Law Department

RECORDATION NO. 14378 Filed 1425
JUL 20 1984 -9 25 AM
INTERSTATE COMMERCE COMMISSION

No. 4-202A016
Date JUL 20 1984
Fee $ 10.00
ICC Washington, D. C.

Chessie System Railroads

Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
~~216-623-2200~~
216-623-2462

July 20, 1984

HAND DELIVERED

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RECORDATION NO. 14378 Filed 1425
JUL 20 1984 -9 25 AM
INTERSTATE COMMERCE COMMISSION

RECEIVED
JUL 20 10 17 AM '84
I.C.C.
FEE OPERATION BR

Attention: Recordation Unit

Dear Mr. Bayne:

Enclosed are four executed counterparts of an Agreement dated as of July 15, 1984, between Mellon Bank (East) National Association and The Chesapeake and Ohio Railway Company. This Agreement is a primary document and constitutes a conditional sale agreement. The names and addresses of the parties are as follows:

Vendor: Mellon Bank (East) National Association
3 Mellon Bank Center, 3rd Floor
Philadelphia, Pennsylvania 19102

Purchaser: The Chesapeake and Ohio Railway Company
P. O. Box 6419
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 210 100-ton open-top hopper cars, to bear the Purchaser's Road Nos. 191600-191809, inclusive, AAR Mechanical Designation: HT. The equipment will be marked "The Chesapeake and Ohio Railway Company" or "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION." Until re-marked to bear the Purchaser's road numbers in the consecutive order set forth above, the equipment will bear the following corresponding road numbers:

Little Rock and Western Railway Corporation

6001-6199

Tradewater Railway Company

6059, 6069, 6073,
6183, 6194

Upper Merion & Plymouth
Railroad Company

6013, 6020, 6006,
6182, 6295, 6296

Also enclosed, as part of this same transaction, are four executed counterparts of an Agreement and Assignment dated as of July 15, 1984, between the Vendor and Mercantile-Safe Deposit and Trust Company. This Agreement is a secondary document. The names and addresses of the parties are as follows:

Assignor: Same as Vendor above

Assignee: Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Two Hopkins Plaza
Baltimore, Maryland 21203

The equipment covered by this Assignment is the same as the equipment covered by the above-described Conditional Sale Agreement.

Also enclosed is a draft of The Chesapeake and Ohio Railway Company in the amount of $10 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC § 11303, as currently administered, you are hereby requested duly to file one of the enclosed counterparts of each document for record in your office and to return the remaining three copies of each to me.

Sincerely,

Louis Recher

Louis Recher
Assistant General Solicitor

Enc.

Interstate Commerce Commission
Washington, D.C. 20423

7/20/84

OFFICE OF THE SECRETARY

Louis Recher
Assist. General Solicitor
Chessie System RR
Terminal Tower
P.O.Box 6419
Cleveland,Ohio 44101

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 7/20/84 at 10:25am and assigned re-recordation number(s). 14378 & 14378-A

Sincerely yours,

James H. Bayne

Secretary

Enclosure(s)

SE-30
(7/79)

EXECUTED IN 4 COUNTERPARTS

OF WHICH THIS IS NO. 1

14378

RECORDATION NO. ..... Filed 1425

JUL 20 1984 -8 25 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of July 15, 1984

between

MELLON BANK (EAST) N.A. NATIONAL ASSOCIATION

~~GIRARD BANK~~, AS AGENT
FOR PAUL REVERE LIFE INSURANCE COMPANY,
PAUL REVERE PROTECTIVE LIFE INSURANCE COMPANY
PAUL REVERE VARIABLE ANNUITY INSURANCE COMPANY,
AND AVCO CORPORATION RETIREMENT INCOME TRUST

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

14% Conditional Sale Indebtedness due July 15, 1994

CONDITIONAL SALE AGREEMENT

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SCHEDULE A—Miscellaneous
SCHEDULE B—Specification

MELLON BANK (EAST) N.A. NATIONAL ASSOCIATION

CONDITIONAL SALE AGREEMENT dated as of July 15, 1984, between ~~GIRARD BANK,~~ AS AGENT FOR PAUL REVERE LIFE INSURANCE COMPANY, PAUL REVERE PROTECTIVE LIFE INSURANCE COMPANY, PAUL REVERE VARIABLE ANNUITY INSURANCE COMPANY, AND AVCO CORPORATION RETIREMENT INCOME TRUST, a Pennsylvania corporation (the "Vendor"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (the "Railroad").

The Vendor has agreed to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions. The term "Vendor", whenever used in this Agreement, means, both before and after any assignment of any of its rights hereunder, the corporation listed in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective 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 Railroad has entered into a Finance Agreement dated as of the date hereof (the "Finance Agreement"), among the Railroad, Mercantile-Safe Deposit and Trust Company, as Agent, and the party named in Schedule A thereto (the "Investor").

ARTICLE 2. Sale. Pursuant to this Agreement, the Vendor will sell and deliver the units of Equipment to the Railroad, and the Railroad will purchase from the Vendor and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be in good order and repair.

ARTICLE 3. Inspection and Delivery. The Vendor will deliver the units of Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Vendor shall not be obligated to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Vendor and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Vendor's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Vendor, 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 or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Vendor.

During renovation, if any, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad, and the Vendor shall grant to such authorized inspectors reasonable access to its plant. The Vendor agrees to inspect all materials used in any such renovation of the Equipment in accordance with the standard quality control practices of the Vendor. Upon readiness of each unit or of a number of units of the 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 is in good order and repair, such inspector or an authorized representative of the Railroad shall execute and deliver to the Vendor 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, or will be, marked in accordance with Article 7 hereof; provided, however, that the Vendor shall not thereby be relieved of its warranty referred to in Article 14 hereof. Units of the Equipment found by an inspector of the Railroad not to be in good order and repair shall be returned to the Vendor at the Vendor's sole expense.

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.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Vendor and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

If the aggregate Purchase Price shall exceed $3,990,000.00 plus the amount by which the investment of the Investor is increased pursuant to Paragraph 1 of the Finance Agreement (such amount as so increased being

hereinafter called the "Maximum CSA Indebtedness"), the Vendor (and any assignee of the Vendor) and the Railroad, unless waived by the Railroad, will 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, 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 CSA Indebtedness, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Vendor for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to the Vendor.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Vendor and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby agrees to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented (including the supplemental invoice or invoices hereinafter provided for) in respect of such Closing Date (said invoiced prices being hereinafter called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum CSA Indebtedness and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in ten (10) consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

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 for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Vendor at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by the Vendor that any prior preliminary invoice or invoices presented by the Vendor shall be in amount not in excess of the final Purchase Price of such Group. One final supplemental invoice (the "Final

Supplemental Invoice") may be presented by the Vendor after the last Closing Date on which a Certificate or Certificates of Acceptance are presented for the last Group of Equipment provided by the Vendor; provided, however, that the Final Supplemental Invoice may only be presented prior to the date set forth in Item 2 of Schedule A hereto (the "Cut-Off Date") and the notation "Final Supplemental Invoice" shall appear on the face thereof.

The installments of the CSA Indebtedness shall be payable annually on July 15 in each year commencing on July 15, 1985, to and including July 15, 1994. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such CSA Indebtedness was incurred at the rate of 14% per annum, and such interest shall be payable, to the extent accrued, on January 15 and July 15 in each year, commencing January 15, 1985.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after July 1, 1984, and prior to October 15, 1984, the "Cut-Off Date"), not more than ten business days following presentation by the Vendor to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein, except that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the amount then on deposit with the Vendor pursuant to the Finance Agreement. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, Cleveland, Ohio, or New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months, except that interest payable on January 15, 1985, shall be calculated on an actual elapsed, 366-day year, basis.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 15% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts (except gross receipts taxes in the nature of or in lieu of sales or use taxes), excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein 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 security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment. The Vendor shall and hereby does retain 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 to the Equipment (other than such additions not required for the normal use of the Equipment, any portion of the cost of which was paid by the Railroad, as are readily removable without causing damage to the Equipment) and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, 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 Vendor. However, the

Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (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 release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such 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 the 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.

ARTICLE 7. Marking of Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, 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, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will cause such markings to be placed on each Unit of Equipment on or prior to the date of acceptance hereunder, or if that is not feasible within a reasonable time thereafter, and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement or a financing statement in respect hereof shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, 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, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. 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 (any such occurrence being hereinafter called a "Casualty Occurrence"), the Railroad shall promptly and fully inform the Vendor in regard thereto (but no later than 30 days after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units of the Equipment 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 Vendor pursuant to this Article 8) hereunder shall exceed $200,000 (or such lesser amount as the Railroad may elect), the Railroad, within 30 days after it has knowledge of such event, shall promptly pay to the Vendor 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 Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but not less than 10 days prior to the due date of the next annual installment of CSA Indebtedness in whole or in part, to prepay installments of CSA Indebtedness or, toward the cost of a unit or units of new equipment of the same type as the Equipment or new standard gauge railroad rolling stock (other than passenger or work equipment or cabooses) to replace units suffering a Casualty Occurrence (provided, however, that the Vendor's obligation to purchase such new equipment shall be limited by the amount of money paid to the Vendor pursuant to the preceding paragraph of this Article 8, plus whatever additional money the Railroad shall provide to the Vendor to make such purchase); and in the event that no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of the CSA Indebtedness as aforesaid. In case any money is applied pursuant to this Article 8 to prepay CSA Indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value 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 Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 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, however, that nothing herein shall result in the Vendor's having any liability or obligation with respect to any replacement unit or units not sold by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor 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.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is new equipment of the same type as the Equipment or is new standard gauge railroad rolling stock (other than work or passenger equipment or cabooses) and has been marked as required by the provisions of Article 7 hereof and certifying the cost of such replacement unit; and

(2) an opinion of counsel for the Railroad that the Vendor has a valid and perfected first security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the interests of the Vendor therein .

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested and reinvested (whether through outright purchase or repurchase agreements), pending its application as hereinabove provided, 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 faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated within the highest two grades by Standard & Poor's Corporation or by 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 commercial banks in the United States of America having a capital and surplus aggregating at least $500,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter 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 Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus

any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, 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 Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

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 Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or 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.

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 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.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. 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.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend and with all lawful rules of any 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, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before November 1 in each year, commencing with the year 1985, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as of the preceding June 30 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 Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor 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 Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use; Classification. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof 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 railroad company controlled by, or under common control with, the Railroad, 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 Vendor to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

The Railroad represents, warrants and agrees that the Equipment is rolling stock equipment or accessories used on such equipment as specified in § 1168 of the Federal Bankruptcy Code.

ARTICLE 12. Prohibition Against Liens. The Railroad 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, charge or security interest on or in the Equipment, or any unit thereof; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and

delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor 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 Vendor. This covenant 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.

ARTICLE 14. Patent Claims; Vendor's Representation; and Vendor's Warranty. The Vendor hereby assigns to the Railroad any and all rights which the Vendor may or does possess to proceed by way of legal action against the original manufacturer of the Equipment (and/or the seller thereof if different from the manufacturer), for indemnity or otherwise, resulting from 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 because of the use in or about the construction, renovation, repair 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 Vendor 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 Vendor because of the use in or about the construction, renovation, repair 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. The Vendor further agrees to execute and deliver to the Railroad or the users of the Equipment 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. The Vendor will give notice to the Railroad of any claim known to the Vendor from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Vendor of any claim known to the Railroad from which liability may be charged against the Vendor hereunder. Such covenants 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.

The Vendor represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which the Railroad ~~it~~ is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The Vendor's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof 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 Vendor, 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.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Vendor from, any of the obligations of the Vendor to deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto or relieve the Railroad of any of its obligations to the Vendor under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 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.

The Railroad recognizes that it is the custom of railroad equipment vendors to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Vendor with respect to the Equipment 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 the Vendor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Vendor.

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, 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 Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Vendor and if the assignee shall not make payment to a Vendor with respect to units of the Equipment as provided in the instrument making such assignment, the Vendor will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Vendor the aggregate unpaid Purchase Price of such units of the Equipment, 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 by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(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 the date due; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any 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 or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days after the commencement of such proceedings; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; 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;

then at any time after the occurrence of such an event of default the Vendor 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 Vendor, 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 Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor 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 Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such 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 no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed that time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or 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 Article 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 Railroad's premises or any other premises where the Equipment may be located, without judicial process of this case be done without breach of the peace, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad; provided, however, that the Equipment shall at all times be kept in good repair.

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

Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor 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 Vendor reasonably convenient to the Railroad and, to permit inspection of the Equipment by the Vendor, the Vendor'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 Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 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 Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, 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 Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor 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 Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, 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 paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit 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 Vendor may determine; provided, however, 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 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 Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then 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, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor 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 to the Railroad as provided in Article 21 hereof. 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 less than 40 prospective bidders 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 Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and 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 Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a

waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum specified in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

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

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the 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 unit 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 Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. 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 in accordance with 49 U.S.C. 11303. 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 Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording reasonably satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including any fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad, at Room 1800, 100 North Charles Street, Baltimore, Maryland 21201, Attention of Treasurer - 303,

(b) to the Vendor, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

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

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Agent pursuant to the Assignment (as defined in the Finance Agreement) shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. 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 acknowledgments hereto annexed.

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

(Corporate Seal)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Attest:

Patricia J. Hunady
Corporate Secretary

By: R W Conner
Senior Vice President

Ass'd. LR

MELLON BANK (EAST) N.A.

(Corporate Seal)

~~GIRARD BANK~~, AS AGENT FOR PAUL REVERE LIFE INSURANCE COMPANY, PAUL REVERE PROTECTIVE LIFE INSURANCE COMPANY, PAUL REVERE VARIABLE ANNUITY INSURANCE COMPANY, AND AVCO CORPORATION RETIREMENT INCOME TRUST

Attest:

C H Dougherty
(Title)

C. H. DOUGHERTY
ASSISTANT SECRETARY

By: G F. Arleth
(Title)

G. F. ARLETH
CORPORATE TRUST OFFICER

MELLON BANK (EAST) N.ATIONAL ASSOCIATION

STATE OF OHIO)
) ss.:
COUNTY OF CUYAHOGA)

On this 6th day of July, 1984, before me personally appeared R.W. Donnem to me personally known who, being by me duly sworn, says that he is Senior Vice President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Louis Recher
LOUIS RECHER, Attorney
Notary Public - State of Ohio
My Commission has no expiration date
section 147.03 R. C.

(NOTARIAL SEAL)

STATE OF PENNSYLVANIA)
) ss.:
COUNTY OF PHILADELPHIA)

MELLON BANK (EAST) N.A.

On this 13TH day of JULY, 1984, before me personally appeared G. F. ARLETH, to me personally known who, being by me duly sworn, says that he is CORPORATE TRUST OFFICER of ~~GIRARD BANK~~, AS AGENT FOR PAUL REVERE LIFE INSURANCE COMPANY, PAUL REVERE PROTECTIVE LIFE INSURANCE COMPANY, PAUL REVERE VARIABLE ANNUITY INSURANCE COMPANY, AND AVCO CORPORATION RETIREMENT INCOME TRUST, 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.

Irene Materna
Notary Public

My Commission Expires: DEC 21 1987

(NOTARIAL SEAL)

SCHEDULE A TO CSA

MELLON BANK (EAST) N.A. NATIONAL ASSOCIATION

Item 1: PNC ~~Girard Bank~~, as Agent for
Paul Revere Life Insurance Company,
Paul Revere Protective Life Insurance Company,
Paul Revere Variable Annuity Insurance Company,
and Avco Corporation Retirement Income Trust
3 ~~Girard Plaza~~ MELLON BANK CENTER
3rd Floor
Philadelphia, Pennsylvania ~~19101~~ 19102

Item 2: January 15, 1985

Item 3: The Vendor warrants that the Equipment will be delivered in accordance with the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (the "CSA").

THE FOREGOING WARRANTY OF THE VENDOR 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 THE VENDOR, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4, AND 14 OF THE CSA AND THE VENDOR NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION, RENOVATION, REPAIR, OPERATION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

The Vendor further agrees with the Railroad that neither the inspection as provided in Article 3 of the CSA, nor any examination, nor the acceptance of any units of Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 3.

SCHEDULE B
to the
Conditional Sale Agreement

Units of Equipment

Equipment Type	Quantity	Unit Base Price	Total Base Price	Place and Estimated Time of Delivery	Present Railroad ID Numbers (Inclusive)*
100-ton open top hopper cars	210 (maximum)	$19,000.00	$3,990,000.00	Hagerstown, Md. and Chicago, Ill.; May-July, 1984	Little Rock and Western Railway Corporation 6001-6199 Tradewater Railway Company 6059, 6069, 6073, 6183, 6194 Upper Merion & Plymouth Railroad Company 6013, 6020, 6006, 6182, 6295, 6296

*These numbers, in the sequence they appear above, will be changed to The Chesapeake and Ohio Railway Company consecutive Road Numbers 191600 to 191809, inclusive.