as well as expenses of the Seller in retaking possession of, removing and storing the Equipment and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad, provided further that if the Railroad or any other persons notified under the terms of this section 17(c) objects in writing to the Seller within 30 days from the receipt of notice of the Seller's election to retain the Equipment, then the Seller may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall have given no notice of intention to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this section 17.

(d) At any time during the continuance of a Declaration of Default, the Seller, with or without retaking possession of any Equipment, at its election and upon reasonable notice to the Railroad 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 Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, provided that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale or other disposition shall be applied as set forth in section 17(g).

(e) Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in

separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine. The Seller or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail, addressed as provided in section 21. 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 right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Seller shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as provided in section 17(g)), and in payment of the purchase price therefor the Seller shall be entitled to have credited on account thereof all sums due to the Seller under this Agreement. From and after the date of any such sale, the Railroad shall pay to the Seller the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

(f) Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby specifically given to the Seller or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement 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 under this Agreement or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Seller's rights or the Railroad's obligations under this Agreement. The

Seller's acceptance of any payment after it shall have become due under this Agreement shall not be deemed to alter or affect the Railroad's obligations or the Seller's rights under this Agreement with respect to any subsequent payments or defaults.

(g) All sums of money realized by the Seller under the remedies provided in this section 17 or which are otherwise held by the Seller during the continuance of a Declaration of Default shall be applied as follows:

first, to the payment of any reasonable costs and expenses of the Seller in its retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale of the Equipment and the Seller's reasonable attorneys' fees and legal expenses, and any taxes, assessments or charges on the Equipment prior to the Seller's title which the Seller may consider necessary or desirable to pay;

second, to the payment of the aggregate unpaid principal amount of Conditional Sale Indebtedness then due and payable, plus the accrued but unpaid interest due thereon to the date of distribution (including interest on overdue principal and interest to the extent permitted under applicable law at the rate of 15.25% per annum), and in case such moneys shall be insufficient to pay in full all such amounts at any time due and payable, then, first, to the payment of all amounts of interest at the time due and payable and, second, to the payment of all unpaid principal amounts of Conditional Sale Indebtedness at the time due and payable; and

third, to the payment of any other indebtedness owing to the Seller and secured by this Agreement and at the time due and payable.

If, after applying all sums of money realized by the Seller under the remedies provided in this section 17, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Seller upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming

due and payable. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

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

(i) The foregoing provisions of this section 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS; WAIVERS

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, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

SECTION 19. RECORDING; FURTHER ASSURANCES.

(a) The Railroad 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 the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its interest in the Equipment (including any Replacement Unit) and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Seller certificates or other evidence satisfactory to the Seller of such filing, registering, depositing and recording.

(b) The Railroad will furnish to the Seller, not more than three months after the anniversary in each year, commencing with the year 1981, of the first filing, registering or recording of this Agreement, an opinion of counsel satisfactory to the Seller stating that, in the opinion of such counsel, either (i) such action has been taken with respect to the filing or recording or the re-filing or rerecording of this Agreement and each supplement and amendment hereto and each assignment hereof and each other instrument as is necessary for the proper perfection and protection in the United States of the Seller's interest in the Equipment and its rights under this Agreement and reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

SECTION 20. PAYMENT OF EXPENSES.

The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for each Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and of counsel for any person acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any person of interests acquired in such first assignment.

SECTION 21. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of

this Agreement shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fourth Business Day after deposit thereof in the United States mails, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Railroad:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Executive Vice President-
Finance

If to a Builder:

At the address specified in Item I of
Schedule I to this Agreement

If to any assignee of the
Seller or of the Railroad:

At the address supplied pursuant to
section 15 of this Agreement

or, as to any such person or any assignee of any such person, to such other address as such person or such assignee may from time to time specify to the other such persons in writing.

SECTION 22. MISCELLANEOUS.

22.1. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

22.2. Waivers; Modifications. This Agreement, including the Schedules hereto, exclusively states the rights of the Seller and the Railroad with respect to the

Equipment and supersedes all other agreements, oral and written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Railroad.

22.3. Binding Effect; Successors and Assigns. The terms and provisions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Agreement) assigns.

22.4. Captions; References. The captions in this Agreement and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections without reference to the document in which they are contained are references to this Agreement.

22.5. Governing Law. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided 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, or in which any unit of the Equipment shall be located and any rights arising out of the markings of the units of Equipment provided for in section 7.

22.6. Execution; Original Counterpart. 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 all the parties, but may consist of a number of copies each signed by fewer than all, but together signed by all the parties hereto. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date

first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed. To the extent, if any, this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the secured party on or immediately following the signature page hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[Corporate
Seal]

Attest:

By

Vice President

Assistant Secretary

ACF INDUSTRIES, INCORPORATED

[Corporate
Seal]

Attest:

By

Vice President

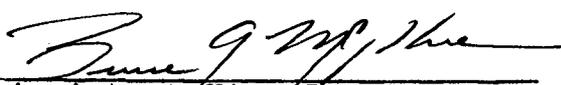
Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

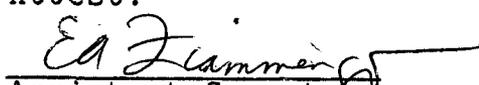
[Corporate
Seal]

Attest:

By



Assistant Vice President
and Treasurer



Assistant Secretary

ALL RIGHT, TITLE AND INTEREST (EXCEPT AS SPECIFICALLY EXCEPTED) OF THE BUILDERS IN AND TO THIS CONDITIONAL SALE AGREEMENT, AS IT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE FIRST PENNSYLVANIA BANK N.A., AS AGENT. AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS AGREEMENT HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 22.6, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING A RECEIPT THEREFOR EXECUTED BY SUCH AGENT ON THIS PAGE.

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF SAN FRANCISCO) ss.:

On this 30th day of April 1980, before me personally appeared Bruce B. McPhee, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Catherine B. Lundy
Notary Public

[NOTARIAL SEAL]



SCHEDULE I

- Item 1: (a) General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525
- (b) ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017
- Item 2: (a) General Motors Corporation (Electro-Motive Division ("GM") warrants that its Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications therefor referred to in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of its 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 its satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of its obligation with respect to such defect under this warranty.

GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrants such items to GM.

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

GM further agrees with the railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

- (b) ACF Industries, Incorporated ("ACF"), warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by ACF) and workmanship under normal use and service, ACF's obligation under this Item 2(b) being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within two years after the delivery of such unit to the Railroad, be returned to ACF with transportation charges prepaid and which ACF's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warranty of ACF is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of ACF, except for its obligations under sections 2, 3, 4 and 14 of the CSA, and ACF neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event

shall ACF be liable for indirect or consequential damages of any kind.

ACF further agrees with the Railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(b).

SCHEDULE II

| <u>Builder</u> | <u>Type</u> | <u>AAR Mechanical Designation</u> | <u>Builder's Specifications</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Unit Base Price</u> | <u>Total Base Price</u> | <u>Road Number (Inclusive)</u> |
|---|--|---|-------------------------------------|----------------------------|-----------------|----------------------------|-----------------------------|------------------------------------|
| General Motors Corporation (Electro-Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | B-B | 8090 | McCook, Ill. | 24 | \$624,825 | \$14,995,800 | SP 4818- 4841 |
| General Motors Corporation (Electro-Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | C-C | 8087 | McCook, Ill. | 22 | 800,000 | 17,600,000 | SP 8256- 8277 |
| General Motors Corporation (Electro-Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | B-B | 8091 | McCook, Ill. | 1 | 706,880 | 706,880 | SP 7959 |
| ACF Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | LO | 79-OAO-092 | Huntington W. Virginia | 155 | 42,000 | 6,510,000 | SP 496545- 496699 |
| | | | | | <u>202</u> | | <u>\$39,812,680</u> | |

SCHEDULE III

Delivery Schedule

| <u>Builder</u> | <u>Type</u> | <u>Estimated Delivery Dates</u> |
|---|--|---|
| General Motors Corporation (Electro- Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | 14 units, May 1980 10 units, June 1980 |
| General Motors Corporation (Electro- Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| General Motors Corporation (Electro- Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| ACG Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | 1 unit, July 1980 154 units, August 1980 |

11757

RECORDATION NO. Filed 1425

MAY 1 1980 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of
April 15, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

ACF INDUSTRIES, INCORPORATED,

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

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CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of April 15, 1980 between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and ACF INDUSTRIES, INCORPORATED (each the "Builder" and together the "Builders", or, as the context may require, as more particularly set forth in section 1, the "Seller") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad").

RECITALS

The Builders have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule II to this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

The term "Seller", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the respective corporations named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses, 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule I hereto, and any successor or successors for the time being to their manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Seller",

"such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule I hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

For all purposes of this Agreement, the following terms shall have the following meanings:

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Philadelphia, Pennsylvania or New York, New York are required or authorized by law to be closed.

Casualty Occurrence: as defined in section 8.1(a).

Casualty Value: as defined in section 8.1(c).

3.1. Certificate of Acceptance: as defined in section

Closing Date: as defined in section 4.4.

Conditional Sale Indebtedness: in the aggregate, the amount of the indebtedness of the Railroad to the Seller under section 4.6(a).

16. Declaration of Default: as defined in section

Delivery Period: as defined in section 4.4.

Equipment: collectively, the equipment listed in Schedule II to this Agreement (including, unless the context otherwise requires, any Replacement Unit) and any additions, modifications or improvements thereto as provided in section 5.

Event of Default: as defined in section 16.

Group: as defined in section 4.4.

Investments: as defined in section 8.2(d).

4.1. Invoiced Purchase Price: as defined in section

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Maximum Installment Price: as defined in section 4.2.

Payment Date: as defined in section 4.7.

Potential Event of Default: any event or condition which after the making of a demand or the lapse of time or both would become an Event of Default.

Purchase Price: as defined in section 4.1.

Replacement Unit: as defined in section 8.2(a).

Specifications: as defined in section 2.

SECTION 2. CONSTRUCTION AND SALE OF EQUIPMENT.

Pursuant to this Agreement each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule II hereto (such units of Equipment with respect to such Builder being hereinafter called its Equipment) at its plant set forth in such Schedule II and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in such Schedule II and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment.

SECTION 3. INSPECTION AND DELIVERY.

3.1. Inspection; Certificate of Acceptance. During the construction of any unit of the Equipment such unit

unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in section 3.2(b), the Railroad shall nevertheless be obligated to accept such Equipment and pay the full Purchase Price therefor, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

(d) On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit, provided that such delivery shall not thereby relieve each Builder of its warranty referred to in section 14.

SECTION 4. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

4.1. Purchase Price; Invoiced Purchase Price. "Purchase Price" shall mean, with respect to any unit of the Equipment, the base price or prices set forth for such unit in Schedule II to this Agreement as such price may be increased or decreased by agreement between the Railroad and the Builder thereof, including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in section 4.5, plus off-line charges, if any. "Invoiced Purchase Price" shall mean, with respect to each unit of the Equipment, the Purchase Price of such unit as set forth in the invoices delivered with respect to such unit pursuant to sections 4.4 and 4.5.

4.2. Maximum Installment Price. "Maximum Installment Price" shall mean (a) if the Railroad has not given notice to the Seller pursuant to the next sentence of this section 4.2, \$40,000,000, or (b) if the Railroad has given such notice, the amount set forth therein. If in the

good faith judgment of the Railroad the aggregate Purchase Price of all units of the Equipment is, at any time, estimated to exceed \$40,000,000, the Railroad may, at its option, by delivery of written notice to the Seller not later than June 10, 1980, increase the Maximum Installment Price of the Equipment to an amount not in excess of the lesser of (a) \$42,000,000 and (b) the estimated aggregate Purchase Price of the Equipment.

4.3. Exclusion of Units. If the aggregate Purchase Price of Equipment for which settlement has been made or is then proposed to be made under this Agreement is in an amount in excess of the Maximum Installment Price, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder or Builders (and any assignee of the Builders) shall, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Installment Price and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder thereof in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

4.4. Delivery Period. For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group a "Group"), for which an invoice or invoices and the Certificate or Certificates of Acceptance are presented by such Builder during a Delivery Period. The period from May 1, 1980 through June 10, 1980, inclusive, shall constitute the first Delivery Period. With respect to the Equipment built by General Motors Corporation (Electro-Motive Division) the period between the 11th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery

Period. With respect to the Equipment built by ACF Industries, Incorporated, the period between the 11th and 25th of any calendar month (beginning June 1980) or between the 26th of any calendar month (beginning June 1980) and the tenth of the following calendar month shall constitute a Delivery Period.

With respect to any Group of the Equipment built by General Motors Corporation (Electro-Motive Division), the 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. With respect to any Group of the Equipment built by ACF Industries, Incorporated, the 10th or 25th day of the month (or if such day is not a Business Day the next succeeding Business Day) next following the end of a Delivery Period during which such Builder shall have presented to the Railroad and the Seller the invoice or invoices and the Certificate or Certificates of Acceptance for such Group shall be a Closing Date. A Closing Date shall not in any event occur prior to June 25, 1980 or after November 25, 1980.

4.5. Supplemental Invoices. In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 15 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price. Each Builder understands and agrees that any preliminary invoice or invoices presented by such Builder in respect of any Group shall be in an amount not in excess of the final Purchase Price of such Group.

4.6. Payment of Invoiced Purchase Price. The Railroad hereby acknowledges itself to be indebted to the Seller for, and hereby promises to pay to the Seller, in immediately available funds at such place as the Seller may designate, the Invoiced Purchase Price of the Equipment as follows:

(a) in 15 consecutive equal annual installments, in the manner and at the times provided in section 4.7,

an amount (which amount shall constitute "Conditional Sale Indebtedness") equal to the lesser of (i) the aggregate of the Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made and (ii) the Maximum Installment Price; and

(b) on each Closing Date, the amount, if any, by which (i) the aggregate Invoiced Purchase Price of all units of the Equipment for which settlement has been and is then being made exceeds (ii) the sum of (x) the Maximum Installment Price and (y) any amount or amounts previously paid or payable with respect to the Invoiced Purchase Price pursuant to this section 4.6(b).

4.7. Payment of Conditional Sale Indebtedness.

The installments of Conditional Sale Indebtedness shall be paid annually in each year, commencing on June 15, 1981 and on each June 15 thereafter, to and including June 15, 1995. The unpaid balance of any Conditional Sale Indebtedness shall bear interest from the Closing Date upon which any such Conditional Sale Indebtedness was incurred at the rate of 14.25% per annum, and such interest shall be payable, to the extent accrued, on December 15, 1980, and on June 15 and December 15 in each year thereafter until the Conditional Sale Indebtedness shall be paid in full (each such June 15 and December 15, a "Payment Date").

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

The Railroad will pay on demand interest at the rate of 15.25% per annum upon all amounts of principal and, to the extent legally enforceable, interest remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

Except as provided in section 8.2, the Railroad shall not have the privilege of prepaying any portion of its indebtedness under this Agreement prior to the date it becomes due. 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. If any date on which any payment becomes due falls on a day that is not

a Business Day, then the payment due on such date shall be made on the next succeeding Business Day.

In the event the Seller, pursuant to section 15, assigns the right to receive the payments to be made by the Railroad under this Agreement, the assignee thereof may request the Railroad to make, and the Railroad shall make, such payments to it at the address supplied to the Railroad by such assignee.

SECTION 5. TITLE TO THE EQUIPMENT.

The Seller shall and hereby does retain title to and a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions, modifications or improvements to the Equipment and any and all replacements of the Equipment and of parts thereof and additions, modifications or improvements thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in section 8.1, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Seller. However, the Seller, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all Liens created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in section 21, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the

Equipment and (c) pay to the Railroad any money paid to the Seller pursuant to section 8 and not theretofore applied as provided in such section. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 6. TAXES.

All payments to be made by the Railroad under this Agreement will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties now or hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title or any interest in the Equipment under the terms of this Agreement (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness and all other amounts payable by the Railroad under this Agreement. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment or any unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof 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 the title of the Seller or result in a Lien upon all or any part of the Equipment, provided that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in

the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Seller directly and paid by the Seller, the Railroad shall reimburse the Seller upon presentation of an invoice therefor, and any amounts so paid by the Seller shall be secured by and under this Agreement, provided that the Railroad shall not be obligated to reimburse the Seller for any Imposition so paid unless the Seller shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Seller) or unless the Railroad shall have approved the payment thereof. All amounts paid by the Railroad pursuant to this section 6 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required under this Agreement.

SECTION 7. MARKING OF EQUIPMENT.

7.1. Required Markings. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule II to this Agreement, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend: "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings approved by the Seller, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Seller's title to and security interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such legend which may be removed, obliterated, defaced or destroyed. The Railroad will not change the identifying number of any unit of the Equipment except in accordance with a statement of a new number or numbers to be substi-

tuted therefor, which statement previously shall have been filed with the Seller by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

7.2. Permitted Markings. Except as provided in section 7.1, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership, provided that the Railroad may allow the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

SECTION 8. CASUALTY OCCURRENCES; REPLACEMENTS AND PRE-PAYMENTS; INSURANCE

8.1. Casualty Occurrences. (a) In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence, together with any occurrence of the type described in section 8.2(e), being referred to herein as a "Casualty Occurrence"), the Railroad shall within 30 days after it has knowledge of such Casualty Occurrence fully inform the Seller in regard thereto.

(b) On the next succeeding Payment Date after the Railroad shall have knowledge that the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Seller pursuant to this section 8.1) hereunder shall exceed \$400,000 (or such lesser amount as the Railroad may elect), the Railroad shall pay to the Seller a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Seller a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

(c) The "Casualty Value" (a) of each unit of the Equipment suffering a Casualty Occurrence (other than a Replacement Unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof

as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness, and (b) of each Replacement Unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Seller as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to section 8.2) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Seller of such Replacement Unit.

(d) In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Seller shall, upon request of the Railroad, after payment by the Railroad to the Seller of a sum equal to the Casualty Value of such Equipment execute and deliver to the Railroad, or to the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

8.2. Replacement Units; Prepayment of Conditional Sale Indebtedness. (a) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller pursuant to section 8.1(b) shall be applied, as the Railroad shall direct in a written instrument filed with the Seller, in whole or in part, to prepay, on the Payment Date on which such money was paid to the Seller, installments of Conditional Sale Indebtedness or (but subject to compliance with the provisions of section 8.2(c)) toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980 (a "Replacement Unit"), to replace units suffering a Casualty Occurrence, and the Railroad shall pay the balance of such cost of a Replacement Unit in addition to the Casualty Value payment provided above. Any Replacement Unit shall have a remaining useful life (as evidenced by a certificate of an operating officer or the

Treasurer or an Assistant Treasurer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such Replacement Unit shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Seller a certificate of an officer of the Railroad that the cost of such Replacement Unit to the Seller does not exceed the lesser of (i) the fair value thereof and (ii) the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service. In case any money which was to be applied toward the cost of Replacement Units has not been so applied within two years from the date such money was paid to the Seller pursuant to section 8.1(b), such money shall be applied by the Seller to prepay, on the Payment Date which is the second anniversary of the date such money was paid to the Seller, installments of Conditional Sale Indebtedness. In case any money is applied pursuant to this section 8.2 to prepay installments of Conditional Sale Indebtedness, it shall be applied to the payment of the installments of Conditional Sale Indebtedness thereafter becoming due in the inverse order of maturity of such installments.

(b) The Railroad will cause any Replacement Unit or Units to be marked as provided in section 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement, provided that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any Replacement Unit or Units not manufactured by it. Title to all such Replacement Units shall be free and clear of all Liens except the Liens permitted by section 12 and shall be taken initially and shall remain in the name of the Seller subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such Replacement Units to come under and be subject to this Agreement. All such Replacement Units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

(c) Whenever the Railroad shall file with the Seller a written direction to apply amounts toward the cost

of any Replacement Unit or Units, the Seller shall so apply such amounts only if the Railroad shall file therewith any settlement documents which may be required pursuant to the second paragraph of section 15.3 and in addition:

(i) a certificate of an operating officer or the Treasurer or an Assistant Treasurer of the Railroad certifying that such Replacement Unit is standard gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives and other than cabooses) first put into service no earlier than May 1, 1980, and has been marked as required by the provisions of section 8.2(b) and certifying, in the event such Replacement Unit is new equipment, the cost of such Replacement Unit and, in the event such Replacement Unit shall be equipment theretofore used in railroad service, that the cost thereof to the Seller does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15th of such original cost for each year in service, and that such Replacement Unit has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(ii) an opinion of counsel for the Railroad that (x) the Seller has a valid and perfected security interest in each such Replacement Unit, free and clear from all Liens except the rights of the Railroad under this Agreement, and that all filings and recordations required by section 19 with respect to each such Replacement Unit have been effected, (y) in the event the Railroad should become a debtor under Chapter 11 of the Bankruptcy Code (11 U.S.C. Chapter 11), the interests of the Seller in each such Replacement Unit are such that the Seller would be entitled to the benefits of section 1168 of the Bankruptcy Code (11 U.S.C. §1168) with respect to each such Replacement Unit, and (z) each such unit has come under and become subject to this Agreement.

(d) So long as no Event of Default shall have occurred and be continuing, any money paid to the Seller

pursuant to section 8.1(b) shall, if the Railroad shall in writing so direct, be invested, pending its application as provided in section 8.2(a), in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating given by Standard & Poor's Corporation or NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic offices of commercial banks in the United States of America having a combined capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Seller on any Investments shall be held by the Seller and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Seller thereon, up to the cost (including accrued interest) thereof, shall be held by the Seller for application pursuant to section 8.2(a), and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Seller an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Seller in connection with the purchase and sale of Investments.

(e) If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Seller, constitute a Casualty Occurrence subject to the provisions of section 8.1 and this section 8.2, provided that, notwithstanding any other provisions of this section 8, the Railroad shall direct any money paid to the Seller in respect thereof to be applied only toward the cost of Replacement Units and not to prepay any installment of Conditional Sale Indebtedness.

(f) If one or more Events of Default shall have occurred and be continuing, all money held by the Seller pursuant to this section 8.2 (including, for this purpose,

Investments) shall be applied by the Seller as if such money were money received upon the sale of Equipment pursuant to section 17.

8.3. Insurance. The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

SECTION 9. MAINTENANCE; COMPLIANCE WITH LAWS AND RULES.

9.1. Maintenance of Equipment. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

9.2. Compliance with Laws and Rules. During the term of this Agreement, the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 or addition of any part on any unit of the Equipment, the Railroad will conform therewith at its own expense, provided that the Railroad may, in good faith and after giving written notice to the Seller, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Seller, adversely affect the property or rights of the Seller under this Agreement.

SECTION 10. REPORTS AND INSPECTIONS.

On or before March 31 in each year, commencing with the calendar year 1981, the Railroad shall furnish to the Seller an accurate statement signed by an officer of the Railroad (a) setting forth as of the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs), and such other information regarding the condition and state of repair of the Equipment as the Seller may reasonably request and (b) stating that, in the case of all Equipment repaired, modified or repainted during the period covered by such statement, the numbers and markings required by section 7.1 have been preserved or replaced. The Seller shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Seller may request during the continuance of this Agreement.

SECTION 11. POSSESSION AND USE.

The Railroad, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Equipment and the Railroad and any affiliate shall have the full right of use thereof by lease or otherwise upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any affiliate, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder thereof to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, provided that the Railroad agrees not to use, assign or permit the assignment of any unit of Equipment to service involving the regular operation and maintenance thereof outside the United States of America and agrees that any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico. The word "affiliate", as used in this section 11 and in section 7.2, shall mean Pacific Fruit Express Company, Evergreen Freight Car

Corporation and any other railroad corporation organized under the laws of the United States of America or of any state thereof or of the District of Columbia which, directly or indirectly controls, or is controlled by, or is under common control with, the Railroad.

SECTION 12. PROHIBITION AGAINST LIENS.

(a) The Railroad will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a Lien on the Equipment, or any unit or part thereof, and will promptly discharge any such Lien which arises, provided that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith (after written notice to the Seller) and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or such unit or part thereof or otherwise under this Agreement. The Seller may, in its discretion, discharge any Liens on or with respect to the Equipment which have arisen in breach of this section 12(a), and the Railroad shall reimburse the Seller for any amounts paid by the Seller to discharge such Liens, such obligation of the Railroad to be secured by and under this Agreement.

(b) The covenant in section 12(a) to discharge Liens will not be deemed breached by reason of the non-discharge 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.

SECTION 13. RAILROAD'S INDEMNITIES.

The Railroad agrees to indemnify, protect and hold harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to reasonable counsel fees arising out of the retention by the

Seller of title to the Equipment, use and operation thereof during the period when title thereto remains in the Seller, or the transfer of title to the Equipment by the Seller pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and of all other sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

SECTION 14. PATENT INDEMNITIES; EACH BUILDER'S WARRANTY OF MATERIAL AND WORKMANSHIP.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, its assigns or the users of the Equipment of such Builder because of the use in or about the construction or operation of any of such 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 Railroad likewise will indemnify, protect and hold harmless the Seller 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 Seller because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder of such Equipment or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder

has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment of such Builder on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment of such Builder all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to such Builder of any claim known to the Railroad from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule I to this Agreement.

SECTION 15. ASSIGNMENTS.

15.1. By the Railroad. The Railroad will not, whether by merger, consolidation, or sale or lease of all or any portion of its assets, sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in section 11, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Seller. A sale, assignment, transfer or disposition to a solvent Class 1 railroad company organized under the laws of the United States of America or any of the states thereof or the District of Columbia which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

15.2. By the Seller, etc. All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Seller and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of any such Builder to construct and deliver its Equipment in accordance herewith or to respond to its respective warranties and indemnities contained or referred to in section 14 or relieve the Railroad of its obligations to the Builder under section 2, 3, 4, 6, 13 or 14 or this section 15 or Schedule I to this Agreement or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

15.3. Contemplated Assignment. The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Seller hereunder, is contemplated. The Railroad expressly represents and agrees, 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 Seller hereunder and for the purposes of inducing such acquisition, that, in the event of such assignment by the Seller as hereinbefore provided, (a) any obligation of the Railroad to such assignee contained in any agreement entered into concurrently herewith relating to the financing of the Equipment shall be secured by this Agreement, and (b) the rights of such assignee to the entire unpaid indebtedness in respect of the

Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder and any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five Business Days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, except for the opinion or opinions of counsel for the assignee or for any investors for whom such assignee may be acting as agent or trustee, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Seller as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of such Builder, enter into an appropriate written agreement with such Builder excluding from this Agreement those units of Equipment of such Builder for which the aggregate Purchase Price shall not have been received, but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of the Equipment of such Builder, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged on the date such payment was due by any of the four largest (as measured by total assets) New York City banks.

SECTION 16. EVENTS OF DEFAULT.

If any one or more of the following events or conditions ("Events of Default") shall occur and be continuing:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

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

(c) the Railroad shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated a bankrupt or insolvent, or (vi) take corporate action for the purpose of any of the foregoing; or

(d) a court or governmental authority of competent jurisdiction shall enter or order, appointing, without consent by the Railroad, a custodian, receiver, trustee or other officer with similar powers with respect to the Railroad or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the

dissolution, winding-up or liquidation of the Railroad, or if any such petition shall be filed against the Railroad and such petition shall not be dismissed within 30 days; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment, or shall permit any Lien to arise with respect to any unit of the Equipment in contravention of the provisions of section 12; or

(f) any representation or warranty made by the Railroad under this Agreement or under any agreement entered into concurrently herewith relating to the financing of the Equipment or by any officer or representative of the Railroad in any document or certificate furnished to the Seller in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of an Event of Default the Seller may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Seller declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Seller of any event which has come to its attention which constitutes a Potential Event of Default or an Event of Default.

The Seller may, at its election, waive any Event of Default and its consequences and rescind and annul any

Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if such Event of Default had not occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

(a) At any time during the continuance of a Declaration of Default, the Seller may, upon such further notice and action, 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 Seller, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this section 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the premises of the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

(b) In case the Seller shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points upon the premises of the Railroad for the delivery of the Equipment to the Seller, the Railroad shall, at its own expense and risk forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Seller and shall there deliver the Equipment or cause it to be delivered to the Seller and (b) the Equipment to be moved to such interchange point or points

of the Railroad as shall be designated by the Seller upon any sale, lease or other disposal of all or any part of the Equipment by the Seller. At the option of the Seller, the Seller may keep the Equipment on any of the lines or premises of the Railroad until the Seller shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Seller reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Seller, the Seller's representatives and prospective purchasers 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 in the premises, the Seller shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Seller and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of a Declaration of Default, the Seller (after retaking possession of the Equipment as hereinbefore in this section 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in section 21, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Seller should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the further proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Seller as compensation for the use of the Equipment, provided that if the Railroad, before the expiration of the 30-day period described in the further proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under

this Agreement as well as expenses of the Seller in retaking possession of, removing and storing the Equipment and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad, provided further that if the Railroad or any other persons notified under the terms of this section 17(c) objects in writing to the Seller within 30 days from the receipt of notice of the Seller's election to retain the Equipment, then the Seller may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall have given no notice of intention to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this section 17.

(d) At any time during the continuance of a Declaration of Default, the Seller, with or without retaking possession of any Equipment, at its election and upon reasonable notice to the Railroad 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 Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, provided that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Seller's reasonable attorneys' fees and legal expenses, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale or other disposition shall be applied as set forth in section 17(g).

(e) Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in

separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine. The Seller or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail, addressed as provided in section 21. 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 right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Seller shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as provided in section 17(g)), and in payment of the purchase price therefor the Seller shall be entitled to have credited on account thereof all sums due to the Seller under this Agreement. From and after the date of any such sale, the Railroad shall pay to the Seller the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

(f) Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby specifically given to the Seller or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement 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 under this Agreement or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Seller's rights or the Railroad's obligations under this Agreement. The

Seller's acceptance of any payment after it shall have become due under this Agreement shall not be deemed to alter or affect the Railroad's obligations or the Seller's rights under this Agreement with respect to any subsequent payments or defaults.

(g) All sums of money realized by the Seller under the remedies provided in this section 17 or which are otherwise held by the Seller during the continuance of a Declaration of Default shall be applied as follows:

first, to the payment of any reasonable costs and expenses of the Seller in its retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale of the Equipment and the Seller's reasonable attorneys' fees and legal expenses, and any taxes, assessments or charges on the Equipment prior to the Seller's title which the Seller may consider necessary or desirable to pay;

second, to the payment of the aggregate unpaid principal amount of Conditional Sale Indebtedness then due and payable, plus the accrued but unpaid interest due thereon to the date of distribution (including interest on overdue principal and interest to the extent permitted under applicable law at the rate of 15.25% per annum), and in case such moneys shall be insufficient to pay in full all such amounts at any time due and payable, then, first, to the payment of all amounts of interest at the time due and payable and, second, to the payment of all unpaid principal amounts of Conditional Sale Indebtedness at the time due and payable; and

third, to the payment of any other indebtedness owing to the Seller and secured by this Agreement and at the time due and payable.

If, after applying all sums of money realized by the Seller under the remedies provided in this section 17, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Seller upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in section 4.7 as being applicable to amounts remaining unpaid after becoming

due and payable. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

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

(i) The foregoing provisions of this section 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS; WAIVERS

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, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

SECTION 19. RECORDING; FURTHER ASSURANCES.

(a) The Railroad 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 the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its interest in the Equipment (including any Replacement Unit) and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Seller certificates or other evidence satisfactory to the Seller of such filing, registering, depositing and recording.

(b) The Railroad will furnish to the Seller, not more than three months after the anniversary in each year, commencing with the year 1981, of the first filing, registering or recording of this Agreement, an opinion of counsel satisfactory to the Seller stating that, in the opinion of such counsel, either (i) such action has been taken with respect to the filing or recording or the refiling or rerecording of this Agreement and each supplement and amendment hereto and each assignment hereof and each other instrument as is necessary for the proper perfection and protection in the United States of the Seller's interest in the Equipment and its rights under this Agreement and reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

SECTION 20. PAYMENT OF EXPENSES.

The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for each Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and of counsel for any person acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any person of interests acquired in such first assignment.

SECTION 21. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of

this Agreement shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fourth Business Day after deposit thereof in the United States mails, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Railroad:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Executive Vice President-
Finance

If to a Builder:

At the address specified in Item I of
Schedule I to this Agreement

If to any assignee of the
Seller or of the Railroad:

At the address supplied pursuant to
section 15 of this Agreement

or, as to any such person or any assignee of any such person, to such other address as such person or such assignee may from time to time specify to the other such persons in writing.

SECTION 22. MISCELLANEOUS.

22.1. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

22.2. Waivers; Modifications. This Agreement, including the Schedules hereto, exclusively states the rights of the Seller and the Railroad with respect to the

Equipment and supersedes all other agreements, oral and written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Railroad.

22.3. Binding Effect; Successors and Assigns. The terms and provisions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Agreement) assigns.

22.4. Captions; References. The captions in this Agreement and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections without reference to the document in which they are contained are references to this Agreement.

22.5. Governing Law. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided 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, or in which any unit of the Equipment shall be located and any rights arising out of the markings of the units of Equipment provided for in section 7.

22.6. Execution; Original Counterpart. 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 all the parties, but may consist of a number of copies each signed by fewer than all, but together signed by all the parties hereto. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date

first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed. To the extent, if any, this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the secured party on or immediately following the signature page hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[Corporate
Seal]

Attest:

Assistant Secretary

By

Vice President

[Corporate
Seal]

Attest:

Assistant Secretary

ACF INDUSTRIES, INCORPORATED

By

C. H. Halahan
Vice President

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

[Corporate
Seal]

Attest:

Assistant Secretary

By

Assistant Vice President
and Treasurer

ALL RIGHT, TITLE AND INTEREST (EXCEPT AS SPECIFICALLY EXCEPTED) OF THE BUILDERS IN AND TO THIS CONDITIONAL SALE AGREEMENT, AS IT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE FIRST PENNSYLVANIA BANK N.A., AS AGENT. AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS AGREEMENT HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 22.6, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING A RECEIPT THEREFOR EXECUTED BY SUCH AGENT ON THIS PAGE.

STATE OF CALIFORNIA)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO)

On this ____ day of April 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Notary Public

[NOTARIAL SEAL]

SCHEDULE I

- Item 1: (a) General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525
- (b) ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017
- Item 2: (a) General Motors Corporation (Electro-Motive Division ("GM") warrants that its Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications therefor referred to in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of its 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 its satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of its obligation with respect to such defect under this warranty.

GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrants such items to GM.

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

GM further agrees with the railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

- (b) ACF Industries, Incorporated ("ACF"), warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in section 2 of the Conditional Sale Agreement to which this Schedule I is attached (the "Conditional Sale Agreement") and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by ACF) and workmanship under normal use and service, ACF's obligation under this Item 2(b) being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within two years after the delivery of such unit to the Railroad, be returned to ACF with transportation charges prepaid and which ACF's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warranty of ACF is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of ACF, except for its obligations under sections 2, 3, 4 and 14 of the CSA, and ACF neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event

shall ACF be liable for indirect or consequential damages of any kind.

ACF further agrees with the Railroad that neither the inspection as provided in section 3 of the Conditional Sale Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said section 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(b).

SCHEDULE II

| <u>Builder</u> | <u>Type</u> | <u>AAR Mechanical Designation</u> | <u>Builder's Specifications</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Unit Base Price</u> | <u>Total Base Price</u> | <u>Road Number (Inclusive)</u> |
|---|--|---|-------------------------------------|----------------------------|-----------------|----------------------------|-----------------------------|------------------------------------|
| General Motors Corporation (Electro-Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | B-B | 8090 | McCook, Ill. | 24 | \$624,825 | \$14,995,800 | SP 4818- 4841 |
| General Motors Corporation (Electro-Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | C-C | 8087 | McCook, Ill. | 22 | 800,000 | 17,600,000 | SP 8256- 8277 |
| General Motors Corporation (Electro-Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | B-B | 8091 | McCook, Ill. | 1 | 706,880 | 706,880 | SP 7959 |
| ACF Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | LO | 79-OA0-092 | Huntington W. Virginia | 155 | 42,000 | 6,510,000 | SP 496545- 496699 |
| | | | | | <u>202</u> | | <u>\$39,812,680</u> | |

SCHEDULE III

Delivery Schedule

| <u>Builder</u> | <u>Type</u> | <u>Estimated Delivery Dates</u> |
|---|--|---|
| General Motors Corporation (Electro- Motive Division) | GP-38-2 2,000 h.p. diesel electric locomotives | 14 units, May 1980 10 units, June 1980 |
| General Motors Corporation (Electro- Motive Division) | SD-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| General Motors Corporation (Electro- Motive Division) | GP-40-2 3,000 h.p. diesel electric locomotives | May 1980 |
| ACG Industries, Incorporated | 100 ton 4,650 cu.ft. covered hopper cars | 1 unit, July 1980 154 units, August 1980 |