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17270
MAR 29 1991

MAR 29 1991 - 8 35 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D.C.

March 27, 1991

17270
MAR 29 1991

MAR 29 1991 - 8 35 AM

INTERSTATE COMMERCE COMMISSION

Re: Southern Pacific Transportation Company

1-092A002

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and four counterparts of a Conditional Sale Agreement dated as of March 1, 1991 (the "Conditional Sale Agreement") and Agreement and Assignment dated as of March 1, 1991 (the "Assignment") relating thereto. Said Conditional Sale Agreement and Assignment are each primary documents.

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

The names and addresses of the parties are:

Railroad under Conditional
Sale Agreement:

Southern Pacific Transportation
Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Treasurer

Builder-Vendor under
Conditional Sale Agreement
and Builder under
Agreement and Assignment:

Morrison Knudsen Corporation
720 Park Boulevard
P.O. Box 73
Boise, Idaho 83729
Attention: Vice President
Locomotive Division

Assignee under Agreement
and Assignment:

The Bank of New York
101 Barclay Street
New York, New York 10007
Attention: Corporate Trust Dept.

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Chapman and Cutler

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New Member

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SCHEDULE A

<u>Type</u>	<u>Builder's Specifications</u>	<u>Plant</u>	<u>Quantity</u>	<u>Minimum Unit Base Price</u>	<u>Minimum Total Base Price</u>	<u>Road Number (Inclusive)</u>
3000 H.P. GP40M-2 road freight locomotive	As per Section 2 of Proposal dated July 3, 1990 submitted by Builder to Railroad	Boise, Idaho or Mountain Top, Pennsylvania	45	\$742,113	\$33,395,085	SP7294-SP7299, SP7100-SP7138

Interstate Commerce Commission
Washington, D.C. 20423

4/2/91

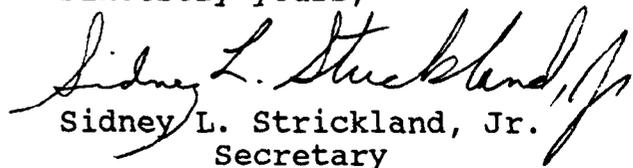
OFFICE OF THE SECRETARY

Ross D. Taylor Esq.
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/29/91 at 8:35am, and assigned recordation number(s). 17270 & 17270-A

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

17270

MAR 29 1991 -8 35 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1991

Between

MORRISON KNUDSEN CORPORATION

Builder

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Railroad

45 Remanufactured General Motors GP40M-2 3000 H.P. Road Freight Locomotives

\$33,500,000 10.15% Conditional Sale Indebtedness due March 1, 2003

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CONDITIONAL SALE AGREEMENT dated as of March 1, 1991, between MORRISON KNUDSEN CORPORATION, an Ohio corporation (the "*Builder*" or the "*Vendor*", as the context may require, all as more particularly set forth in Article 1 hereof), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "*Railroad*").

RECITAL

The Builder has agreed to remanufacture, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the remanufactured locomotives described in Schedule B hereto (the "*Equipment*").

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

ARTICLE 1. CERTAIN DEFINITIONS.

The term "*Vendor*", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto 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, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and businesses. The Railroad has entered into a Finance Agreement dated as of the date hereof (the "*Finance Agreement*"), among the Railroad, The Bank of New York, as Agent (the "*Agent*"), and the parties named in Schedule A thereto (the "*Investors*").

Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

ARTICLE 2. CONSTRUCTION AND SALE.

Pursuant to this Agreement, the Builder shall remanufacture the units of the Equipment as described in Schedule B hereto at its plant described in said Schedule B 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. The Builder represents and warrants (i) that each unit of Equipment shall be remanufactured in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Railroad and the Investors (which specifications and modifications, if any, are hereinafter called the "*Specifications*"), and (ii) the design, quality and component parts of each unit of

Equipment shall conform, on the date of completion of the remanufacture of each thereof, to all United States of America Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to equipment of the character of such units of the Equipment.

ARTICLE 3. INSPECTION AND DELIVERY.

The Builder will deliver the units of the Equipment to the Railroad at the place or places designated from time to time by the Railroad with the consent of the Builder, freight charges and storage charges, if any, prepaid for the account of the Railroad, in accordance with the delivery schedule set forth in Item 2 of Schedule A hereto; *provided, however*, that the Builder shall not be obligated to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing.

The Builder shall not be held responsible for any delay or failure to perform to the extent that such delay or failure is the result of any cause not reasonably within its control and which makes performance impossible. Causes beyond the control of the Builder shall include, but not be limited to, actions by any federal, state or local government or agency; strikes or other labor disruption; fire or other damage to its manufacturing facilities; lack of or other inability to obtain materials, labor, fuel or supplies; delays or defaults by subcontractors or suppliers; the inability to obtain transportation or necessary component parts (except the locomotive cores); and acts or omissions of the Railroad, including Railroad-directed changes in the Specifications. Whenever it has reason to believe that performance will be delayed due to causes beyond its control, the Builder shall give the Railroad notice of the length of the estimated delay and of the steps it is taking to eliminate or mitigate the delay.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before September 30, 1991 (the "*Cut-Off Date*") shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when the Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement or such other appropriate method of financing as the Railroad shall determine and as shall be acceptable to the Builder.

During remanufacture, 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 will inspect all materials used in the construction of the 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, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance ("*Certificate of Acceptance*") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are, or will be, marked in accordance with Article 7 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. PURCHASE PRICE AND PAYMENT.

The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase as is agreed to by the Builder and the Railroad. The term "*Purchase Price*" as used herein shall mean the base price or prices as so increased.

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

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

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the Purchase Price of the units of the Equipment for which settlement is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the "*Invoiced Purchase Prices*"), exceeds (y) the lesser of \$744,444.44 or the fair market value of such units; and

(b) in 11 consecutive equal annual installments of principal, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to

subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

The installments of the CSA Indebtedness shall be payable annually on March 1 in each year commencing on March 1, 1993, to and including March 1, 2003. The CSA Indebtedness may not be prepaid except pursuant to Article 8 hereof in the case of a Casualty Occurrence. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such CSA Indebtedness was incurred at the rate of 10.15% per annum, and such interest shall be payable, to the extent accrued, on September 1 and March 1 in each year, commencing September 1, 1991.

The term "*Closing Date*" with respect to any Group of the Equipment shall mean such date or dates (on or after March 27, 1991, and prior to the Cut-Off Date) as are designated as Closing Dates in Item 2 of Schedule A hereto or as otherwise designated by the Railroad upon 5 business days notice to special counsel to the Investors, the Vendor and the Builder. 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, Boston, Massachusetts or San Francisco, California, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. If any payment date is not a business day, the payment may be made on the next business day and no default interest shall accrue for the intervening period.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 12.15% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

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

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address and in the manner 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 and the Investors (the "*Indemnified Persons*") for collection or other charges and will be free of expense to the Indemnified Persons 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 levied with respect to the income of the Indemnified Person) or license fees, assessments, charges,

finer or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "*Impositions*"), all of which Impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep all and every part of the Equipment at all times free and clear of all Impositions which might in any way affect the title and security interest of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such Impositions shall have been charged or levied against any Indemnified Person directly and paid by such Indemnified Person, the Railroad shall reimburse such Indemnified Person upon presentation of an invoice therefor, and any amounts so paid by such Indemnified Person shall be secured by and under this Agreement; *provided, however*, that the Railroad shall not be obligated to reimburse any Indemnified Person for any Impositions so paid unless such Indemnified Person shall have been legally liable with respect thereto (as evidenced by an opinion of counsel reasonably acceptable to both such Indemnified Party and the Railroad) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. TITLE TO THE EQUIPMENT.

The Vendor hereby retains title to 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 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, it being understood that the Builder shall not be responsible in respect of its warranties or patent indemnification with respect to any such accession unless the same is supplied by the Builder.

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 and full title to the Equipment shall pass to and vest in the Railroad (free of any security interest hereunder) 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 (without representations or warranties except as to acts of the Vendor) transferring and releasing its title therein to the Railroad, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained

hereby or otherwise created by the Vendor and deliver such bill or bills of sale to the Railroad, (b) execute and deliver for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the title and security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. MARKING OF 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 shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will cause such markings to be placed on each Unit of Equipment on or prior to the date of acceptance hereunder and will promptly replace any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement shall have been previously 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 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 United States affiliates.

ARTICLE 8. CASUALTY OCCURRENCES; INSURANCE.

In the event that any unit of the Equipment shall be lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a "*Casualty Occurrence*"), the Railroad shall promptly and fully inform the Vendor in

writing in regard thereto (but no later than 30 days after it has knowledge of such Casualty Occurrence). When any unit or units shall have suffered a Casualty Occurrence, the Railroad within 40 days after the Railroad has knowledge of such occurrence shall pay to the Vendor a sum equal to the aggregate Casualty Value of such unit or units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default of which the Vendor has actual knowledge shall have occurred and be continuing hereunder, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor prior to the February 1 next following the date of the deposit of the Casualty Value as provided in the preceding paragraph, (a) to prepay installments of CSA Indebtedness on the next following March 1 or (b) so long as no event of default under this Agreement or event which with notice or lapse of time or both could constitute an event of default hereunder shall have occurred and be continuing (any such event of default or event being hereinafter called a "Default") to purchase a unit or units of equipment of the same or similar type with the same usage and having at least the same useful life as the Equipment (or such other replacement equipment as may be consented to by Investors holding 75% of the aggregate CSA Indebtedness then outstanding) to replace units suffering a Casualty Occurrence not later than such next following March 1; *provided*, that with respect to any unit suffering a Casualty Occurrence which occurs between September 1 and February 1, if the Railroad elects to replace such unit, the Railroad shall have until the next following September 1 to procure a replacement unit to be purchased by the Vendor pursuant hereto; *provided*, however, that if the Railroad fails to procure such a replacement unit, the Vendor shall apply the Casualty Value with respect to such unit to the prepayment of the installments of the CSA Indebtedness on such next following September 1. In the event that the Railroad shall fail to direct the Vendor as to the application of the Casualty Value, the Vendor shall apply such Casualty Value as provided in clause (a) above. For purposes of this Agreement, the Vendor shall be deemed to have actual knowledge of a Default when one or more officers in the Corporate Trust Department of the Agent responsible for monitoring this transaction has actual knowledge of such Default or when the Agent shall have received written notice of such Default in the manner and to the address provided in Section 9 of the Finance Agreement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating or mechanical officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/12th of such original cost for each year in service after incurring such original cost; and, for this purpose, original cost shall mean the cost paid to the manufacturer thereof in the case of new Equipment and the cost of the remanufacture thereof in the case of remanufactured Equipment. In case any money is applied pursuant to this Article 8 to prepay CSA Indebtedness, it shall be so applied *first* to the installment of

CSA Indebtedness falling due on March 1, 2003, and *then*, to the remaining installments of CSA Indebtedness in inverse order of their maturity.

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

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "*Equipment*" as used in this Agreement; *provided, however*, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the security interest retained hereunder and the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

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

- (1) a certificate of the Vice President - Finance, the Treasurer or the Controller of the Railroad certifying that the Railroad is not in Default hereunder and that such replacement unit is equipment of the same or similar type, with the same usage and having at least the same useful life as the Equipment (or such other replacement equipment as may be consented to by Investors holding 75% of the aggregate CSA Indebtedness then outstanding) and has been marked as required by the provisions of Article 7 hereof and certifying the cost of such replacement unit;

(2) a bill of sale to the Vendor for such unit transferring title and security interest to the Vendor hereunder free and clear from all claims, liens, security interests and other encumbrances, except the rights of the Railroad under this Agreement; and

(3) an opinion of counsel for the Railroad that the Vendor has title to such replacement unit, 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 and all necessary filings and recordings have been made to perfect the interests of the Vendor therein and that the Vendor is entitled to the benefits of 11 U.S.C. §1168 with respect to such replacement unit in the event of the filing of a petition for the reorganization of the Railroad under Title 11 of the United States Code.

So long as no Default of which the Vendor has actual knowledge shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct and shall so certify that no Default has occurred and is continuing, be invested and reinvested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, or (ii) open market commercial paper rated at least "A-1" by Standard & Poor's Corporation or at least "P-1" by Moody's Investors Service, Inc., or the successor of either of them, in each case maturing in not more than one year from the date of such investment and in each case not constituting zero coupon bonds and not purchased at a deep discount from face value (such investments being hereinafter called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, so long as no Default of which the Vendor has actual knowledge shall have occurred and be continuing, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad upon its request. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; *provided, however*, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied, within the time period specified in the second paragraph of this Article 8, only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default of which the Vendor has actual knowledge shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments and all proceeds thereof and interest thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof and the Vendor shall be entitled to liquidate any Investments in connection with such application.

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

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

ARTICLE 9. MAINTENANCE; COMPLIANCE WITH LAWS AND RULES.

(a) 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, ordinary wear and tear excepted.

(b) During the term of this Agreement, the Railroad will at all times comply in all respects with all laws, rules and regulations of the jurisdictions in which its material operations involving the Equipment may extend, with the rules of the Association of American Railroads and with all lawful rules and regulations of the United States of America Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws, rules and regulations affect the title to the Equipment, or materially affect the operation or use of the Equipment, and in the event that such laws, rules or regulations require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. REPORTS AND INSPECTIONS.

On or before May 1 in each year, commencing with the year 1992, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad who may be the Vice President - Finance, the Treasurer, the Controller or the Chief Mechanical Officer of the Railroad (a) setting forth as of the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs), (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced, (c) setting forth a description of the condition and state of repair of all of the Equipment and (d) covering such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonable request. The Vendor and the Investors shall have the right, by their agents, to inspect the Equipment and the Railroad's records with respect thereto and to discuss the affairs of the Railroad and the status of the Equipment with officers of the Railroad and, if an event of default shall have occurred and be continuing, with representatives of its certified public accountants, all at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. POSSESSION AND USE; CLASSIFICATION.

(a) So long as no event of default of which the Vendor has actual knowledge shall have occurred under this Agreement and be continuing, the Railroad shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad and the Railroad may allow the use of the Equipment by other railroads controlled by or under common control with the Railroad in accordance with the provisions hereof.

(b) The Railroad represents, warrants and agrees that the Equipment is rolling stock equipment to which the provisions of §1168 of the Federal Bankruptcy Code are applicable.

ARTICLE 12. PROHIBITION AGAINST LIENS.

The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof; *provided, however,* that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement or otherwise in or to the

Equipment. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 13. RAILROAD'S INDEMNITIES.

The Railroad agrees to indemnify, protect and hold harmless each Indemnified Person from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title and a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said title and security interest remains in the Vendor or the transfer of said title and security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. PATENT INDEMNITIES; BUILDER REPRESENTATION; BUILDER WARRANTY OF MATERIAL AND WORKMANSHIP.

(a) The Builder will indemnify, protect and hold harmless the Railroad and each Indemnified Person 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 any Indemnified Person, its assigns or the users of the Equipment because of the use in or about the remanufacturing 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 proprietary right. The Railroad likewise will indemnify, protect and hold harmless each Indemnified Person 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 such Indemnified Person because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to, and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by the

Builder for use in or about the remanufacture or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such 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.

(b) The Builder represents that its entering into this Agreement, or entering into any assignment of this Agreement, does not constitute a non-exempt prohibited transaction within the meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”) with respect to any employee benefit plan (other than a governmental plan) with respect to which the Builder is a party in interest, all within the meaning of ERISA.

(c) The Builder's warranty of material and workmanship and limitations of liability are set forth in Schedule A hereto. If an event of default or a Default shall have occurred and be continuing hereunder, the Vendor shall be entitled to the benefit of, and to enforce, the warranty of material and workmanship of the Builder hereunder and the rights granted by the Builder hereunder to the Railroad in respect of patent or other infringements in respect of the Equipment.

ARTICLE 15. ASSIGNMENTS.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroads 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 manufacture and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and its warranties in Schedule A hereto or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, and this Article 15

or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee or as provided in such assignment, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of the Equipment 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, 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 such units of the Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest charged by The Bank of New York.

ARTICLE 16. DEFAULTS.

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

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

(b) the Railroad shall, for more than 30 days after the Vendor or any Investor shall have demanded in writing performance thereof, fail (other than as described under clause (a) above) 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 or such Investor for such compliance; or

(c) a voluntary petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by the Railroad; or

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed against the Railroad and, unless such petition shall have been dismissed or nullified, all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing and performed and all outstanding events of default (except events of default referred to in Clauses (d) and (f) of this Article 16) shall not have been cured, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings within 60 days after the commencement of such proceedings; or

(e) any other proceedings shall be commenced by 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); or

(f) any other proceedings shall be commenced 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 or all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing and performed and/or all outstanding events of default (except events of default referred to in clauses (d) and (f) of this Article 16) shall not have been cured pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not

subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such proceedings shall have been commenced;

(g) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized use or transfer of the right to possession of any unit of the Equipment;

(h) any representation or warranty made by the Railroad in the CSA, the Finance Agreement or any certificate or document furnished pursuant thereto shall prove to be incorrect in any material respect when made.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "*Declaration of Default*") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default ("*Default Date*") at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed that time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. REMEDIES.

At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter

upon the Railroad's premises or any other premises where the Equipment may be located, without judicial process 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 shall demand possession of the Equipment pursuant to this Agreement and shall designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to maintain the Equipment and to keep it insured as required hereby and to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

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

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

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad or the Investors may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 prospective bidders have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

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

If, after applying all sums of money realized by the Vendor under the remedies herein provided plus any other moneys held by the Vendor or realized by it upon the liquidation of Investments held by it, 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 applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad, will pay all expenses, including reasonable 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 expenses, including reasonable attorneys fees, and the amount thereof shall be included in such judgment.

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

ARTICLE 18. APPLICABLE STATE LAWS.

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

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of

any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. RECORDING.

The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission in accordance with 49 U.S. §11303; and the Railroad will from time to time perform any other act and will execute, deliver and file (and will refile when necessary) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection (to the satisfaction of counsel for the Vendor) of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

ARTICLE 20. PAYMENT OF EXPENSES.

The Railroad will pay all costs and expenses (other than the fees and expenses of any counsel for the Builder) incident to this Agreement, the Finance Agreement and the Agreement and Assignment (as defined in the Finance Agreement) and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent, and any successor agent thereto), and any instrument supplemental or related hereto or thereto, including all reasonable fees and expenses of Chapman and Cutler, counsel for the Investors and all costs and expenses in connection with subsequent transfers by the Investors.

ARTICLE 21. NOTICE.

Any notice required or permitted to be given by any party hereto to any other party or parties shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by registered or certified mail, telex, telecopy (confirmed with a copy by mail) or similar transmission, or by overnight courier or by hand, addressed as follows:

- (a) to the Railroad, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, attention of Treasurer;
- (b) to the Builder, at its address set forth in Item 1 of Schedule A hereto; and
- (c) to The Bank of New York at 101 Barclay Street, New York, New York, 10007, attention of Corporate Trust Department - Administration or to any other 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.

(a) All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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

ARTICLE 23. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by 49 U.S §11303 and such additional rights arising out of any filing of this Agreement and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed.

ARTICLE 24. EXECUTION.

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Agent shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S §1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By *W. C. Yarberry*
Title: Vice President-Finance
Name: W. C. Yarberry

Executed on March 22, 1991.

MORRISON KNUDSEN CORPORATION

By _____
Title:
Name:

Executed on _____, 1991

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S §1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By _____
Title:
Name:

Executed on _____, 1991.

MORRISON KNUDSEN CORPORATION

By *PE J. Knudsen*
Title:
Name:

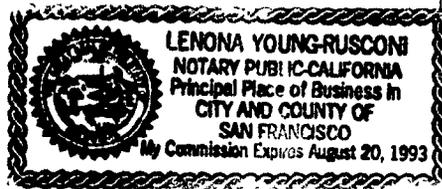
Executed on *Mar 25*, 1991

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN FRANCISCO)

On this 22nd day of March, 1991, before me personally appeared L. C. Yarberry to me personally known, who being by me duly sworn, says that he is the Vice President-Finance of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that said instrument was signed 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.

Lenona Young-Rusconi
Notary Public

[NOTARIAL SEAL]



My commission expires: August 20, 1993

STATE OF _____)
) SS
COUNTY OF _____)

On this ____ day of March, 1991, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of MORRISON KNUDSEN CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this ____ day of March, 1991, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

STATE OF Idaho)
) SS
COUNTY OF Ada)

On this 25th day of March, 1991, before me personally appeared R.E. Jenkins, to me personally known, who being by me duly sworn, says that he is the Vice President of MORRISON KNUDSEN CORPORATION, that said instrument was signed 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.

Linda Ann Rogger
Notary Public

[NOTARIAL SEAL]

My commission expires: 12/7/93

SCHEDULE A

- Item 1: Morrison Knudsen Corporation, an Ohio corporation, Rail Systems Group, having an address at 720 Park Boulevard, P.O. Box 73, Boise, Idaho 83729, Attention: Vice President Locomotive Division (the "*Builder*")
- Item 2: Unless the Builder and the Railroad otherwise agree, the Equipment shall be settled for in accordance with §3 of the Agreement dated August 22, 1990, as supplemented by letter dated December 18, 1990, between the Builder and the Railroad with deliveries commencing in March, 1991 and with not more than ten settlements.
Cut-Off Date: September 30, 1991.
- Item 3: (a) The Builder warrants all locomotives sold under this Agreement, and all components and parts thereof, to be remanufactured to original equipment manufacturer's standards and, at the time of delivery, to be free from defects in workmanship and material. Any such component or part (the "*Part*") which is defective will be repaired or replaced, provided that the Railroad has given the Builder timely notice of the alleged defect, that the Builder has had a reasonable opportunity to inspect the Part and that the Part may be returned to the Builder's manufacturing facilities at the Builder's discretion and at the Railroad's expense. Any and all warranty components that are scrapped by the Railroad will be credited to the Builder's account.
- (b) This Warranty shall not extend to any defect to the extent caused by the failure of the Railroad to comply with the original equipment manufacturer's operating and maintenance recommendations; by the Railroad's misuse, negligence; by accident; or by repairs or alterations which were not authorized or approved by the Builder.
- (c) This Warranty shall expire with respect to each locomotive remanufactured hereunder on the earlier of three (3) years from the date of its delivery or its having operated for 450,000 miles (the "*Warranty Period*").
- (d) THE BUILDER'S LIABILITY HEREUNDER AND FOR ANY BREACH OF THIS AGREEMENT SHALL BE LIMITED TO THE COST OF REPAIRING OR REPLACING THE DEFECTIVE PART UPON ITS DELIVERY TO THE BUILDER AT ITS REMANUFACTURING FACILITY. IN NO EVENT SHALL THE BUILDER BE LIABLE FOR PROXIMATE DAMAGES IN ANY AMOUNT, INCLUDING TRANSPORTATION CHARGES, LOSS OF USE OR DOWNTIME OF A LOCOMOTIVE (EXCEPT AS DESCRIBED IN EXHIBITS 2 AND 3 AND §9 OF THE AGREEMENT DATED AUGUST 22, 1990, AS SUPPLEMENTED BY LETTER DATED DECEMBER 18, 1990, BETWEEN THE BUILDER AND THE RAILROAD) OR FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS.

(e) THIS AGREEMENT IS MADE ON THE EXPRESS UNDERSTANDING THAT THE WARRANTIES SET FORTH IN THIS SCHEDULE A ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. THE RAILROAD ACKNOWLEDGES THAT NO REPRESENTATION NOT SET FORTH HEREIN HAS BEEN MADE TO IT OR RELIED UPON BY IT WITH RESPECT TO THE QUALITY OF ANY REMANUFACTURED LOCOMOTIVE, OR ANY COMPONENT OR PART THEREOF, WHICH IS THE SUBJECT OF THIS AGREEMENT AND THAT THE WARRANTY PROVIDED HEREIN SHALL NOT BE EXTENDED OR ALTERED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY THE BUILDER. THIS SCHEDULE A HAS NO IMPACT ON THE BUILDER'S RESPONSIBILITIES AS SPECIFIED IN EXHIBITS 2 AND 3 AND §9 OF THE AGREEMENT DATED AUGUST 22, 1990, AS SUPPLEMENTED BY LETTER DATED DECEMBER 18, 1990, BETWEEN THE BUILDER AND THE RAILROAD.

Item 4: The Maximum CSA Conditional Sale Indebtedness is \$36,850,000.

**SCHEDULE B
TO
CONDITIONAL SALE AGREEMENT**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Plant</u>	<u>Quantity</u>	<u>Minimum Unit Base Price</u>	<u>Minimum Total Base Price</u>	<u>Road Number (Inclusive)</u>
3000 H.P. GP40M-2 road freight locomotive	As per Section 2 of Proposal dated July 3, 1990 submitted by Builder to Railroad	Boise, Idaho or Mountain Top, Pennsylvania	45	\$742,113	\$33,395,085	SP7294-SP7299, SP7100-SP7138