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13340-B-147A023
MAY 27 1983 12 15 PM
FEE OPERATIONS
MAY 27 1983
No. _____
Date _____
Fee \$ 50.00
Washington, D. C.

The Kansas City Southern Railway Company
Amended and Restated Finance Agreement and
Amendment Dated as of May 1, 1983
11-3/8% CSA Indebtedness Due June 1, 1993

Dear Ms. Mergenovich:

This one we think is 13340-B

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Kansas City Southern Railway Company for filing and recordation counterparts of the following document:

Amended and Restated Finance Agreement and Amendment ("Amendment"), dated as of May 1, 1983, among The Kansas City Southern Railway Company, as Railroad, Chemical Bank, as Agent, and the parties named in Schedules A and B thereto.

The Amendment amends a Conditional Sale Agreement dated as of November 30, 1981, previously filed and recorded with the Interstate Commerce Commission on November 30, 1981, at 10:30 a.m., Recordation Number 13340.

The amendments to the Conditional Sale Agreement are set forth on pages 16 through 17 of the Amendment. The enclosed counterparts are signed and acknowledged by each of the present parties in interest to the Conditional Sale Agreement. The other signature lines which appear in the enclosed counterparts are not relevant for this purpose since they apply only to the Restated Finance Agreement which is not a document on file with the Commission.

Quantity 1
A.C. Swain

Please file and record the Amendment submitted with this letter and assign it Recordation Number 13340-B.

Enclosed is a check for \$50.00 payable to the Interstate Commerce Commission for the recordation fee for the Amendment.

Please stamp all counterparts of the enclosed document with your official recording stamp. You will wish to retain one copy of the instrument and this transmittal letter for your files. It is requested that the remaining counterparts of the document be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich,
as Agent for The Kansas
City Southern Railway
Company

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

95A

Interstate Commerce Commission
Washington, D.C. 20423

5/27/83

OFFICE OF THE SECRETARY

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10006

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 5/27/83 at 12:15pm, and assigned re-
recording number(s). 13340-B

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

13340-B
MAY 27 1983 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 3909-052]

AMENDED AND RESTATED FINANCE AGREEMENT

AND

AMENDMENT

dated as of May 1, 1983,

Among

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
Railroad,

CHEMICAL BANK,

Agent,

THE PARTY NAMED IN SCHEDULE A HERETO,
Investor,

and

THE PARTIES NAMED IN SCHEDULE B HERETO,
Permanent Investors,

11-3/8% CSA Indebtedness due June 1, 1993

(Covering 2 GP-40-2 Locomotives
and 10 SD-50 Locomotives)[Amending and restating the Finance Agreement and the
Conditional Sale Agreement, each dated as of November 30,
1981.]

AMENDED AND RESTATED FINANCE AGREEMENT AND AMENDMENT, dated as of May 1, 1983, among CHEMICAL BANK, a New York banking corporation ("Agent"), THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation ("Railroad"), and the PARTY NAMED IN SCHEDULE A HERETO (severally "Investor" and collectively, together with its successors and assigns including the Permanent Investors, "Investors", "each Investor" or "any Investor") and the PARTIES NAMED IN SCHEDULE B HERETO (severally "Permanent Investor" and collectively, together with their successors and assigns, "Permanent Investors").

The Railroad has entered into a conditional sale agreement dated as of November 30, 1981 ("CSA", a conformed copy of which is attached hereto as Exhibit A), with GENERAL MOTORS CORPORATION (Electro-Motive Division) ("Builder") for the purchase from the Builder of the new railroad equipment referred to in Schedule B to the CSA ("Equipment").

The CSA provides, among other things, for the payment by the Railroad to the Builder of the purchase price of the Equipment ("CSA Indebtedness") plus interest on the unpaid balance thereof in installments.

The Agent has acquired the right, title and interest of the Builder in and to the CSA and the right, title and interest in and to the Equipment covered thereby for a consideration equal to the CSA Indebtedness thereunder and upon other terms and conditions as set forth in the Agreement and Assignment dated as of November 30, 1981 ("Assignment", a conformed copy of which is attached hereto as Exhibit B), between the Agent and the Builder.

The CSA and the Assignment were filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m., Recordation Nos. 13340 and 13340-A, respectively.

All the Equipment has heretofore been purchased under the CSA, the Builder has been paid in full for the Equipment and the Railroad and the Agent, through the Assignment, are now the only parties in interest to the CSA.

On the Take Out Date hereinafter defined, the Investor will hold CSA Indebtedness evidenced by a certificate of interest, in the principal amount shown opposite its

name in Schedule A hereto, which CSA Indebtedness the Investor intends to sell to the Permanent Investors and which the Permanent Investors intend to purchase from the Investor on the Take Out Date.

The parties hereto desire to amend and restate the original Finance Agreement dated as of November 30, 1981, and to amend the CSA, as herein set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

1. Subject to the terms and conditions hereof, (a) each Permanent Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., New York City time, on June 1, 1983 ("Take Out Date"), an amount equal to the amount of the commitment set forth opposite such Permanent Investor's name in Schedule B hereto and (b) the Railroad will pay to the Agent, in immediately available funds, not later than 11:00 a.m. New York City time, on the Take Out Date an amount equal to the unpaid interest on the outstanding CSA Indebtedness accrued to the Take Out Date plus a principal repayment of \$476, 045.58 to reduce the CSA Indebtedness to exactly \$10,000,000. The Investor hereby represents and warrants to the Permanent Investors that on the Take Out Date it will be the holder of all such outstanding CSA Indebtedness.

In the event that the Agent does not in fact receive all the funds to be paid to it as provided in the preceding paragraph in a timely fashion on June 1, 1983, the Take Out Date may be postponed by the Agent for up to three business days, in which case the Agent may invest all funds actually received in the Federal Funds Market or similar securities designated by the Railroad (any income therefrom and any loss therefrom to be for the account of the Railroad), but funds received from any Permanent Investor in time for such investment on June 1, 1983, will bear interest payable by the Railroad from the date so received at the rate of 11-3/8% per annum.

All payments to be made hereunder by the Permanent Investors to the Agent shall be wired to Chemical Bank, 277 Park Avenue, New York, N.Y., Attention of Kansas City Southern Industries - Account Officer.

Subject to the terms and conditions hereof, upon payment to the Agent on the Take Out Date of the amount to

be paid by each Permanent Investor and by the Railroad pursuant to this Paragraph 1, on the Take Out Date the Agent will pay to the Investor an amount equal to the unpaid CSA Indebtedness held by the Investor (as shown on Schedule A hereto) plus accrued and unpaid interest thereon; and the Investor, simultaneously with the payment to it of such amount, will surrender its certificate of interest to the Agent for cancellation.

Upon payment to the Agent of the amount required to be paid by a Permanent Investor pursuant to this Paragraph 1 on the Take Out Date, the Agent will execute and deliver to such Permanent Investor (or, upon the written request of such Permanent Investor, to the nominee or nominees of such Permanent Investor or to the office of the custodian for such Permanent Investor) a certificate or certificates of interest substantially in the form annexed hereto as Schedule C, dated as of the Take Out Date.

Each Investor, against payment to it of all amounts payable under any certificate of interest delivered to it pursuant to this Agreement, will surrender such certificate of interest to the Agent.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other days on which banking institutions in New York, New York, are authorized or obligated to be closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. If any date for payment hereunder or under the CSA is not a business day, such payment may be made on the first business day next succeeding such date.

The parties hereto agree that, subject to the payment by the Permanent Investors and by the Railroad of the amounts to be paid pursuant to this Paragraph 1 and the receipt by the Investor of the amount due it pursuant to this Paragraph 1, from and after the Take Out Date (a) the Investor hereby transfers and assigns to the Permanent Investors all its right, title and interest in and to its CSA Indebtedness (but the Investor will retain any indemnification to which it is then entitled under the CSA), (b) the Finance Agreement shall be amended and restated and the CSA shall be amended as set forth herein, and (c) unless the context otherwise requires, the terms "CSA" and "Assignment", as used in this Agreement, the CSA and the Assignment, shall mean, respectively, the CSA and the Assignment,

each as amended hereby, and the term "Finance Agreement" as used in the CSA and the Assignment, shall mean this Agreement.

All transactions pursuant hereto which shall occur on the Take Out Date shall be deemed for purposes of this Agreement, the CSA and the Assignment to have occurred simultaneously.

2. The Agent will hold the rights under the CSA acquired under the Assignment and the security interest in the Equipment in trust for the benefit of the Investors in accordance with their respective interests therein as such interests shall from time to time appear, but without priority of one over the other. It is expressly agreed that the obligations of the Agent hereunder as such holder and with respect to the payments to the Investors to be made by the Agent are only those expressly set forth herein.

3. The Railroad represents and warrants to the Investor, the Permanent Investors and the Agent as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri and is duly qualified to do business in and is in good standing in such other jurisdictions in which its business and activities require such qualification.

(b) It has full corporate power and authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement and the CSA ("Railroad Documents"), and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Railroad Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute legal, valid and binding agreements, enforceable against it in accordance with their terms.

(d) There are no actions, suits or proceedings (whether or not purportedly on its behalf) pending or (to its knowledge) threatened against or affecting it or any of its property rights at law or in equity or before any commission or other administrative agency which could materially and adversely affect its condition (financial or otherwise) or its ability to perform its

obligations under the Railroad Documents and it is not to its knowledge in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

(e) It is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting its business, operations, property, assets or condition (financial or otherwise).

(f) It has furnished to each Permanent Investor its audited consolidated balance sheet as of December 31, 1981, and December 31, 1982, and the related consolidated statements of income and retained earnings for the years then ended. Such financial statements are in accordance with its books and records and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby. The financial statements present fairly its financial condition at such dates and the results of its operations and changes in its financial position for such periods. There has not been any material adverse change in its assets, liabilities, business or condition (financial or otherwise) since December 31, 1982.

(g) Neither the execution and delivery of the Railroad Documents nor the consummation of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of (i) its charter or By-laws, (ii) any law or any regulation, order, injunction or decree of any court or governmental instrumentality or (iii) any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is now a party or by which it or its property may be bound, or constitute (with notice or lapse of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any of its property or upon the Equipment pursuant to the terms thereof, except as contemplated by the CSA and the Assignment.

(h) No mortgage, deed of trust, security interest or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter

cover or affect any of its property or interest therein now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Agent therein, except as contemplated by the CSA and the Assignment.

(i) No authorization or approval from any governmental or public body or authority of the United States of America or of any of the states thereof or of the District of Columbia is necessary for the execution, delivery and performance of the Railroad Documents.

(j) It has filed all foreign, Federal, state and local tax returns which are required to be filed and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and as to which it has established adequate reserves.

(k) It is not entering into the Railroad Documents or any other transaction contemplated thereby 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 it, the Investor, any Permanent Investor or the Agent in its individual capacity is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA").

(l) It is not in default, and no event has occurred which with notice or lapse of time or both would be a default under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property may be bound, nor of any law or any material regulation, order, injunction or decree of any court or any governmental instrumentality.

(m) All the Equipment is in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange and has been maintained as required by Article 9 of the CSA.

(n) The Railroad is not in default on any of its financial obligations and neither the Railroad nor any of its predecessor companies has defaulted on any

financial obligation within the five years next preceeding the date hereof.

(o) On or before the Take Out Date, this Agreement will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and such filing will protect the Agent's interest in and to the Equipment and no other filing or recording (or giving of notice) with any other Federal, state or local government is necessary in order to protect the interests of the Agent under the CSA in and to the Equipment in the United States of America.

4. Each Permanent Investor represents to the Railroad, the Agent, the Investor and each other Permanent Investor as follows:

(a) Such Permanent Investor is acquiring its interest in the aggregate CSA Indebtedness for its own account for investment or for one or more separate accounts maintained by it and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same; provided, however, that the disposition of its property shall at all times be within its control.

(b) Either such Permanent Investor is acquiring its interest in the CSA Indebtedness with assets of a "governmental plan" or such Permanent Investor is not acquiring such interest directly or indirectly with assets drawn from any "separate account", all as defined in ERISA, unless such separate account is exempt from the prohibited transactions rules of ERISA.

(c) Such Permanent Investor represents that it has full power and authority to execute and deliver this Agreement and to carry out its terms.

Each Permanent Investor hereby agrees that any transfer of all or any part of its interest in the CSA Indebtedness shall be upon the express condition that the transferee thereof shall be bound by the terms of this Agreement. Prior to any such transfer, such Permanent Investor shall notify the Agent in writing thereof; and the Agent shall cause to be promptly prepared and delivered to such Permanent Investor an appropriate agreement, to be entered into among such Permanent Investor, such transferee

and the Agent, evidencing such transfer upon the terms hereof.

5. The obligation of each Permanent Investor to make payment to the Agent pursuant to Paragraph 1 hereof and the obligation of the Agent to make payment to the Investor on the Take Out Date pursuant to Paragraph 1 hereof shall be subject to the receipt by the Agent on or prior to the Take Out Date of the funds to be paid to it by the Railroad pursuant to Paragraph 1 hereof and of the following documents, dated on or not more than 10 days prior to the Take Out Date:

(a) A complete and accurate set of all the closing documents (which may be photocopies) delivered to the Agent at each equipment closing pursuant to Section 4 of the Assignment.

(b) An opinion of Messrs. Cravath, Swaine & Moore, special counsel for the Permanent Investors and the Agent, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery by each Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(ii) the CSA has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) the Assignment has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(iv) the Agent is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by the Assignment and the bills of sale for the Equipment, the Agent has a valid purchase money security interest in the units of Equipment and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA);

(v) the rights of the Agent to possession of the Equipment would be subject to the provisions of 11 U.S.C. § 1168 (assuming the Railroad continues to be a "railroad" as defined in 11 U.S.C. § 101 (33));

(vi) this Agreement, the CSA and the Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing or recording (or giving of notice) with any other Federal, state or local government is necessary in order to protect the rights of Agent therein or in the Equipment in any state of the United States of America;

(vii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to the knowledge of said counsel, necessary in connection with the execution, delivery and performance of this Agreement, the CSA and the Assignment;

(viii) under the circumstances contemplated by this Agreement it is not necessary to register the CSA, the Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933, as in effect on the date of such opinion, or to qualify the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939, as in effect on the date of such opinion;

(ix) the legal opinion referred to in subparagraph (c) of this Paragraph 5 is satisfactory in form and scope to said special counsel and that in their opinion the Permanent Investors, the Agent and they are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Permanent Investors may reasonably request.

(c) An opinion of counsel for the Railroad, to the effect set forth in subparagraphs (a), (b), (c), (d), (e), (g), (h), (i), (l) and (o) of Paragraph 3 hereof.

(d) A Certificate of an officer of the Railroad to the effect that the Railroad's representations and warranties contained in this Agreement are true on and as of the Take Out Date, with the same effect as though made on such date.

(e) A certificate of an officer of the Investor to the effect that (i) the Investor is a holder of all the CSA Indebtedness outstanding under the CSA, i.e., \$10,000,000 principal amount (after giving effect to the principal repayment of \$476,045.58 to be made by the Railroad on the Closing Date) and (ii) the Investor does not know of any Default (as defined in Paragraph 8 of the Finance Agreement).

In giving the opinions specified in this Paragraph 5, counsel may qualify its opinion to the effect that any agreement is enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (b) of this Paragraph 5, counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and, as to title of the Builder to its Equipment, on the opinions of counsel for the Builder contained in the set of closing documents referred to in subparagraph (a) of this Paragraph 5 and (ii) as to any matter governed by the law of any jurisdiction other than the State of New York or the United States, on the opinions of counsel for the Builder or the Railroad, as to such matter.

The Take Out Date closing hereunder shall take place at the offices of Messrs. Cravath, Swaine & Moore, in New York, New York.

6. The Agent will accept all sums paid to it pursuant to Article 8 of the CSA with respect to Casualty Occurrences (as therein defined). So long as, to the actual knowledge of the Agent, no event of default under the CSA shall have occurred and be continuing, the Agent will apply such sums to the prompt pro rata prepayment of each of the installments of the aggregate CSA Indebtedness remaining unpaid (in proportion to the aggregate principal amount of CSA Indebtedness represented by each such installment), without premium, together with interest accrued on such

prepaid CSA Indebtedness from the last date to which such interest was paid to the date of such prepayment.

7. The Agent will accept payments made to it by the Railroad pursuant to the CSA and the Assignment on account of the principal of or interest on the CSA Indebtedness thereunder and, so long as, to the actual knowledge of the Agent, no event of default under the CSA shall have occurred and be continuing, will apply such payments promptly to the payment to the Investors, first, of interest payable to them on their respective interests in the installments of CSA Indebtedness, and second, of their respective interests in the installments of CSA Indebtedness in the order of maturity thereof, until the same shall have been paid in full. If, to the knowledge of the Agent, an event of default under the CSA shall have occurred and be continuing, all moneys held by or coming into the possession of the Agent which, under the provisions of the CSA, are applicable to the payment or prepayment of the CSA Indebtedness or interest thereon (including, without limitation, the net proceeds of any repossession and sale or lease of any unit of the Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease and otherwise hereunder in connection with the CSA and the Assignment which shall not theretofore have been reimbursed to the Agent by the Railroad pursuant to the CSA) shall be distributed promptly by the Agent pro rata among the Investors in accordance with their respective interests in the principal and interest on the CSA Indebtedness at the time of such distribution and the Agent shall otherwise take such action as is referred to in Paragraph 8 hereof.

The Railroad agrees to pay all amounts due pursuant to this Agreement and the CSA on or before 11:00 a.m., New York City time, on the date due in Federal funds or other immediately available New York City funds. All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be made by check mailed to the Permanent Investors on the date such payment is due or, upon written request of any Permanent Investor or as specified in Schedule B hereto, by bank wire transfer of Federal funds or other immediately available funds by 12:00 noon, New York City time, on the date such payment is due to such Permanent Investor at such address as may be specified to the Agent in writing.

8. So long as the Agent shall have no actual knowledge that the Railroad is in default under this

Agreement or that an event of default or event which with the lapse of time and/or demand or failure to take action provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing (any such default, event of default or event being herein called a "Default"), the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it, or which it may be entitled to assert or take, under the CSA, except as otherwise specifically provided herein. The Agent shall incur no liability hereunder in acting upon any notice, certificate, warrant or other paper or instrument believed by it in good faith to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its willful misconduct or negligence; provided, however, that in case the Agent shall have actual knowledge of the occurrence of a Default, the Agent shall notify the Investors thereof promptly by registered mail and shall take such action and assert such rights under the CSA as shall be agreed upon by Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding. In case the Agent is required to take action hereunder, it shall be indemnified by the Investors in proportion to their respective interests in the aggregate CSA Indebtedness then outstanding against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights. So long as the Railroad or any person controlling, controlled by or under common control with the Railroad shall hold any interest in the CSA Indebtedness, such interest shall be disregarded for purposes of any direction of Investors to the Agent pursuant to this Paragraph 8.

The Agent may consult with legal counsel of its own choice and the Agent shall be under no liability for any action taken or suffered in good faith by it in accordance with the opinion of such counsel, so long as such opinion relates to legal matters.

9. So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to each Investor (and, in the case of clauses (v) and (vi), the Agent) (i) as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Railroad and in any event within 45

days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries as of the end of each such quarter and consolidated statements of income and retained earnings of the Railroad and its consolidated subsidiaries for each such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct and prepared in accordance with generally accepted accounting principles, subject to changes resulting from year-end adjustments, by a principal financial officer of the Railroad; (ii) as soon as practicable after the end of each fiscal year of the Railroad, and in any event within 120 days thereafter, copies of the audited consolidated balance sheet of the Railroad and its consolidated subsidiaries at the end of such year, and audited consolidated statements of income and retained earnings of the Railroad and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by the Railroad that such consolidated balance sheet and statements of retained earnings and surplus have been prepared in accordance with generally accepted accounting principles; (iii) as soon as available, copies of the Annual Report to stockholders of Kansas City Southern Industries, Inc., or its successor; (iv) promptly upon the filing of the same, the annual reports under the Securities Exchange Act of 1934 of the Railroad, or its successor; (v) immediately upon becoming aware of the existence of a Default, written notice by registered mail which specifies the nature of the Default and what action the Railroad is taking or proposes to take with respect thereto; and (vi) with reasonable promptness, such other data, reasonably related to this transaction, as from time to time reasonably may be requested by the Agent or any Investor.

Within 120 days of the end of each fiscal year of the Railroad, the Railroad will deliver to the Agent and to each Investor a certificate of the Vice President and Chief Financial Officer or the Comptroller of the Railroad stating that the signatories have reviewed the relevant terms of the CSA and the Assignment and have made, or caused to be made under their supervision, a review of the transactions or conditions of the Railroad and its consolidated subsidiaries from the beginning of the accounting period covered by the income statements being delivered separately or therewith to

the date of the certificate and that such review has not disclosed the existence during such period of any Default or if any such Default existed or exists, specifying the nature and period of existence thereof and what action the Railroad has taken or proposed to take with respect thereto.

The Railroad will permit the Agent and any representatives of the Investors to discuss the affairs, finances and accounts of the Railroad with its officers and employees, all at such reasonable times and as often as reasonably may be requested.

10. The Agent will promptly mail or deliver one counterpart or copy of all notices, reports, statements or documents received by it from the Railroad pursuant to this Agreement, the CSA or the Assignment to each Investor.

11. All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Investor shall be in writing signed by an officer, assistant officer, manager or assistant manager of such Investor or another person thereunto duly authorized by such Investor, and the Agent may rely on any notice, instruction, direction or approval so signed.

12. The Agent represents and warrants that it has all necessary corporate authority to enter into this Agreement and the Assignment and to execute and deliver the certificates of interest. The Agent makes no representation and assumes no responsibility with respect to (i) the validity of the CSA or the Assignment or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or (ii) the value of or the title to the Equipment.

13. In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder, or with respect to title to any unit of the Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents and title to such unit of the Equipment until such dispute shall have been settled either by agreement of the Investors or by final order, decree or judgment of a court of competent jurisdiction.

14. All documents and funds deliverable hereunder to the Permanent Investors shall be delivered or mailed to

them at their respective addresses set forth in Schedule B hereto, or as any Permanent Investor may otherwise specify.

All documents deliverable hereunder to the Agent shall be delivered to it at its address at 277 Park Avenue, New York, N.Y., 10172, Attention of Kansas City Southern Industries Account Officer, or as the Agent may otherwise specify.

All documents and funds deliverable hereunder to the Railroad shall be delivered to it at its address at 114 West Eleventh Street, Kansas City, Missouri 64105, Attention of Vice President and Chief Financial Officer.

15. The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to the Investors that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice; it being understood and agreed that the Agent shall also give such notice if it is directed to do so by Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding. If, prior to the date stated in said notice, Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such Investors all right, title and interest of the Agent under the CSA and the Assignment and in and to the Equipment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such assignment by the Agent to a person or institution designated by such Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall be thereafter relieved of all duties and responsibilities hereunder. Any successor appointed hereunder shall be a bank or trust company located in Baltimore, Maryland, or in New York, New York, having capital and surplus aggregating at least \$50,000,000.

Any corporation resulting from any merger or consolidation to which the Agent or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all the corporate trust business of the Agent or any successor Agent, provided such

corporation shall be a bank or a trust company doing business in New York, New York, or in Baltimore, Maryland, having a capital and surplus aggregating at least \$50,000,000, shall be the successor agent hereunder without the execution or filing of any paper or further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

16. The Railroad and the Agent, as assignee of the Builder under the Assignment, agree that, subject to the payment of the amount to be paid by the Permanent Investors and by the Railroad pursuant to Paragraph 1 hereof, the CSA shall be amended as follows:

(a) The third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of Article 4 of the CSA are deleted and the following is substituted for such third and fifth paragraphs:

"The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor at such place as the Vendor or its assignee shall designate, the remainder of the Purchase Price of the Equipment (\$10,000,000, as of June 1, 1983, after giving effect to a principal repayment of \$476,045.58 made by the Railroad, herein-after called the "CSA Indebtedness") in eight (8) equal annual installments as hereinafter provided."

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"The installments of the CSA Indebtedness shall be payable annually, in immediately available funds, on June 1 in each year commencing on June 1, 1986, to and including June 1, 1993. The unpaid portion of the CSA Indebtedness shall bear interest from the respective dates on which such indebtedness was incurred at the rate of 11-3/8% per annum. Such interest shall be payable to the extent accrued, in immediately available funds, on June 1 and December 1 in each year, commencing December 1, 1983."

(b) The fourteenth paragraph of Article 4 of the CSA is deleted and the following is substituted therefor:

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

(c) The first paragraph of Article 8 of the CSA is deleted and the following substituted therefor:

"In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. The Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the Casualty Value of each such unit of the Equipment suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the pro rata prepayment of each of the installments of the aggregate CSA Indebtedness remaining unpaid (in proportion to the aggregate principal amount of CSA Indebtedness represented by each such installment) without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid."

(d) The first parenthetical clause in the second paragraph of Article 8 of the CSA is deleted and the following is substituted therefor:

"(other than passenger or work equipment or box cars)".

(e) The parenthetical clause in item (1) of the third paragraph of Article 8 of the CSA is deleted and the following substituted therefor:

"(other than passenger or work equipment or box cars)".

(f) The second paragraph of Article 10 of the CSA is deleted since the substance thereof is covered in Paragraph 9 hereof.

17. The Railroad will pay or cause to be paid (i) the reasonable fees and disbursements of Messrs. Cravath, Swaine & Moore, as special counsel for the Permanent Investors and the Agent, and the cost of producing and reproducing this Agreement, the CSA and the Assignment, (ii) the fee payable to the placing agent in connection with the placement of the CSA Indebtedness with the Permanent Investors, (iii) the reasonable routine and ordinary fees, costs and disbursements of the Agent, (iv) the costs of filing and recording this Agreement and any amendments or supplements thereto with the Interstate Commerce Commission, and (v) the costs of producing and reproducing any amendments or supplements and the reasonable fees and disbursements of Messrs. Cravath, Swaine & Moore in connection therewith. The Investor, the Permanent Investors and the Agent shall have no liability for any of the aforesaid fees, costs, disbursements and expenses.

18. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by applicable Federal law and such additional rights arising out of the filing or recording hereof.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers or other persons thereunto duly authorized, as of the date first above written.

[Seal]
Attest:

CHEMICAL BANK, as Agent,

by

Vice President

Title

[Seal]
Attest:

Sherry K. Cooper
Assistant Secretary

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

by Donald Long
Vice President

INVESTOR:

CHEMICAL BANK,

by

Vice President

PERMANENT INVESTORS:

UNION MUTUAL LIFE INSURANCE
COMPANY,

by

Senior Vice President

UNIONMUTUAL PENSION
& INSURANCE CORPORATION,

by

Senior Vice President

AMERICAN GUARANTEE
& LIABILITY INSURANCE COMPANY,

by

Title:

EMPIRE FIRE AND MARINE
INSURANCE COMPANY,

by

Title:

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY,

by

Title:

| <u>Name and Address of Investor</u> | <u>CSA Indebtedness to be held (after principal repayment of \$476,045.58)</u> |
|--|--|
| Chemical Bank 277 Park Avenue New York, N.Y. 10172 | \$10,000,000 |
| Attention of Kansas City Southern Industries Account Officer | |

| <u>Name and Address of Permanent Investors</u> | <u>Commitment</u> |
|--|-------------------|
| Union Mutual Life Insurance Company 2211 Congress Street Portland, Maine 04122 Attention of Bond Investment Division Payment of principal and/or interest to be made by bank wire transfer of Federal Funds to Maine National Bank, 400 Congress Street, Portland, Maine 04112 for credit to Account No. 00-0062-0, with sufficient information to identify the source and application of funds. | \$2,000,000 |
| Unionmutual Pension & Insurance Corporation 2211 Congress Street Portland, Maine 04122 Attention of Bond Investment Division Payment of principal and/or interest to be made by bank wire transfer of Federal Funds to Maine National Bank, 400 Congress Street, Portland, Maine 04112 for credit to Account No. 005-3796-9, with sufficient information to identify the source and application of such funds. | \$5,000,000 |

Name and Address of
Permanent Investors

Commitment

American Guarantee & Liability
Insurance Company
231 North Martingale Road
Schaumburg, Illinois 60196

\$1,000,000

Attention of Mr. Stuart Olin,
Vice President

Certificate of Interest to be issued
in the name of Boehm & Co.

Payments shall be made by wire transfer
of immediately available funds to
Boehm & Co., in care of Bankers Trust
Company, Personal Trust, One Bankers
Trust Plaza (25th Floor), Attention of
Income Collection (interest payments
only) (Attention of Reorganization for
payments other than interest) for
American Guarantee & Liability
Insurance Company, Account No. 361565,
New York, N.Y. 10005, with sufficient
information to identify the source and
application of funds.

Name and Address of
Permanent Investors

Commitment

Empire Fire and Marine
Insurance Company
1624 Douglas Street
Omaha, Nebraska 68102

\$1,000,000

Attention of Frank Kratky,
Treasurer

All payments on account of the
Certificate or the Agreement shall
be made by bank wire transfer of
immediately available funds to:

First National Bank of Omaha
Trust Department
One First National Center
Omaha, Nebraska
Account No. 15-23296-070

All other communications shall be
delivered or mailed to:

Empire Fire and Marine Insurance Company
1624 Douglas Street
Omaha, Nebraska 68102

Name and Address of
Permanent Investors

Commitment

Universal Underwriters Insurance Company \$1,000,000
5115 Oak Street
Kansas City, Missouri 64112

Attention of Mr. G. B. Martin,
Vice President and Treasurer

Certificate of interest to be issued in
the name of UUVEST.

Payments of principal shall be made by
wire transfer of immediately available
funds to UUVEST, in care of United
Missouri Bank, 10th and Grand Streets,
Kansas City, Missouri 64141, for
Universal Underwriters Insurance Company,
Account Number 000-738-2, Tax I.D. No.
431266724, with sufficient information
to identify the source and application
of funds. Payments of interest shall be
sent to Universal Underwriters Insurance
Company, 5115 Oak Street, Kansas City,
Missouri 64112, Attention of Investments,
with sufficient information to identify
the source and application of funds.

\$ 10,000,000

CERTIFICATE OF INTEREST

CHEMICAL BANK ("Agent") hereby acknowledges receipt from

("Permanent Investor") of

Dollars (\$ _____), such sum having been paid by the Permanent Investor under and pursuant to the terms and conditions of an Amended and Restated Finance Agreement and Amendment dated as of May 1, 1983 ("Finance Agreement"), among the Agent, THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("Railroad"), the party named in Schedule A to the Finance Agreement, the Permanent Investor and the other party named in Schedule B to the Finance Agreement. By reason of such payment the Permanent Investor has an interest in a principal amount equal to such sum in the CSA Indebtedness (as defined in the CSA hereinafter mentioned) and in and to (i) the Conditional Sale Agreement dated as of November 30, 1981 ("CSA"), between General Motors Corporation (Electro-Motive Division) ("Builder"), and the Railroad, (ii) the related Agreement and Assignment dated as of November 30, 1981, between the Builder and the Agent, (iii) the right, title and interest of the Agent in and to the railroad Equipment covered by the CSA and (iv) all cash and other property from time to time held by the Agent under the Finance Agreement, except to the extent that installments of such principal amount shall have been paid.

Under the terms of the CSA and the Finance Agreement, subject to the rights of prepayment contained therein in the event of a Casualty Occurrence (as defined therein), (i) such principal amount is repayable in 8 consecutive equal annual installments on June 1 in each year commencing June 1, 1986, to and including June 1, 1993, (ii) such principal amount bears interest, payable semiannually on June 1 and December 1 in each year, commencing December 1, 1983, on the unpaid portion thereof from time to time outstanding from the date of this certificate until the same shall have become due and payable, at the rate of 11-3/8% per annum, and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest, to the extent legally enforceable, at the rate of 12-3/8% per annum. All payments received by the Agent in accordance with the terms of the Finance

Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Finance Agreement.

Dated:

CHEMICAL BANK, as Agent under
the Finance Agreement,

By

Authorized Officer

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

[CS&M Ref. No. 2302-842]

CONDITIONAL SALE AGREEMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

(Covering 2 GP-40-2 Road Locomotives and 10 SD-50 Road Locomotives)

Filed with the Interstate Commerce Commission pursuant to
49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m.,
recording number 13340.

CONDITIONAL SALE AGREEMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

CONDITIONAL SALE AGREEMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (the "Railroad").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad rolling stock equipment described in Schedule B attached hereto (the "Equipment") subject to the terms and conditions set forth herein;

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

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its 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, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Sale and Purchase. Subject to the terms and conditions set forth in this Agreement, the Builder shall construct the units of the Equipment at its plant set forth in Schedule B hereto and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall have been constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between the Builder and the Railroad (which specifications

and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be standard gauge railroad rolling stock equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the 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), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or after any event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

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

Notwithstanding the preceding provisions of this Article 3, (1) 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 and (2) if the aggregate Invoiced Purchase Prices (as defined in Article 4 hereof) of all Equipment previously settled for under this Agreement exceeds \$11,225,000, the Railroad may exclude herefrom any units of Equipment not theretofore settled for under this Agreement. If any unit or units of Equipment shall be excluded from this Agreement pur-

suant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise expressly provided in the purchase order or orders covering the Equipment, the Railroad shall nevertheless be obligated to accept any Equipment excluded from this Agreement 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 Builder, such payment to be in cash within 30 days following the later of the delivery of, or the presentation of the invoice for, 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 the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion 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 conforms to the Specifications, requirements and standards applicable thereto, on or prior to the Closing Date (as defined in Article 4 hereof) hereunder in respect of each such unit of Equipment acquired by the Railroad, such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to the Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

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, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

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 Builder and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment of the Builder shall be divided into groups of units of the Equipment, delivered to and accepted by the Railroad during a period of not less than 30 days (each such group being hereinafter called a Group), or otherwise as the Builder, the Railroad and the Vendor may agree to.

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

Amended
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(a) on each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$11,225,000 and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 30 equal consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount, if any, paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

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The installments of the CSA Indebtedness shall be payable semiannually, in immediately available funds, on June 1 and December 1 in each year commencing June 1, 1982, to and including December 1, 1996 (or if any such date is not a business day (as hereinafter defined), on the next succeeding business day with interest at the rate per annum specified below), each such date being hereinafter called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date on which such indebtedness was incurred at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean with respect to any CSA Indebtedness (a) initially, the period from the Closing Date in respect of which such CSA Indebtedness was incurred and ending on November 30, 1981; provided that (x) if such date is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day, unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day, (y) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period is to end) shall end on the last Banking Day of the calendar month during which such Interest Period is to end and (z) interest shall accrue from and including the first day of each Interest Period to but excluding the last day of such Interest Period, and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such CSA Indebtedness and ending on the numerically corresponding day in the calendar month 1 month, 3 months, 6 months or 12 months thereafter, as the Railroad shall select in the notice given pursuant to (b) below, or if the Railroad shall fail to so select, 1 month; provided, as aforesaid; provided further, that if the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply is required to be paid on the next succeeding Payment Date, such Interest Period shall end no later than such Payment Date; (ii) "Floating Rate" shall mean (a) the LIBOR Rate plus 1/2 of 1% or (b) the Prime Rate, as the Railroad shall select by giving written or telex notice to Chemical Bank ("Chemical") not later than 12:00 noon New York City time on the day three Banking Days prior to each Interest Period, or if the Railroad shall fail to so select, the Prime Rate; (iii) "Banking Day" shall mean any day other than a Saturday, Sunday or legal holiday on which banks are open for business (including dealings in dollar deposits) in New York City and

Amended

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in the London Interbank Market; (iv) "Prime Rate" shall mean the rate per annum announced by Chemical from time to time as being in effect for prime commercial domestic loans of 90-day maturities (for purposes of this Agreement, any change in the Prime Rate shall be effective on the date such change is announced by Chemical); and (v) "LIBOR Rate" with respect to any Interest Period, shall mean an interest rate (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the London office of Chemical by leading banks in the London Interbank Market at 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period for deposits in dollars approximately comparable in principal amount to the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply and for the maturity comparable to the applicable Interest Period. Each determination of the LIBOR Rate shall be made by Chemical and shall be conclusive absent manifest error.

Amended

Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued (i) on portions of the CSA Indebtedness as to which the Prime Rate applies, on each June 1 and December 1 commencing June 1, 1982, and (ii) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, on the last date of the applicable Interest Period (provided that if such Interest Period shall be greater than six months in duration, interest shall be payable on the dates referred to in (i) commencing with the first of such dates after the commencement of such Interest Period, and on the last date of such Interest Period).

In the event that, on each occasion, on the day two Banking Days prior to the commencement of any Interest Period, Chemical shall have determined (which determination shall be conclusive and binding on the Railroad) that dollar deposits in the applicable amounts are not generally available in the London Interbank Market, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Chemical of making and maintaining its investment in the CSA Indebtedness pursuant to the Finance Agreement (its "Investment"), or that reasonable means do not exist for ascertaining the LIBOR Rate, Chemical shall as soon as practicable thereafter give written or telex notice of such determination to the Railroad. If such notice shall have been given and until the circumstances giving rise to such notice no longer exist, the Floating Rate

Deleted

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shall be the Prime Rate. Each determination of Chemical hereunder shall be conclusive absent manifest error.

Deleted

Since the cost to Chemical of making or maintaining the Investment may fluctuate as a result of imposition of, or changes in, the reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States, including, but not limited to any reserve on Eurocurrency Liabilities as defined by Regulation D at the ratios provided in such Regulation from time to time, it is hereby agreed that the Investment shall be deemed to constitute a Eurocurrency Liability (as defined in such Regulation). Such Eurocurrency Liability shall further be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may otherwise be available to Chemical from time to time under such Regulation. The Railroad shall pay to Chemical such additional amount or amounts as will compensate it for the effect of such reserve requirements as determined by Chemical on the basis of such reserve requirements applicable to it, which determination shall be conclusive absent manifest error.

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Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to Chemical with respect to the Investment (other than taxes imposed on the overall net income of Chemical by the jurisdiction in which Chemical has its principal office or by any political subdivision or taxing authority therein), or shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Chemical, or shall impose on Chemical or the London Interbank Market any other condition affecting the Investment and the result of any of the foregoing shall be to increase the cost to Chemical of making or maintaining the Investment or to reduce the amount of any sum received or receivable by Chemical in respect thereof, by an amount deemed by Chemical to be material, then (but without duplication for payments otherwise required under this Agreement), the Railroad shall pay to Chemical, upon Chemical's demand, such additional amount or amounts as will compensate Chemical for such additional cost or reduction. A certificate

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of Chemical setting forth the basis for the determination from time to time of such amount or amounts as shall be necessary to compensate Chemical as specified in this paragraph shall be delivered to the Railroad and shall be conclusive absent manifest error. Failure on the part of Chemical to demand compensation for any increased costs in any Interest Period shall not constitute a waiver of the Chemical's rights to demand compensation for any increased costs in any other Interest Period. Chemical's right to any additional compensation for increased costs due under this paragraph shall be absolute and shall not be subject to any contention of invalidity or inapplicability of the law or regulation or the interpretation or administration thereof imposing such increased costs on Chemical.

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Notwithstanding anything to the contrary herein contained, if any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for Chemical to make or maintain the Investment at the LIBOR Rate, Chemical may, by written notice to the Railroad, declare that the Floating Rate shall thereafter be the Prime Rate. For purposes of this paragraph, a notice to the Railroad by Chemical shall be effective, if lawful, on the last day of the then current Interest Period or, if there are then more than one current Interest Period, on the last day of each such Interest Period, respectively, otherwise, such notice shall be effective on the date of receipt by the Railroad.

The Railroad shall indemnify Chemical against any loss or expense which Chemical may sustain or incur as a consequence of any change in the Floating Rate described in the preceding paragraph or as a consequence of any prepayment of the CSA Indebtedness (including any loss incurred or to be incurred by it in the reemployment of funds released by any prepayment).

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to November 30, 1981, the Cut-Off Date), not more than 15 business days following presentation by the Builder 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 four business days prior to the Closing Date designated therein. Such notice shall set forth the number and the

Invoiced Purchase Price of the units of Equipment to be settled for on such Closing Date and the amount or amounts payable by the Vendor to the Builder pursuant to the terms of any assignment by the Builder of its rights hereunder.

The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

Interest under this Agreement shall be calculated on the basis of (x) on portions of the CSA Indebtedness as to which the Prime Rate applies, a 360-day year of 12 30-day months and (y) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, the actual number of days elapsed in a year of 360 days.

Amended

The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% per annum in excess of the applicable rate 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 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 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 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 counsel for the Vendor, adversely affect the property 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. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property 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 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 its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the 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 title of the Railroad to 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 the 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 set forth in any amendment or supplement 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 such 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 markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any unit of such 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 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 (other than the Vendor) 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; Prepayment of CSA Indebtedness; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed \$50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When 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 Vendor pursuant to this Article 8) shall exceed \$200,000, the Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, 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 such Casualty Value; provided, however, that if a proceeding specified in clause (c) or (d) of Article 16 hereof shall have been commenced or an event of default or event which with notice, lapse of time and/or demand or failure to take action provided for in Article 16 hereof shall have occurred and be continuing (any such commencement, event of default or event being herein called a "Default"), the Railroad shall forthwith after it has knowledge of any Casualty

Amended

Occurrence pay to the Vendor a sum equal to the aggregate Casualty Value of each unit of the Equipment suffering a Casualty Occurrence as of the date of such payment. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the prepayment of the installments of the CSA Indebtedness in the inverse order of maturity, without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid.

Amended

So long as no Default shall have occurred and be continuing, the Railroad may, at any time after it has informed the Vendor in regard to a Casualty Occurrence, cause to be transferred to the Vendor a replacement unit or units of new standard-gauge railroad rolling stock (other than passenger or work equipment) to replace units suffering a Casualty Occurrence and receive credit therefor in an amount equal to the cost thereof (as evidenced by the invoice therefor specified in the next paragraph) against any Casualty Value payment it might otherwise be required to make in respect of the unit or units which shall have suffered the Casualty Occurrence. Such unit or units of replacement equipment shall have a useful life at least as long as that which the Equipment described in Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence.

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Whenever the Railroad shall cause any unit of replacement equipment to be transferred to the Vendor in lieu of making all or any part of any Casualty Value payment, the Railroad shall deliver to the Vendor at the time of transfer of such replacement unit bills of sale, invoices and certificates of acceptance, substantially in the form provided by the first assignment of this Agreement by the Builder, together with:

(1) a certificate of an officer of the Railroad certifying (i) that such replacement unit is new "standard gauge" railroad rolling stock (other than passenger or work equipment), (ii) the date such unit was first put into service, (iii) that such unit has a useful life at least as long as the Equipment of the type described in Schedule B hereto would have had but for the Casualty Occurrence and has been marked as required by the provisions of this Article 8 and (iv) the cost thereof;

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(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has come under and become subject to this Agreement pursuant to a supplement hereto, that all necessary filings have been made to perfect the interests of the Vendor therein and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (as now in effect or as hereafter amended) with respect to such replacement unit; and

(3) an executed counterpart of the supplement referred to in clause (2) above stamped to show filing under 49 U.S.C. § 11303.

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 such Casualty Value is determined 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 cost thereof as of the date of acquisition by the Vendor of such replacement unit as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined 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 replacements of Equipment or parts thereof 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 Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured or sold by it. Title to all such replacement units and parts 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 (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) 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 and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

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 full satisfaction by the Railroad of its obligations hereunder in respect of 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 or part thereof 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, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on or in respect of similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on or in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, 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, 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, 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 opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder, on or before March 31 in each year, commencing with the calendar year 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the preceding December 31 the total number, description and identifying numbers of all units of the Equipment (i) 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), and (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than running repairs), and containing such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (B) stating that, (i) 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 and (ii) the insurance which the Railroad is required to carry and maintain pursuant to the last paragraph of Article 8 hereof is in effect. 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.

So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to the Vendor, (i) as soon as available, and in any event within 60 days after the end of the applicable accounting period, two copies of the consolidated balance sheet of the Railroad as of the end of its respective first, second and third quarterly accounting periods in each fiscal year and two copies of the related consolidated statements of income and retained earnings of the Railroad for the portion of its fiscal year ended with the last day of its quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Railroad and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Railroad as at the end of such fiscal year, and of the consolidated statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Railroad's independent public accountants who shall be of recognized national standing and (iii) as soon as available, copies of all material regular and periodic reports to the Securities and Exchange Commission and the Interstate Commerce Commission, including each Annual Report, which are required to be filed by the Railroad. The Railroad further agrees to furnish to the Vendor (x) immediately upon becoming aware of the existence of a Default, a written notice which specifies the nature of the Default (as defined in Article 8 hereof) and what action the Railroad is taking or proposes to take with respect thereto and (y) with reasonable promptness, such other data as from time to time may be reasonably requested.

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The Railroad will permit the Vendor and any representatives of the Vendor to discuss the affairs, finances and accounts of the Railroad with its principal officers all at such reasonable times and as often as may be requested.

ARTICLE 11. Possession and Use. 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 or routes owned or operated by it either alone or

jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate 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 to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned railroad subsidiaries and may lease the Equipment to one or more railroad affiliates or, under a written lease for a term not exceeding six months (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

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, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; 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 opinion of counsel for 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 until reimbursed therefor by the Railroad or otherwise 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, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. 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. Builder's Warranties of Material and Workmanship; Patent Indemnities. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto and the agreement of the parties relating to patent indemnification is set forth in Item 3 of said Schedule A. Such patent indemnification provisions shall continue in full force and effect notwithstanding the full payment of all sums under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any 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 Builder from, any of the obligations of the Builder 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, or relieve the Railroad of any of its obligations to the Builder or 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 and 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 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 purpose 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 Builder with respect to the Equipment or the specifications, 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 Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad 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 from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, except as provided in the purchase order for such Equipment, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of the units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of Chemical Bank 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 on the day on which payment thereof shall be due hereunder; 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 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or a 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 expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the 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 (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 or lapse of time, or both, 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 expressly 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.

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 if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully 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, without 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 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. 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 reasonable point or points selected by the Vendor 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 waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this Agreement 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, storing and maintaining 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, maintaining, 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, maintaining, 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 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 fewer than 40 corporate 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. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. 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 any 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.

From and after the date of any such sale, the Railroad shall pay to the Vendor 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.

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 set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, 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 (which is not overridden by applicable federal law) 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, and 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, etc. The Railroad will, at its own expense, 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. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, refile, register, deposit, record and rerecord 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 interests in and to the Equipment 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 Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

This Agreement creates a security interest for

the benefit of the Vendor in the Equipment the possession and use of which has been or will be transferred to the Railroad, which security interest secures payment and performance by the Railroad of its obligations under this Agreement.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or any successor agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, and all fees and expenses of Messrs. Cravath, Swaine & Moore, as special counsel for the first assignee of this Agreement and for any party initially acquiring interests in such first assignment, and all reasonable legal expenses in connection with the transfer by any party of interests acquired in such first assignment.

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 its chief place of business at the following specified addresses:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Builder, 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, except to the extent expressly provided in the third paragraph of Article 3 hereof and the final paragraph of Article 15 hereof, supercedes 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 Missouri; 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, or in which any unit of the Equipment shall be located, including any Federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, 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, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by

Donald L. Graf
Vice President

[Corporate Seal]

Attest:

Geraldine D. Dollins
Assistant Secretary

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

P. K. Hoglund
Vice President

[Corporate Seal]

Attest:

W. J. Scott
Assistant Secretary

STATE OF MISSOURI,)
) ss.:
COUNTY OF JACKSON,)

On this 25th day of November 1981, before me personally appeared Donald L. Graf, to me personally known, who, being by me duly sworn, says that he is Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that the corporate seal of said Corporation is affixed to the foregoing instrument, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Irene Paulhe
Notary Public
Irene Paulhe
Notary Public-State of Missouri
Commissioned in Platte County
My Commission Expires March 22, 1983

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

On this 25th day of November 1981, before me personally appeared P. K. Hoglund, to me personally known, who, being by me duly sworn, says that he is 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.

[NOTARIAL SEAL]

Juanita Acantilado
Notary Public

My Commission Expires April 17, 1984

SCHEDULE A

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

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

- Item 3: GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's right under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this

Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 8 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Railroad.

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

SCHEDULE B

| <u>Type</u> | <u>Builder's Specifications</u> | <u>AAR Mechanical Designation</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Railroad Road Numbers</u> | <u>Unit Base Price</u> | <u>Total Delivered Price</u> | <u>Estimated Time and Place of Delivery</u> |
|---------------------------|---------------------------------|-----------------------------------|------------------------|-----------------|------------------------------|------------------------|--|---|
| GP 40-2 Road Locomotives | 8091 | B-B | McCook, Illinois | 2 | KCS 796 KCS 797 | \$799,080.00 | \$1,608,015.60 | Bloomburg, Texas November, 1981 |
| 10 SD-50 Road Locomotives | 8115 | C-C | McCook, Illinois | 10 | KCS 704- 713 | \$954,310.00 | <u>\$9,616,318.96</u> \$11,224,334.56 | Bloomburg, Texas November, 1981 |

CSM Ref. No. 2302-842

AGREEMENT AND ASSIGNMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

CHEMICAL BANK

Filed with the Interstate Commerce Commission pursuant to
49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m.,
recordation number 13340-A.

AGREEMENT AND ASSIGNMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

AGREEMENT AND ASSIGNMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder"), and CHEMICAL BANK (the "Assignee").

WHEREAS the Builder and The Kansas City Southern Railway Company (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad rolling stock equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereby agree as follows:

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

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA on account of its indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA other than those hereinabove excluded; and

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

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder shall not deliver any of the Equipment to the Railroad under the CSA until any necessary filings and recordations referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice of special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on,

indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Schedule A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the 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 Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, at least two business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of its Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the CSA has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid, binding and enforceable instrument, (iii) the Assignee is

vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution, delivery and performance of the CSA or this Assignment by the parties thereto, (vi) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vii) registration of the CSA or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended and (viii) the rights of the Assignee to possession of the Equipment would be subject to the provisions of 11 U.S.C. § 1168 (assuming the Railroad continues to be a "railroad" as defined in 11 U.S.C. § 101(33)); such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and substance to said counsel and that said counsel believe that the Assignee is justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (iv), (v) and (vi) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of this Assignment and the CSA by all parties thereto other than the Railroad) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) each of this Assignment and the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by the Builder and is a legal, valid and enforceable instrument binding upon the Builder;

(g) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to this first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad; and

(h) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (1) no event of default, or event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and is then continuing and (2) no Federal tax liens (including tax liens filed pursuant to section 6323 of the United States Internal Revenue Code of 1954, as amended) or, to the best of the knowledge and belief of the Railroad, other tax liens, have been filed and are then in effect against the Railroad which could adversely affect the interest of the Assignee in the Equipment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (d) and (e), counsel may rely, as

to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the CSA, on the opinion of counsel for the Builder; and, in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Railroad or the opinion of counsel for the Builder as to such matter.

The Assignee shall not be required to make payment for the Equipment assigned hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA.

In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee. If the aggregate Purchase Price (as defined in the CSA) of the Equipment exceeds \$11,225,000 and the Railroad does not make the payments specified in subparagraph (a) of the third paragraph of Article 4 of the CSA with respect to any unit of Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment in respect of which the Purchase Price exceeds \$11,225,000.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment and upon the giving of notice required in Article 15 of the CSA, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

In compliance with Article 21 of the CSA, the address of the Assignee is 20 Pine Street, New York, New York 10005, attention of Kansas City Southern Industries, Inc.-- Account Officer.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment 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.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constitut-

ing but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

P. K. Hoglund

Vice President

[CORPORATE SEAL]

Attest:

W. J. Scott

Assistant Secretary

CHEMICAL BANK,

by

John H. Roach, Jr.

Vice President

Attest:

Nancy McNaley

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE KANSAS CITY SOUTHERN RAILWAY COMPANY hereby acknowledges due notice (and receipt of an executed copy) of and consents to the assignment made by the foregoing Agreement and Assignment dated as of November 30, 1981.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

by

Donald L. Graf

Vice President

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

On this 25th day of November 1981, 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, 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.

Juanita Acantilado
Notary Public

[NOTARIAL SEAL]

My Commission Expires April 17, 1984

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

On this 25th day of November 1981, before me personally appeared J. H. Roach, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, 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.

Ivy L. Soltz
Notary Public
Ivy L. Soltz

[NOTARIAL SEAL]

My Commission Expires

Notary Public-State of New York
No. 4627098
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires March 30, 1982

[CS&M Ref. 3909-052]

AMENDED AND RESTATED FINANCE AGREEMENT

AND

AMENDMENT

dated as of May 1, 1983,

Among

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
Railroad,

CHEMICAL BANK,

Agent,

THE PARTY NAMED IN SCHEDULE A HERETO,
Investor,

and

THE PARTIES NAMED IN SCHEDULE B HERETO,
Permanent Investors,

11-3/8% CSA Indebtedness due June 1, 1993.

(Covering 2 GP-40-2 Locomotives
and ~~18~~ SD-~~40~~ Locomotives)

~~20~~
1050-50

[Amending and restating the Finance Agreement and the
Conditional Sale Agreement, each dated as of November 30,
1981.]

AMENDED AND RESTATED FINANCE AGREEMENT AND AMENDMENT, dated as of May 1, 1983, among CHEMICAL BANK, a New York banking corporation ("Agent"), THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation ("Railroad"), and the PARTY NAMED IN SCHEDULE A HERETO (severally "Investor" and collectively, together with its successors and assigns including the Permanent Investors, "Investors", "each Investor" or "any Investor") and the PARTIES NAMED IN SCHEDULE B HERETO (severally "Permanent Investor" and collectively, together with their successors and assigns, "Permanent Investors").

The Railroad has entered into a conditional sale agreement dated as of November 30, 1981 ("CSA", a conformed copy of which is attached hereto as Exhibit A), with GENERAL MOTORS CORPORATION (Electro-Motive Division) ("Builder") for the purchase from the Builder of the new railroad equipment referred to in Schedule B to the CSA ("Equipment").

The CSA provides, among other things, for the payment by the Railroad to the Builder of the purchase price of the Equipment ("CSA Indebtedness") plus interest on the unpaid balance thereof in installments.

The Agent has acquired the right, title and interest of the Builder in and to the CSA and the right, title and interest in and to the Equipment covered thereby for a consideration equal to the CSA Indebtedness thereunder and upon other terms and conditions as set forth in the Agreement and Assignment dated as of November 30, 1981 ("Assignment", a conformed copy of which is attached hereto as Exhibit B), between the Agent and the Builder.

The CSA and the Assignment were filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m., Recordation Nos. 13340 and 13340-A, respectively.

All the Equipment has heretofore been purchased under the CSA, the Builder has been paid in full for the Equipment and the Railroad and the Agent, through the Assignment, are now the only parties in interest to the CSA.

On the Take Out Date hereinafter defined, the Investor will hold CSA Indebtedness evidenced by a certificate of interest, in the principal amount shown opposite its

name in Schedule A hereto, which CSA Indebtedness the Investor intends to sell to the Permanent Investors and which the Permanent Investors intend to purchase from the Investor on the Take Out Date.

The parties hereto desire to amend and restate the original Finance Agreement dated as of November 30, 1981, and to amend the CSA, as herein set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

1. Subject to the terms and conditions hereof, (a) each Permanent Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., New York City time, on June 1, 1983 ("Take Out Date"), an amount equal to the amount of the commitment set forth opposite such Permanent Investor's name in Schedule B hereto and (b) the Railroad will pay to the Agent, in immediately available funds, not later than 11:00 a.m. New York City time, on the Take Out Date an amount equal to the unpaid interest on the outstanding CSA Indebtedness accrued to the Take Out Date plus a principal repayment of \$476,045.58 to reduce the CSA Indebtedness to exactly \$10,000,000. The Investor hereby represents and warrants to the Permanent Investors that on the Take Out Date it will be the holder of all such outstanding CSA Indebtedness.

In the event that the Agent does not in fact receive all the funds to be paid to it as provided in the preceding paragraph in a timely fashion on June 1, 1983, the Take Out Date may be postponed by the Agent for up to three business days, in which case the Agent may invest all funds actually received in the Federal Funds Market or similar securities designated by the Railroad (any income therefrom and any loss therefrom to be for the account of the Railroad), but funds received from any Permanent Investor in time for such investment on June 1, 1983, will bear interest payable by the Railroad from the date so received at the rate of 11-3/8% per annum.

All payments to be made hereunder by the Permanent Investors to the Agent shall be wired to Chemical Bank, 277 Park Avenue, New York, N.Y., Attention of Kansas City Southern Industries - Account Officer.

Subject to the terms and conditions hereof, upon payment to the Agent on the Take Out Date of the amount to

be paid by each Permanent Investor and by the Railroad pursuant to this Paragraph 1, on the Take Out Date the Agent will pay to the Investor an amount equal to the unpaid CSA Indebtedness held by the Investor (as shown on Schedule A hereto) plus accrued and unpaid interest thereon; and the Investor, simultaneously with the payment to it of such amount, will surrender its certificate of interest to the Agent for cancellation.

Upon payment to the Agent of the amount required to be paid by a Permanent Investor pursuant to this Paragraph 1 on the Take Out Date, the Agent will execute and deliver to such Permanent Investor (or, upon the written request of such Permanent Investor, to the nominee or nominees of such Permanent Investor or to the office of the custodian for such Permanent Investor) a certificate or certificates of interest substantially in the form annexed hereto as Schedule C, dated as of the Take Out Date.

Each Investor, against payment to it of all amounts payable under any certificate of interest delivered to it pursuant to this Agreement, will surrender such certificate of interest to the Agent.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other days on which banking institutions in New York, New York, are authorized or obligated to be closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. If any date for payment hereunder or under the CSA is not a business day, such payment may be made on the first business day next succeeding such date.

The parties hereto agree that, subject to the payment by the Permanent Investors and by the Railroad of the amounts to be paid pursuant to this Paragraph 1 and the receipt by the Investor of the amount due it pursuant to this Paragraph 1, from and after the Take Out Date (a) the Investor hereby transfers and assigns to the Permanent Investors all its right, title and interest in and to its CSA Indebtedness (but the Investor will retain any indemnification to which it is then entitled under the CSA), (b) the Finance Agreement shall be amended and restated and the CSA shall be amended as set forth herein, and (c) unless the context otherwise requires, the terms "CSA" and "Assignment", as used in this Agreement, the CSA and the Assignment, shall mean, respectively, the CSA and the Assignment,

each as amended hereby, and the term "Finance Agreement" as used in the CSA and the Assignment, shall mean this Agreement.

All transactions pursuant hereto which shall occur on the Take Out Date shall be deemed for purposes of this Agreement, the CSA and the Assignment to have occurred simultaneously.

2. The Agent will hold the rights under the CSA acquired under the Assignment and the security interest in the Equipment in trust for the benefit of the Investors in accordance with their respective interests therein as such interests shall from time to time appear, but without priority of one over the other. It is expressly agreed that the obligations of the Agent hereunder as such holder and with respect to the payments to the Investors to be made by the Agent are only those expressly set forth herein.

3. The Railroad represents and warrants to the Investor, the Permanent Investors and the Agent as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri and is duly qualified to do business in and is in good standing in such other jurisdictions in which its business and activities require such qualification.

(b) It has full corporate power and authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement and the CSA ("Railroad Documents"), and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Railroad Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute legal, valid and binding agreements, enforceable against it in accordance with their terms.

(d) There are no actions, suits or proceedings (whether or not purportedly on its behalf) pending or (to its knowledge) threatened against or affecting it or any of its property rights at law or in equity or before any commission or other administrative agency which could materially and adversely affect its condition (financial or otherwise) or its ability to perform its

obligations under the Railroad Documents and it is not to its knowledge in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

(e) It is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting its business, operations, property, assets or condition (financial or otherwise).

(f) It has furnished to each Permanent Investor its audited consolidated balance sheet as of December 31, 1981, and December 31, 1982, and the related consolidated statements of income and retained earnings for the years then ended. Such financial statements are in accordance with its books and records and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby. The financial statements present fairly its financial condition at such dates and the results of its operations and changes in its financial position for such periods. There has not been any material adverse change in its assets, liabilities, business or condition (financial or otherwise) since December 31, 1982.

(g) Neither the execution and delivery of the Railroad Documents nor the consummation of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of (i) its charter or By-laws, (ii) any law or any regulation, order, injunction or decree of any court or governmental instrumentality or (iii) any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is now a party or by which it or its property may be bound, or constitute (with notice or lapse of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any of its property or upon the Equipment pursuant to the terms thereof, except as contemplated by the CSA and the Assignment.

(h) No mortgage, deed of trust, security interest or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter

cover or affect any of its property or interest therein now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Agent therein, except as contemplated by the CSA and the Assignment.

(i) No authorization or approval from any governmental or public body or authority of the United States of America or of any of the states thereof or of the District of Columbia is necessary for the execution, delivery and performance of the Railroad Documents.

(j) It has filed all foreign, Federal, state and local tax returns which are required to be filed and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and as to which it has established adequate reserves.

(k) It is not entering into the Railroad Documents or any other transaction contemplated thereby 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 it, the Investor, any Permanent Investor or the Agent in its individual capacity is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA").

(l) It is not in default, and no event has occurred which with notice or lapse of time or both would be a default under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property may be bound, nor of any law or any material regulation, order, injunction or decree of any court or any governmental instrumentality.

(m) All the Equipment is in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange and has been maintained as required by Article 9 of the CSA.

(n) The Railroad is not in default on any of its financial obligations and neither the Railroad nor any of its predecessor companies has defaulted on any

financial obligation within the five years next preceeding the date hereof.

(o) On or before the Take Out Date, this Agreement will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and such filing will protect the Agent's interest in and to the Equipment and no other filing or recording (or giving of notice) with any other Federal, state or local government is necessary in order to protect the interests of the Agent under the CSA in and to the Equipment in the United States of America.

4. Each Permanent Investor represents to the Railroad, the Agent, the Investor and each other Permanent Investor as follows:

(a) Such Permanent Investor is acquiring its interest in the aggregate CSA Indebtedness for its own account for investment or for one or more separate accounts maintained by it and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same; provided, however, that the disposition of its property shall at all times be within its control.

(b) Either such Permanent Investor is acquiring its interest in the CSA Indebtedness with assets of a "governmental plan" or such Permanent Investor is not acquiring such interest directly or indirectly with assets drawn from any "separate account", all as defined in ERISA, unless such separate account is exempt from the prohibited transactions rules of ERISA.

(c) Such Permanent Investor represents that it has full power and authority to execute and deliver this Agreement and to carry out its terms.

Each Permanent Investor hereby agrees that any transfer of all or any part of its interest in the CSA Indebtedness shall be upon the express condition that the transferee thereof shall be bound by the terms of this Agreement. Prior to any such transfer, such Permanent Investor shall notify the Agent in writing thereof; and the Agent shall cause to be promptly prepared and delivered to such Permanent Investor an appropriate agreement, to be entered into among such Permanent Investor, such transferee

and the Agent, evidencing such transfer upon the terms hereof.

5. The obligation of each Permanent Investor to make payment to the Agent pursuant to Paragraph 1 hereof and the obligation of the Agent to make payment to the Investor on the Take Out Date pursuant to Paragraph 1 hereof shall be subject to the receipt by the Agent on or prior to the Take Out Date of the funds to be paid to it by the Railroad pursuant to Paragraph 1 hereof and of the following documents, dated on or not more than 10 days prior to the Take Out Date:

(a) A complete and accurate set of all the closing documents (which may be photocopies) delivered to the Agent at each equipment closing pursuant to Section 4 of the Assignment.

(b) An opinion of Messrs. Cravath, Swaine & Moore, special counsel for the Permanent Investors and the Agent, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery by each Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(ii) the CSA has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) the Assignment has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(iv) the Agent is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by the Assignment and the bills of sale for the Equipment, the Agent has a valid purchase money security interest in the units of Equipment and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA);

(v) the rights of the Agent to possession of the Equipment would be subject to the provisions of 11 U.S.C. § 1168 (assuming the Railroad continues to be a "railroad" as defined in 11 U.S.C. § 101 (33));

(vi) this Agreement, the CSA and the Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing or recording (or giving of notice) with any other Federal, state or local government is necessary in order to protect the rights of Agent therein or in the Equipment in any state of the United States of America;

(vii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to the knowledge of said counsel, necessary in connection with the execution, delivery and performance of this Agreement, the CSA and the Assignment;

(viii) under the circumstances contemplated by this Agreement it is not necessary to register the CSA, the Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933, as in effect on the date of such opinion, or to qualify the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939, as in effect on the date of such opinion;

(ix) the legal opinion referred to in subparagraph (c) of this Paragraph 5 is satisfactory in form and scope to said special counsel and that in their opinion the Permanent Investors, the Agent and they are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Permanent Investors may reasonably request.

(c) An opinion of counsel for the Railroad, to the effect set forth in subparagraphs (a), (b), (c), (d), (e), (g), (h), (i), (l) and (o) of Paragraph 3 hereof.

(d) A Certificate of an officer of the Railroad to the effect that the Railroad's representations and warranties contained in this Agreement are true on and as of the Take Out Date, with the same effect as though made on such date.

(e) A certificate of an officer of the Investor to the effect that (i) the Investor is a holder of all the CSA Indebtedness outstanding under the CSA, i.e., \$10,000,000 principal amount (after giving effect to the principal repayment of \$476,045.58 to be made by the Railroad on the Closing Date) and (ii) the Investor does not know of any Default (as defined in Paragraph 8 of the Finance Agreement).

In giving the opinions specified in this Paragraph 5, counsel may qualify its opinion to the effect that any agreement is enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (b) of this Paragraph 5, counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and, as to title of the Builder to its Equipment, on the opinions of counsel for the Builder contained in the set of closing documents referred to in subparagraph (a) of this Paragraph 5 and (ii) as to any matter governed by the law of any jurisdiction other than the State of New York or the United States, on the opinions of counsel for the Builder or the Railroad, as to such matter.

The Take Out Date closing hereunder shall take place at the offices of Messrs. Cravath, Swaine & Moore, in New York, New York.

6. The Agent will accept all sums paid to it pursuant to Article 8 of the CSA with respect to Casualty Occurrences (as therein defined). So long as, to the actual knowledge of the Agent, no event of default under the CSA shall have occurred and be continuing, the Agent will apply such sums to the prompt pro rata prepayment of each of the installments of the aggregate CSA Indebtedness remaining unpaid (in proportion to the aggregate principal amount of CSA Indebtedness represented by each such installment), without premium, together with interest accrued on such

prepaid CSA Indebtedness from the last date to which such interest was paid to the date of such prepayment.

7. The Agent will accept payments made to it by the Railroad pursuant to the CSA and the Assignment on account of the principal of or interest on the CSA Indebtedness thereunder and, so long as, to the actual knowledge of the Agent, no event of default under the CSA shall have occurred and be continuing, will apply such payments promptly to the payment to the Investors, first, of interest payable to them on their respective interests in the installments of CSA Indebtedness, and second, of their respective interests in the installments of CSA Indebtedness in the order of maturity thereof, until the same shall have been paid in full. If, to the knowledge of the Agent, an event of default under the CSA shall have occurred and be continuing, all moneys held by or coming into the possession of the Agent which, under the provisions of the CSA, are applicable to the payment or prepayment of the CSA Indebtedness or interest thereon (including, without limitation, the net proceeds of any repossession and sale or lease of any unit of the Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease and otherwise hereunder in connection with the CSA and the Assignment which shall not theretofore have been reimbursed to the Agent by the Railroad pursuant to the CSA) shall be distributed promptly by the Agent pro rata among the Investors in accordance with their respective interests in the principal and interest on the CSA Indebtedness at the time of such distribution and the Agent shall otherwise take such action as is referred to in Paragraph 8 hereof.

The Railroad agrees to pay all amounts due pursuant to this Agreement and the CSA on or before 11:00 a.m., New York City time, on the date due in Federal funds or other immediately available New York City funds. All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be made by check mailed to the Permanent Investors on the date such payment is due or, upon written request of any Permanent Investor or as specified in Schedule B hereto, by bank wire transfer of Federal funds or other immediately available funds by 12:00 noon, New York City time, on the date such payment is due to such Permanent Investor at such address as may be specified to the Agent in writing.

8. So long as the Agent shall have no actual knowledge that the Railroad is in default under this

Agreement or that an event of default or event which with the lapse of time and/or demand or failure to take action provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing (any such default, event of default or event being herein called a "Default"), the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it, or which it may be entitled to assert or take, under the CSA, except as otherwise specifically provided herein. The Agent shall incur no liability hereunder in acting upon any notice, certificate, warrant or other paper or instrument believed by it in good faith to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its willful misconduct or negligence; provided, however, that in case the Agent shall have actual knowledge of the occurrence of a Default, the Agent shall notify the Investors thereof promptly by registered mail and shall take such action and assert such rights under the CSA as shall be agreed upon by Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding. In case the Agent is required to take action hereunder, it shall be indemnified by the Investors in proportion to their respective interests in the aggregate CSA Indebtedness then outstanding against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights. So long as the Railroad or any person controlling, controlled by or under common control with the Railroad shall hold any interest in the CSA Indebtedness, such interest shall be disregarded for purposes of any direction of Investors to the Agent pursuant to this Paragraph 8.

The Agent may consult with legal counsel of its own choice and the Agent shall be under no liability for any action taken or suffered in good faith by it in accordance with the opinion of such counsel, so long as such opinion relates to legal matters.

9. So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to each Investor (and, in the case of clauses (v) and (vi), the Agent) (i) as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Railroad and in any event within 45

days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries as of the end of each such quarter and consolidated statements of income and retained earnings of the Railroad and its consolidated subsidiaries for each such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct and prepared in accordance with generally accepted accounting principles, subject to changes resulting from year-end adjustments, by a principal financial officer of the Railroad; (ii) as soon as practicable after the end of each fiscal year of the Railroad, and in any event within 120 days thereafter, copies of the audited consolidated balance sheet of the Railroad and its consolidated subsidiaries at the end of such year, and audited consolidated statements of income and retained earnings of the Railroad and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by the Railroad that such consolidated balance sheet and statements of retained earnings and surplus have been prepared in accordance with generally accepted accounting principles; (iii) as soon as available, copies of the Annual Report to stockholders of Kansas City Southern Industries, Inc., or its successor; (iv) promptly upon the filing of the same, the annual reports under the Securities Exchange Act of 1934 of the Railroad, or its successor; (v) immediately upon becoming aware of the existence of a Default, written notice by registered mail which specifies the nature of the Default and what action the Railroad is taking or proposes to take with respect thereto; and (vi) with reasonable promptness, such other data, reasonably related to this transaction, as from time to time reasonably may be requested by the Agent or any Investor.

Within 120 days of the end of each fiscal year of the Railroad, the Railroad will deliver to the Agent and to each Investor a certificate of the Vice President and Chief Financial Officer or the Comptroller of the Railroad stating that the signatories have reviewed the relevant terms of the CSA and the Assignment and have made, or caused to be made under their supervision, a review of the transactions or conditions of the Railroad and its consolidated subsidiaries from the beginning of the accounting period covered by the income statements being delivered separately or therewith to

the date of the certificate and that such review has not disclosed the existence during such period of any Default or if any such Default existed or exists, specifying the nature and period of existence thereof and what action the Railroad has taken or proposed to take with respect thereto.

The Railroad will permit the Agent and any representatives of the Investors to discuss the affairs, finances and accounts of the Railroad with its officers and employees, all at such reasonable times and as often as reasonably may be requested.

10. The Agent will promptly mail or deliver one counterpart or copy of all notices, reports, statements or documents received by it from the Railroad pursuant to this Agreement, the CSA or the Assignment to each Investor.

11. All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Investor shall be in writing signed by an officer, assistant officer, manager or assistant manager of such Investor or another person thereunto duly authorized by such Investor, and the Agent may rely on any notice, instruction, direction or approval so signed.

12. The Agent represents and warrants that it has all necessary corporate authority to enter into this Agreement and the Assignment and to execute and deliver the certificates of interest. The Agent makes no representation and assumes no responsibility with respect to (i) the validity of the CSA or the Assignment or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or (ii) the value of or the title to the Equipment.

13. In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder, or with respect to title to any unit of the Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents and title to such unit of the Equipment until such dispute shall have been settled either by agreement of the Investors or by final order, decree or judgment of a court of competent jurisdiction.

14. All documents and funds deliverable hereunder to the Permanent Investors shall be delivered or mailed to

them at their respective addresses set forth in Schedule B hereto, or as any Permanent Investor may otherwise specify.

All documents deliverable hereunder to the Agent shall be delivered to it at its address at 277 Park Avenue, New York, N.Y., 10172, Attention of Kansas City Southern Industries Account Officer, or as the Agent may otherwise specify.

All documents and funds deliverable hereunder to the Railroad shall be delivered to it at its address at 114 West Eleventh Street, Kansas City, Missouri 64105, Attention of Vice President and Chief Financial Officer.

15. The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to the Investors that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice; it being understood and agreed that the Agent shall also give such notice if it is directed to do so by Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding. If, prior to the date stated in said notice, Investors holding interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such Investors all right, title and interest of the Agent under the CSA and the Assignment and in and to the Equipment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such assignment by the Agent to a person or institution designated by such Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall be thereafter relieved of all duties and responsibilities hereunder. Any successor appointed hereunder shall be a bank or trust company located in Baltimore, Maryland, or in New York, New York, having capital and surplus aggregating at least \$50,000,000.

Any corporation resulting from any merger or consolidation to which the Agent or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all the corporate trust business of the Agent or any successor Agent, provided such

corporation shall be a bank or a trust company doing business in New York, New York, or in Baltimore, Maryland, having a capital and surplus aggregating at least \$50,000,000, shall be the successor agent hereunder without the execution or filing of any paper or further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

16. The Railroad and the Agent, as assignee of the Builder under the Assignment, agree that, subject to the payment of the amount to be paid by the Permanent Investors and by the Railroad pursuant to Paragraph 1 hereof, the CSA shall be amended as follows:

(a) The third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of Article 4 of the CSA are deleted and the following is substituted for such third and fifth paragraphs:

"The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor at such place as the Vendor or its assignee shall designate, the remainder of the Purchase Price of the Equipment (\$10,000,000, as of June 1, 1983, after giving effect to a principal repayment of \$476,045.58 made by the Railroad, herein-after called the "CSA Indebtedness") in eight (8) equal annual installments as hereinafter provided."

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"The installments of the CSA Indebtedness shall be payable annually, in immediately available funds, on June 1 in each year commencing on June 1, 1986, to and including June 1, 1993. The unpaid portion of the CSA Indebtedness shall bear interest from the respective dates on which such indebtedness was incurred at the rate of 11-3/8% per annum. Such interest shall be payable to the extent accrued, in immediately available funds, on June 1 and December 1 in each year, commencing December 1, 1983."

(b) The fourteenth paragraph of Article 4 of the CSA is deleted and the following is substituted therefor:

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

(c) The first paragraph of Article 8 of the CSA is deleted and the following substituted therefor:

"In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. The Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the Casualty Value of each such unit of the Equipment suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the pro rata prepayment of each of the installments of the aggregate CSA Indebtedness remaining unpaid (in proportion to the aggregate principal amount of CSA Indebtedness represented by each such installment) without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid."

(d) The first parenthetical clause in the second paragraph of Article 8 of the CSA is deleted and the following is substituted therefor:

"(other than passenger or work equipment or box cars)".

(e) The parenthetical clause in item (1) of the third paragraph of Article 8 of the CSA is deleted and the following substituted therefor:

"(other than passenger or work equipment or box cars)".

(f) The second paragraph of Article 10 of the CSA is deleted since the substance thereof is covered in Paragraph 9 hereof.

17. The Railroad will pay or cause to be paid (i) the reasonable fees and disbursements of Messrs. Cravath, Swaine & Moore, as special counsel for the Permanent Investors and the Agent, and the cost of producing and reproducing this Agreement, the CSA and the Assignment, (ii) the fee payable to the placing agent in connection with the placement of the CSA Indebtedness with the Permanent Investors, (iii) the reasonable routine and ordinary fees, costs and disbursements of the Agent, (iv) the costs of filing and recording this Agreement and any amendments or supplements thereto with the Interstate Commerce Commission, and (v) the costs of producing and reproducing any amendments or supplements and the reasonable fees and disbursements of Messrs. Cravath, Swaine & Moore in connection therewith. The Investor, the Permanent Investors and the Agent shall have no liability for any of the aforesaid fees, costs, disbursements and expenses.

18. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by applicable Federal law and such additional rights arising out of the filing or recording hereof.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers or other persons thereunto duly authorized, as of the date first above written.

[Seal]
Attest:

CHEMICAL BANK, as Agent,

by Michael J. Kline
Vice President

Janet W. Twomey
Title

[Seal]
Attest:

Garnet W. Zwomey
Assistant Secretary

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

by

Vice President

INVESTOR:

CHEMICAL BANK,

by

Michael J. Kline
Vice President

PERMANENT INVESTORS:

UNION MUTUAL LIFE INSURANCE
COMPANY,

by

Senior Vice President

UNIONMUTUAL PENSION
& INSURANCE CORPORATION,

by

Senior Vice President

AMERICAN GUARANTEE
& LIABILITY INSURANCE COMPANY,

by

Title:

EMPIRE FIRE AND MARINE
INSURANCE COMPANY,

by

Title:

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY,

by

Title:

| <u>Name and Address</u> <u>of Investor</u> | <u>CSA Indebtedness</u> <u>to be held (after principal</u> <u>repayment of \$476,045.58)</u> |
|--|--|
| Chemical Bank 277 Park Avenue New York, N.Y. 10172 | \$10,000,000 |
| Attention of Kansas City Southern Industries Account Officer | |

| <u>Name and Address of Permanent Investors</u> | <u>Commitment</u> |
|--|-------------------|
| Union Mutual Life Insurance Company 2211 Congress Street Portland, Maine 04122 Attention of Bond Investment Division Payment of principal and/or interest to be made by bank wire transfer of Federal Funds to Maine National Bank, 400 Congress Street, Portland, Maine 04112 for credit to Account No. 00-0062-0, with sufficient information to identify the source and application of funds. | \$2,000,000 |
| Unionmutual Pension & Insurance Corporation 2211 Congress Street Portland, Maine 04122 Attention of Bond Investment Division Payment of principal and/or interest to be made by bank wire transfer of Federal Funds to Maine National Bank, 400 Congress Street, Portland, Maine 04112 for credit to Account No. 005-3796-9, with sufficient information to identify the source and application of such funds. | \$5,000,000 |

Name and Address of
Permanent Investors

Commitment

American Guarantee & Liability
Insurance Company
231 North Martingale Road
Schaumburg, Illinois 60196

\$1,000,000

Attention of Mr. Stuart Olin,
Vice President

Certificate of Interest to be issued
in the name of Boehm & Co.

Payments shall be made by wire transfer
of immediately available funds to
Boehm & Co., in care of Bankers Trust
Company, Personal Trust, One Bankers
Trust Plaza (25th Floor), Attention of
Income Collection (interest payments
only) (Attention of Reorganization for
payments other than interest) for
American Guarantee & Liability
Insurance Company, Account No. 361565,
New York, N.Y. 10005, with sufficient
information to identify the source and
application of funds.

Name and Address of
Permanent Investors

Commitment

Empire Fire and Marine
Insurance Company
1624 Douglas Street
Omaha, Nebraska 68102

\$1,000,000

Attention of Frank Kratky,
Treasurer

All payments on account of the
Certificate or the Agreement shall
be made by bank wire transfer of
immediately available funds to:

First National Bank of Omaha
Trust Department
One First National Center
Omaha, Nebraska
Account No. 15-23296-070

All other communications shall be
delivered or mailed to:

Empire Fire and Marine Insurance Company
1624 Douglas Street
Omaha, Nebraska 68102

Name and Address of
Permanent Investors

Commitment

Universal Underwriters Insurance Company \$1,000,000
5115 Oak Street
Kansas City, Missouri 64112

Attention of Mr. G. B. Martin,
Vice President and Treasurer

Certificate of interest to be issued in
the name of UUVEST.

Payments of principal shall be made by
wire transfer of immediately available
funds to UUVEST, in care of United
Missouri Bank, 10th and Grand Streets,
Kansas City, Missouri 64141, for
Universal Underwriters Insurance Company,
Account Number 000-738-2, Tax I.D. No.
431266724, with sufficient information
to identify the source and application
of funds. Payments of interest shall be
sent to Universal Underwriters Insurance
Company, 5115 Oak Street, Kansas City,
Missouri 64112, Attention of Investments,
with sufficient information to identify
the source and application of funds.

\$ 10,000,000

CERTIFICATE OF INTEREST

CHEMICAL BANK ("Agent") hereby acknowledges receipt from

("Permanent Investor") of

Dollars (\$) _____), such sum having been paid by the Permanent Investor under and pursuant to the terms and conditions of an Amended and Restated Finance Agreement and Amendment dated as of May 1, 1983 ("Finance Agreement"), among the Agent, THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("Railroad"), the party named in Schedule A to the Finance Agreement, the Permanent Investor and the other party named in Schedule B to the Finance Agreement. By reason of such payment the Permanent Investor has an interest in a principal amount equal to such sum in the CSA Indebtedness (as defined in the CSA hereinafter mentioned) and in and to (i) the Conditional Sale Agreement dated as of November 30, 1981 ("CSA"), between General Motors Corporation (Electro-Motive Division) ("Builder"), and the Railroad, (ii) the related Agreement and Assignment dated as of November 30, 1981, between the Builder and the Agent, (iii) the right, title and interest of the Agent in and to the railroad Equipment covered by the CSA and (iv) all cash and other property from time to time held by the Agent under the Finance Agreement, except to the extent that installments of such principal amount shall have been paid.

Under the terms of the CSA and the Finance Agreement, subject to the rights of prepayment contained therein in the event of a Casualty Occurrence (as defined therein), (i) such principal amount is repayable in 8 consecutive equal annual installments on June 1 in each year commencing June 1, 1986, to and including June 1, 1993, (ii) such principal amount bears interest, payable semiannually on June 1 and December 1 in each year, commencing December 1, 1983, on the unpaid portion thereof from time to time outstanding from the date of this certificate until the same shall have become due and payable, at the rate of 11-3/8% per annum, and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest, to the extent legally enforceable, at the rate of 12-3/8% per annum. All payments received by the Agent in accordance with the terms of the Finance

Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Finance Agreement.

Dated:

CHEMICAL BANK, as Agent under
the Finance Agreement,

By

Authorized Officer

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

[CS&M Ref. No. 2302-842]

CONDITIONAL SALE AGREEMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

(Covering 2 GP-40-2 Road Locomotives and 10 SD-50 Road Locomotives)

Filed with the Interstate Commerce Commission pursuant to
49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m.,
recordation number 13340.

CONDITIONAL SALE AGREEMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

CONDITIONAL SALE AGREEMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (the "Railroad").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad rolling stock equipment described in Schedule B attached hereto (the "Equipment") subject to the terms and conditions set forth herein;

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

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its 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, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Sale and Purchase. Subject to the terms and conditions set forth in this Agreement, the Builder shall construct the units of the Equipment at its plant set forth in Schedule B hereto and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall have been constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between the Builder and the Railroad (which specifications

and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be standard gauge railroad rolling stock equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the 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), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or after any event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

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

Notwithstanding the preceding provisions of this Article 3, (1) 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 and (2) if the aggregate Invoiced Purchase Prices (as defined in Article 4 hereof) of all Equipment previously settled for under this Agreement exceeds \$11,225,000, the Railroad may exclude herefrom any units of Equipment not theretofore settled for under this Agreement. If any unit or units of Equipment shall be excluded from this Agreement pur-

suant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise expressly provided in the purchase order or orders covering the Equipment, the Railroad shall nevertheless be obligated to accept any Equipment excluded from this Agreement 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 Builder, such payment to be in cash within 30 days following the later of the delivery of, or the presentation of the invoice for, 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 the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion 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 conforms to the Specifications, requirements and standards applicable thereto, on or prior to the Closing Date (as defined in Article 4 hereof) hereunder in respect of each such unit of Equipment acquired by the Railroad, such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to the Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

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, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

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 Builder and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment of the Builder shall be divided into groups of units of the Equipment, delivered to and accepted by the Railroad during a period of not less than 30 days (each such group being hereinafter called a Group), or otherwise as the Builder, the Railroad and the Vendor may agree to.

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

Amended

(a) on each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$11,225,000 and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

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(b) in 30 equal consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount, if any, paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

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The installments of the CSA Indebtedness shall be payable semiannually, in immediately available funds, on June 1 and December 1 in each year commencing June 1, 1982, to and including December 1, 1996 (or if any such date is not a business day (as hereinafter defined), on the next succeeding business day with interest at the rate per annum specified below), each such date being hereinafter called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date on which such indebtedness was incurred at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean with respect to any CSA Indebtedness (a) initially, the period from the Closing Date in respect of which such CSA Indebtedness was incurred and ending on November 30, 1981; provided that (x) if such date is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day, unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day, (y) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period is to end) shall end on the last Banking Day of the calendar month during which such Interest Period is to end and (z) interest shall accrue from and including the first day of each Interest Period to but excluding the last day of such Interest Period, and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such CSA Indebtedness and ending on the numerically corresponding day in the calendar month 1 month, 3 months, 6 months or 12 months thereafter, as the Railroad shall select in the notice given pursuant to (b) below, or if the Railroad shall fail to so select, 1 month; provided, as aforesaid; provided further, that if the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply is required to be paid on the next succeeding Payment Date, such Interest Period shall end no later than such Payment Date; (ii) "Floating Rate" shall mean (a) the LIBOR Rate plus 1/2 of 1% or (b) the Prime Rate, as the Railroad shall select by giving written or telex notice to Chemical Bank ("Chemical") not later than 12:00 noon New York City time on the day three Banking Days prior to each Interest Period, or if the Railroad shall fail to so select, the Prime Rate; (iii) "Banking Day" shall mean any day other than a Saturday, Sunday or legal holiday on which banks are open for business (including dealings in dollar deposits) in New York City and

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in the London Interbank Market; (iv) "Prime Rate" shall mean the rate per annum announced by Chemical from time to time as being in effect for prime commercial domestic loans of 90-day maturities (for purposes of this Agreement, any change in the Prime Rate shall be effective on the date such change is announced by Chemical); and (v) "LIBOR Rate" with respect to any Interest Period, shall mean an interest rate (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the London office of Chemical by leading banks in the London Interbank Market at 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period for deposits in dollars approximately comparable in principal amount to the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply and for the maturity comparable to the applicable Interest Period. Each determination of the LIBOR Rate shall be made by Chemical and shall be conclusive absent manifest error.

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Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued (i) on portions of the CSA Indebtedness as to which the Prime Rate applies, on each June 1 and December 1 commencing June 1, 1982, and (ii) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, on the last date of the applicable Interest Period (provided that if such Interest Period shall be greater than six months in duration, interest shall be payable on the dates referred to in (i) commencing with the first of such dates after the commencement of such Interest Period, and on the last date of such Interest Period).

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In the event that, on each occasion, on the day two Banking Days prior to the commencement of any Interest Period, Chemical shall have determined (which determination shall be conclusive and binding on the Railroad) that dollar deposits in the applicable amounts are not generally available in the London Interbank Market, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Chemical of making and maintaining its investment in the CSA Indebtedness pursuant to the Finance Agreement (its "Investment"), or that reasonable means do not exist for ascertaining the LIBOR Rate, Chemical shall as soon as practicable thereafter give written or telex notice of such determination to the Railroad. If such notice shall have been given and until the circumstances giving rise to such notice no longer exist, the Floating Rate

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shall be the Prime Rate. Each determination of Chemical hereunder shall be conclusive absent manifest error.

Since the cost to Chemical of making or maintaining the Investment may fluctuate as a result of imposition of, or changes in, the reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States, including, but not limited to any reserve on Eurocurrency Liabilities as defined by Regulation D at the ratios provided in such Regulation from time to time, it is hereby agreed that the Investment shall be deemed to constitute a Eurocurrency Liability (as defined in such Regulation). Such Eurocurrency Liability shall further be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may otherwise be available to Chemical from time to time under such Regulation. The Railroad shall pay to Chemical such additional amount or amounts as will compensate it for the effect of such reserve requirements as determined by Chemical on the basis of such reserve requirements applicable to it, which determination shall be conclusive absent manifest error.

Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to Chemical with respect to the Investment (other than taxes imposed on the overall net income of Chemical by the jurisdiction in which Chemical has its principal office or by any political subdivision or taxing authority therein), or shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Chemical, or shall impose on Chemical or the London Interbank Market any other condition affecting the Investment and the result of any of the foregoing shall be to increase the cost to Chemical of making or maintaining the Investment or to reduce the amount of any sum received or receivable by Chemical in respect thereof, by an amount deemed by Chemical to be material, then (but without duplication for payments otherwise required under this Agreement), the Railroad shall pay to Chemical, upon Chemical's demand, such additional amount or amounts as will compensate Chemical for such additional cost or reduction. A certificate

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of Chemical setting forth the basis for the determination from time to time of such amount or amounts as shall be necessary to compensate Chemical as specified in this paragraph shall be delivered to the Railroad and shall be conclusive absent manifest error. Failure on the part of Chemical to demand compensation for any increased costs in any Interest Period shall not constitute a waiver of the Chemical's rights to demand compensation for any increased costs in any other Interest Period. Chemical's right to any additional compensation for increased costs due under this paragraph shall be absolute and shall not be subject to any contention of invalidity or inapplicability of the law or regulation or the interpretation or administration thereof imposing such increased costs on Chemical.

Notwithstanding anything to the contrary herein contained, if any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for Chemical to make or maintain the Investment at the LIBOR Rate, Chemical may, by written notice to the Railroad, declare that the Floating Rate shall thereafter be the Prime Rate. For purposes of this paragraph, a notice to the Railroad by Chemical shall be effective, if lawful, on the last day of the then current Interest Period or, if there are then more than one current Interest Period, on the last day of each such Interest Period, respectively, otherwise, such notice shall be effective on the date of receipt by the Railroad.

The Railroad shall indemnify Chemical against any loss or expense which Chemical may sustain or incur as a consequence of any change in the Floating Rate described in the preceding paragraph or as a consequence of any prepayment of the CSA Indebtedness (including any loss incurred or to be incurred by it in the reemployment of funds released by any prepayment).

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to November 30, 1981, the Cut-Off Date), not more than 15 business days following presentation by the Builder 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 four business days prior to the Closing Date designated therein. Such notice shall set forth the number and the

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Invoiced Purchase Price of the units of Equipment to be settled for on such Closing Date and the amount or amounts payable by the Vendor to the Builder pursuant to the terms of any assignment by the Builder of its rights hereunder.

The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

Interest under this Agreement shall be calculated on the basis of (x) on portions of the CSA Indebtedness as to which the Prime Rate applies, a 360-day year of 12 30-day months and (y) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, the actual number of days elapsed in a year of 360 days.

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The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% per annum in excess of the applicable rate 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 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 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 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 counsel for the Vendor, adversely affect the property 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. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property 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 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 its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the 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 title of the Railroad to 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 the 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 set forth in any amendment or supplement 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 such 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 markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any unit of such 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 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 (other than the Vendor) 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; Prepayment of CSA Indebtedness; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed \$50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When 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 Vendor pursuant to this Article 8) shall exceed \$200,000, the Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, 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 such Casualty Value; provided, however, that if a proceeding specified in clause (c) or (d) of Article 16 hereof shall have been commenced or an event of default or event which with notice, lapse of time and/or demand or failure to take action provided for in Article 16 hereof shall have occurred and be continuing (any such commencement, event of default or event being herein called a "Default"), the Railroad shall forthwith after it has knowledge of any Casualty

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Occurrence pay to the Vendor a sum equal to the aggregate Casualty Value of each unit of the Equipment suffering a Casualty Occurrence as of the date of such payment. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the prepayment of the installments of the CSA Indebtedness in the inverse order of maturity, without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid.

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So long as no Default shall have occurred and be continuing, the Railroad may, at any time after it has informed the Vendor in regard to a Casualty Occurrence, cause to be transferred to the Vendor a replacement unit or units of new standard-gauge railroad rolling stock (other than passenger or work equipment) to replace units suffering a Casualty Occurrence and receive credit therefor in an amount equal to the cost thereof (as evidenced by the invoice therefor specified in the next paragraph) against any Casualty Value payment it might otherwise be required to make in respect of the unit or units which shall have suffered the Casualty Occurrence. Such unit or units of replacement equipment shall have a useful life at least as long as that which the Equipment described in Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence.

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Whenever the Railroad shall cause any unit of replacement equipment to be transferred to the Vendor in lieu of making all or any part of any Casualty Value payment, the Railroad shall deliver to the Vendor at the time of transfer of such replacement unit bills of sale, invoices and certificates of acceptance, substantially in the form provided by the first assignment of this Agreement by the Builder, together with:

(1) a certificate of an officer of the Railroad certifying (i) that such replacement unit is new "standard gauge" railroad rolling stock (other than passenger or work equipment), (ii) the date such unit was first put into service, (iii) that such unit has a useful life at least as long as the Equipment of the type described in Schedule B hereto would have had but for the Casualty Occurrence and has been marked as required by the provisions of this Article 8 and (iv) the cost thereof;

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(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has come under and become subject to this Agreement pursuant to a supplement hereto, that all necessary filings have been made to perfect the interests of the Vendor therein and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (as now in effect or as hereafter amended) with respect to such replacement unit; and

(3) an executed counterpart of the supplement referred to in clause (2) above stamped to show filing under 49 U.S.C. § 11303.

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 such Casualty Value is determined 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 cost thereof as of the date of acquisition by the Vendor of such replacement unit as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined 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 replacements of Equipment or parts thereof 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 Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured or sold by it. Title to all such replacement units and parts 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 (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) 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 and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

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 full satisfaction by the Railroad of its obligations hereunder in respect of 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 or part thereof 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, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on or in respect of similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on or in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, 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, 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, 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 opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder, on or before March 31 in each year, commencing with the calendar year 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the preceding December 31 the total number, description and identifying numbers of all units of the Equipment (i) 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), and (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than running repairs), and containing such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (B) stating that, (i) 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 and (ii) the insurance which the Railroad is required to carry and maintain pursuant to the last paragraph of Article 8 hereof is in effect. 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.

So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to the Vendor, (i) as soon as available, and in any event within 60 days after the end of the applicable accounting period, two copies of the consolidated balance sheet of the Railroad as of the end of its respective first, second and third quarterly accounting periods in each fiscal year and two copies of the related consolidated statements of income and retained earnings of the Railroad for the portion of its fiscal year ended with the last day of its quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Railroad and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Railroad as at the end of such fiscal year, and of the consolidated statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Railroad's independent public accountants who shall be of recognized national standing and (iii) as soon as available, copies of all material regular and periodic reports to the Securities and Exchange Commission and the Interstate Commerce Commission, including each Annual Report, which are required to be filed by the Railroad. The Railroad further agrees to furnish to the Vendor (x) immediately upon becoming aware of the existence of a Default, a written notice which specifies the nature of the Default (as defined in Article 8 hereof) and what action the Railroad is taking or proposes to take with respect thereto and (y) with reasonable promptness, such other data as from time to time may be reasonably requested.

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The Railroad will permit the Vendor and any representatives of the Vendor to discuss the affairs, finances and accounts of the Railroad with its principal officers all at such reasonable times and as often as may be requested.

ARTICLE 11. Possession and Use. 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 or routes owned or operated by it either alone or

jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate 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 to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned railroad subsidiaries and may lease the Equipment to one or more railroad affiliates or, under a written lease for a term not exceeding six months (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

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, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; 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 opinion of counsel for 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 until reimbursed therefor by the Railroad or otherwise 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, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. 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. Builder's Warranties of Material and Workmanship; Patent Indemnities. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto and the agreement of the parties relating to patent indemnification is set forth in Item 3 of said Schedule A. Such patent indemnification provisions shall continue in full force and effect notwithstanding the full payment of all sums under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any 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 Builder from, any of the obligations of the Builder 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, or relieve the Railroad of any of its obligations to the Builder or 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 and 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 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 purpose 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 Builder with respect to the Equipment or the specifications, 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 Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad 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 from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, except as provided in the purchase order for such Equipment, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of the units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of Chemical Bank 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 on the day on which payment thereof shall be due hereunder; 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 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or a 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 expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the 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 (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 or lapse of time, or both, 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 expressly 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.

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 if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully 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, without 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 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. 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 reasonable point or points selected by the Vendor 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 waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this Agreement 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, storing and maintaining 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, maintaining, 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, maintaining, 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 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 fewer than 40 corporate 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. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. 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 any 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.

From and after the date of any such sale, the Railroad shall pay to the Vendor 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.

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 set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, 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 (which is not overridden by applicable federal law) 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, and 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, etc. The Railroad will, at its own expense, 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. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, refile, register, deposit, record and rerecord 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 interests in and to the Equipment 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 Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

This Agreement creates a security interest for

the benefit of the Vendor in the Equipment the possession and use of which has been or will be transferred to the Railroad, which security interest secures payment and performance by the Railroad of its obligations under this Agreement.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or any successor agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, and all fees and expenses of Messrs. Cravath, Swaine & Moore, as special counsel for the first assignee of this Agreement and for any party initially acquiring interests in such first assignment, and all reasonable legal expenses in connection with the transfer by any party of interests acquired in such first assignment.

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 its chief place of business at the following specified addresses:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Builder, 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, except to the extent expressly provided in the third paragraph of Article 3 hereof and the final paragraph of Article 15 hereof, supercedes 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 Missouri; 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, or in which any unit of the Equipment shall be located, including any Federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, 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, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by

Donald L. Graf
Vice President

[Corporate Seal]

Attest:

Geraldine D. Dollins
Assistant Secretary

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

P. K. Hoglund

Vice President

[Corporate Seal]

Attest:

W. J. Scott

Assistant Secretary

STATE OF MISSOURI,)
) ss.:
COUNTY OF JACKSON,)

On this 25th day of November 1981, before me personally appeared Donald L. Graf, to me personally known, who, being by me duly sworn, says that he is Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that the corporate seal of said Corporation is affixed to the foregoing instrument, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Irene Paulhe
Notary Public
Irene Paulhe
Notary Public-State of Missouri
Commissioned in Platte County
My Commission Expires March 22, 1983

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

On this 25th day of November 1981, before me personally appeared P. K. Hoglund, to me personally known, who, being by me duly sworn, says that he is 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.

[NOTARIAL SEAL]

Juanita Acantilado
Notary Public

My Comission Expires April 17, 1984

SCHEDULE A

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

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

- Item 3: GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's right under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this

Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 8 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Railroad.

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

SCHEDULE B

| <u>Type</u> | <u>Builder's Specifications</u> | <u>AAR Mechanical Designation</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Railroad Road Numbers</u> | <u>Unit Base Price</u> | <u>Total Delivered Price</u> | <u>Estimated Time and Place of Delivery</u> |
|---------------------------|---------------------------------|-----------------------------------|------------------------|-----------------|------------------------------|------------------------|------------------------------|---|
| GP 40-2 Road Locomotives | 8091 | B-B | McCook, Illinois | 2 | KCS 796 KCS 797 | \$799,080.00 | \$1,608,015.60 | Bloomburg, Texas November, 1981 |
| 10 SD-50 Road Locomotives | 8115 | C-C | McCook, Illinois | 10 | KCS 704- 713 | \$954,310.00 | <u>\$9,616,318.96</u> | Bloomburg, Texas November, 1981 |
| | | | | | | | \$11,224,334.56 | |

CSM Ref. No. 2302-842

AGREEMENT AND ASSIGNMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

CHEMICAL BANK

Filed with the Interstate Commerce Commission pursuant to
49 U.S.C. § 11303 on November 30, 1981, at 10:30 a.m.,
recordation number 13340-A.

AGREEMENT AND ASSIGNMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

AGREEMENT AND ASSIGNMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder"), and CHEMICAL BANK (the "Assignee").

WHEREAS the Builder and The Kansas City Southern Railway Company (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad rolling stock equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereby agree as follows:

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

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA on account of its indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA other than those hereinabove excluded; and

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

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder shall not deliver any of the Equipment to the Railroad under the CSA until any necessary filings and recordations referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice of special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on,

indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Schedule A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the 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 Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, at least two business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of its Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the CSA has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid, binding and enforceable instrument, (iii) the Assignee is

vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution, delivery and performance of the CSA or this Assignment by the parties thereto, (vi) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vii) registration of the CSA or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended and (viii) the rights of the Assignee to possession of the Equipment would be subject to the provisions of 11 U.S.C. § 1168 (assuming the Railroad continues to be a "railroad" as defined in 11 U.S.C. § 101(33)); such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and substance to said counsel and that said counsel believe that the Assignee is justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (iv), (v) and (vi) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of this Assignment and the CSA by all parties thereto other than the Railroad) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) each of this Assignment and the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by the Builder and is a legal, valid and enforceable instrument binding upon the Builder;

(g) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to this first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad; and

(h) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (1) no event of default, or event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and is then continuing and (2) no Federal tax liens (including tax liens filed pursuant to section 6323 of the United States Internal Revenue Code of 1954, as amended) or, to the best of the knowledge and belief of the Railroad, other tax liens, have been filed and are then in effect against the Railroad which could adversely affect the interest of the Assignee in the Equipment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (d) and (e), counsel may rely, as

to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the CSA, on the opinion of counsel for the Builder; and, in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Railroad or the opinion of counsel for the Builder as to such matter.

The Assignee shall not be required to make payment for the Equipment assigned hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA.

In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee. If the aggregate Purchase Price (as defined in the CSA) of the Equipment exceeds \$11,225,000 and the Railroad does not make the payments specified in subparagraph (a) of the third paragraph of Article 4 of the CSA with respect to any unit of Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment in respect of which the Purchase Price exceeds \$11,225,000.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment and upon the giving of notice required in Article 15 of the CSA, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

In compliance with Article 21 of the CSA, the address of the Assignee is 20 Pine Street, New York, New York 10005, attention of Kansas City Southern Industries, Inc.-- Account Officer.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment 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.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constitut-

ing but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

P. K. Hoglund

Vice President

[CORPORATE SEAL]

Attest:

W. J. Scott

Assistant Secretary

CHEMICAL BANK,

by

John H. Roach, Jr.

Vice President

Attest:

Nancy McNaley

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE KANSAS CITY SOUTHERN RAILWAY COMPANY hereby acknowledges due notice (and receipt of an executed copy) of and consents to the assignment made by the foregoing Agreement and Assignment dated as of November 30, 1981.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

by

Donald L. Graf

Vice President

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

On this 25th day of November 1981, 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, 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.

Juanita Acantilado
Notary Public

[NOTARIAL SEAL]

My Commission Expires April 17, 1984

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

On this 25th day of November 1981, before me personally appeared J. H. Roach, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, 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.

Ivy L. Soltz
Notary Public
Ivy L. Soltz

[NOTARIAL SEAL]

My Commission Expires

Notary Public-State of New York
No. 4627098
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires March 30, 1982