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CONDITIONAL SALE AND SECURITY AGREEMENT

DATED AS OF MAY 10, 1971

BETWEEN

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

AND

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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AGREEMENT AND ASSIGNMENT

DATED AS OF MAY 10, 1971

BETWEEN

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

AND

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

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2 MODEL SW 1500 DIESEL LOCOMOTIVES

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THIS AGREEMENT dated as of May 10, 1971, by and between  
General Motors Corporation, a corporation of  
the State of Delaware (Electro-Motive Division),  
hereinafter called "Seller", whose address is:  
LaGrange, Illinois 60525

and

Houston Belt & Terminal Railway Company, a  
corporation of the State of Texas, hereinafter  
called "Buyer", whose address is: .

Union Station Building  
Houston, Texas 77002

WITNESSETH, THAT:

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

(1) CONSTRUCTION, SALE AND DELIVERY. Seller hereby agrees  
to construct, sell and deliver to Buyer, and Buyer hereby agrees  
to buy from Seller, accept delivery of, and pay therefor, as  
hereinafter set forth, the following described railroad equip-  
ment (hereinafter sometimes referred to as "Equipment"):

Two (2) new Model 1500 HP SW 1500 Diesel  
Electric Switching Locomotives constructed in  
accordance with Seller's Specifications No.  
8036, bearing

Buyer's Road Numbers

53

54

A copy of said specifications has been furnished to Buyer and  
is, by reference, made a part of this agreement as fully as

though expressly set forth herein.

(A) Purchase Price. The purchase price of each of said two new locomotives shall be the principal amount of \$169,518.00. Interest shall be paid at the rate per annum upon unpaid balances of said purchase price, at the times and in the manner specified in Section 2 of this Agreement.

(B) Delivery. As and when each locomotive is completed and ready for shipment, the Seller shall deliver same to the Buyer on its lines at Houston, Texas, freight charges prepaid and, when delivered, said locomotives shall become subject to the terms and conditions of this Agreement as if delivered simultaneously with the execution and delivery hereof. Buyer shall reimburse Seller in the full amount of said freight charges at the time of delivery, and the same will not constitute any part of the purchase price.

Upon the delivery of each locomotive, Buyer agrees to furnish to Seller, in its name, a certificate executed in quadruplicate by any agent or agents it may designate therefor, stating that said locomotive, specified by number in such certificate, has been delivered to and accepted on its behalf by such agent or agents. The execution of such certificate of acceptance shall be conclusive evidence that said locomotive covered thereby conforms to specifications and is acceptable to Buyer in all details.

The two locomotives will be delivered to Buyer on or about May 18, 1971. Said deliveries shall be subject to all delays due to fire, strikes, labor troubles, accidents, breakdown of machinery, railroad embargoes and congestion, failure or delay of the manufacturer or persons from whom Seller is purchasing machinery, equipment and materials to deliver the same, acts of God, inability of Seller to obtain machinery, equipment or materials because of Governmental regulations or priorities, Government interventions, and all causes beyond the control of Seller affecting Seller, its plant or sources of supply.

(2) PAYMENT OF PURCHASE PRICE. Conditional only upon the receipt and acceptance of said equipment, which may be conclusively presumed from the execution of the certificate of acceptance above referred to, Buyer hereby promises to pay to Seller, or the assignee thereof, at such place as may be designated by Seller or its assignee, the following amounts:

(A) The purchase price of each locomotive shall be paid by Buyer to Seller in seventy-two installments, each equal to one seventy-second of said purchase price. The first such installment shall be due and payable on the date of delivery of such locomotive to and acceptance thereof by Buyer, and the remaining installments shall fall due thereafter, one on the first day of each calendar month following said delivery and acceptance date until

all installments are paid. Buyer will have the right at any time and from time to time to prepay said purchase price, and each prepayment shall be applied to said installments in inverse order of their maturity, and

(B) Buyer shall pay Seller interest on the unpaid balance of said purchase price at a rate per annum equal to the Prime Rate (as said term is hereinafter defined) from time to time in effect, interest to be payable monthly as it accrues concurrently with and in addition to the installments of said purchase price. Interest under this Agreement shall be determined on the basis of a 360 day year of twelve 30 day months. The term "Prime Rate" as used in this Agreement shall mean the prime commercial loan interest rate charged from time to time by Texas Commerce Bank National Association on prime commercial loans of not exceeding ninety day maturities. The Prime Rate shall change as and when said prime commercial loan interest rate shall change.

Buyer further covenants and agrees to pay interest at the rate of ten percent (10%) per annum upon all amounts of (A) and (B) above remaining unpaid after the same become due and payable pursuant to the terms and provisions hereof.

All payments provided for in this Agreement shall be made by Buyer in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

(3) SELLER'S WARRANTY. Seller warrants the locomotives specified herein to be free from defects in material and workmanship under normal use and service; its obligations under this warranty being limited to make good at its factory any part or parts thereof, which shall be returned to it with transportation charges prepaid, within two (2) years after delivery of such

equipment to Buyer, or before the locomotive has been 250,000 miles in scheduled service, whichever event shall first occur, and which Seller's examination shall disclose to its satisfaction to have been thus defective.

This warranty shall not apply to any locomotive components which shall have been repaired or altered unless repaired or altered by Seller or its authorized service representatives, if, in its judgment, such repair or alterations affect the stability of the equipment or if the equipment has been subject to misuse, negligence or accident, nor shall it apply to specialties not of Seller's own specification or design.

Seller reserves the right to make changes in design or add any improvements on equipment at any time without incurring any obligation to install same on equipment previously purchased.

This warranty being expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on Seller's part, and Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its equipment.

(4) TITLE TO THE EQUIPMENT. Seller shall, and hereby does, retain the full legal title to, and property in, and Buyer hereby grants to Seller a purchase money security interest in, any and all of said equipment until Buyer shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by Buyer,

notwithstanding the delivery of the equipment to, and the right to the use thereof by Buyer as herein provided.

Buyer covenants and agrees that it will cause the equipment to be kept numbered with the proper road numbers and to be kept plainly marked, on metal plates upon both sides of each unit of the equipment covered by this agreement, with the name of Seller or of Seller's assignee, as the case may be, in letters not less than one inch in height, followed by the word "Owner", or other appropriate words designated by Seller, and Buyer agrees that it will not place said equipment in operation or exercise any control or dominion over any part thereof until said metal plates so marked have been attached on both sides of each unit of said equipment.

Buyer agrees that it will not during the continuance of this Agreement change the road numbers of said locomotives unless and until notice of any change shall have been given by Buyer to Seller, or to the assignee of Seller, as the case may be.

Except as above provided, Buyer will not allow the name of any person, association or corporation to be placed on the equipment or any replacements thereof, as a designation that might be interpreted as a claim of ownership; provided, however, that Buyer may cause the equipment to be lettered "Houston Belt & Terminal Railway Company" or in some other appropriate manner for convenience of identification of the interest of Buyer or its successor or successors therein.

When and only when Seller has been paid the full purchase price for said equipment, together with interest and any and all other payments as herein provided, and all of Buyer's covenants

and conditions herein contained have been performed by Buyer, absolute right to possession of, title to and property in said equipment shall pass to and vest in Buyer without further transfer or action on the part of Seller, except that Seller shall, if requested by Buyer so to do, execute and deliver to Buyer a bill or bills of sale of said equipment, transferring all its right, title and interest in and to said equipment to Buyer free and clear of all liens and encumbrances created or retained hereby, or otherwise created or authorized by Seller against said equipment and shall execute for record or for filing in 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 Buyer to said equipment, provided, however, that if Seller shall have assigned its interest in and to said locomotives and its rights hereunder pursuant to Article (12) hereof, such assignee of Seller shall execute and deliver to Buyer a bill of sale conveying said locomotives to Buyer and warranting the same, but only against the acts and deeds of such assignee.

(5) TAXES. All payments to be made by Buyer hereunder shall be free of expenses to Seller for collection or other charges, and of the amount of any City, State or Federal taxes (other than City, State and Federal Income taxes) or licenses, fines and penalties levied or imposed directly upon this agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses and taxes Buyer assumes and agrees to pay in addition to the above mentioned purchase price of said equipment. Buyer shall also pay promptly all taxes and assessments which may

be imposed upon the equipment or for the use thereof, or upon the earnings arising therefrom or the operations thereof, by any jurisdiction in which the equipment is operated by Buyer, and agrees to keep at all times all and every part of the equipment free and clear of all taxes, assessments, liens and encumbrances.

(6) COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Buyer covenants that the equipment will at all times be maintained, used and operated under and in compliance with all laws and regulations in any jurisdiction to which the equipment may be subject. Buyer further covenants that it will comply in all respects with all acts of Congress and with the laws of the United States and Territories which its operations involving the equipment may extend during the term of this Agreement and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative, or judicial body exercising any power or jurisdiction over any of the equipment, insofar as such acts, laws, and rules apply to or affect the equipment or the operation thereof, and in the event that said laws or rules require the alteration of any of the equipment, Buyer agrees to conform therewith, at its expense, and to maintain the same in proper condition for operation under such laws and rules during the life of this agreement; provided, however, that Buyer may, in good faith, contest in any reasonable manner the application of any such law or rule which does not affect Seller's title in and to the equipment.

Buyer further agrees at its own expense to keep said locomotives adequately insured, in an insurance company satisfactory to Seller, against loss or damage thereof caused by fire, collision,

wrecks, or other casualties, up to 80% of the value of the locomotives from time to time, subject to a deductible with respect to any one loss of one percent (1%) of the amount for which the locomotive is insured, applying to all losses except those caused by fire and lightning, and said insurance shall be made payable to Seller or its assignee as their interests may appear.

(7) SERVICING, REPLACEMENTS AND MAINTENANCE. Seller will send a competent person to the point of delivery of the locomotives to superintend the placing of the same in working condition. Buyer shall provide each such person as well as any person that may be provided by Seller to investigate complaints regarding said locomotives, without expense to Seller, with all the necessary labor, materials, locomotive supplies and transportation on lines owned or controlled by Buyer.

Buyer covenants and agrees that at all times after the delivery of such equipment, it will maintain and keep said equipment in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss, or destruction of said equipment from whatever cause arising.

Buyer shall replace the equipment or any of it, or any parts thereof, at its own cost, except as otherwise herein provided, if it or any of it shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other equipment or parts of similar type and of substantially as good material or construction as that lost or destroyed, or Buyer shall promptly pay to Seller a sum equal to the then unpaid balance applicable to such

locomotive. Buyer will cause any such new equipment to be marked as above provided and to be numbered with the same road number as the equipment so replaced. Any and all such replacements of equipment or any of it and of any parts shall constitute accessions to the equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original equipment delivered hereunder, and included in the word "equipment" as used in this Agreement. Title to all such new equipment shall be taken initially, and shall remain, in the name of Seller, subject to the provisions hereof.

(8) REPORTS AND INSPECTIONS. Buyer hereby agrees to furnish to Seller, if requested, once in every year as long as this Agreement shall be in force, an accurate inventory of the equipment in actual service, the number and description of such equipment as may have been destroyed and replaced by other equipment, and the then location of said equipment.

Buyer shall promptly and fully inform Seller of any loss or destruction of any of the equipment.

Seller shall have the right, but shall be under no obligation, to inspect the equipment at any reasonable time or times during the continuance of this Agreement. Buyer agrees, insofar as it may legally do so, to supply free transportation over its lines to designated agents of Seller for the purpose of enabling such agents to reach the point where the equipment is in operation for the purpose of inspection and/or assisting and instructing the employees of Buyer in the proper operation and maintenance of the equipment.

(9) USE AND LOCATION. Buyer agrees that after the delivery of the equipment and at all times during the continuance of this Agreement, said equipment will be kept, maintained and used solely by Buyer upon the lines of the railroad owned and/or operated by it, in the State of Texas.

(10) PROHIBITION AGAINST LIENS. Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through or under Buyer and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the equipment or any of it, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of Seller in and to the equipment.

(11) INDEMNITIES AND GUARANTIES. Buyer hereby covenants and agrees to save, indemnify and keep harmless Seller or Seller's Assignee from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the equipment or the use or operation thereof during the life of this Agreement. With respect to such losses, damages, injuries, claims and demands, said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

Buyer will bear the risk, and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of any or all of the equipment; provided, however, that Seller and any successor or successors to its manufacturing property and business shall not, as to any of the equipment, be relieved from its warranty covering material and workmanship set forth in Article (3) of this Agreement. Seller for itself and any successor or successors to its manufacturing property and business, also agrees to save, indemnify and keep harmless Buyer from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the equipment at the time of delivery, except with regard to any appliances, devices or materials specified or required by Buyer, and not manufactured by the Seller; and the Buyer likewise will indemnify, protect and hold harmless the Seller from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Seller because of the use in or about the construction or operation of the equipment, or any unit thereof, of any design, article or material specified by the Buyer and not manufactured by the Seller which infringes or is claimed to infringe on any United States patent or other right.

(12) ASSIGNMENTS BY SELLER. Buyer agrees that Seller's rights under this Agreement (except the right to manufacture the locomotives) may be assigned in whole or in part, and that Seller's Assignee or any successor Assignee shall be entitled, to the extent specified in such assignment, to all of the rights of Seller hereunder

with respect to the locomotives, but no such assignment shall subject any assignee to, or relieve Seller or the successor or successors to its manufacturing property and business from, any of the obligations of Seller as to the construction, delivery, warranty or indemnity of or in respect of the locomotives, or any other duty, obligation or liability of Seller under this Agreement, nor shall any such assignment relieve the Buyer of its obligations to the Seller under Articles (1), (5) and (11) hereof, or any other obligation which according to its terms and context is intended to survive an assignment. Buyer agrees that the rights of any such assignee, including the right to receive such part of the purchase price as may be assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Seller or the successor or successors to its manufacturing property and business in respect of the locomotives or the manufacture, construction, delivery or warranty thereof or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Buyer by Seller or the successor or successors to its manufacturing property and business.

In case of assignment of this Agreement by Seller, prompt written notice of such assignment shall be given by Seller to Buyer, and Buyer shall be protected in any payments made hereunder to Seller prior to notice of such assignment.

In the event of any such sale, transfer, or assignment, or successive sales, transfers, or assignments by Seller, of title to

the equipment and of Seller's rights hereunder in respect thereof, Buyer shall, whenever requested by such vendee, transferee, or assignee, change the name plates to be attached on both sides of each unit of the equipment so as to indicate title of such vendee, transferee or assignee to such equipment and its succession to the rights of Seller hereunder, such plates to bear such words or legend as shall be specified by said vendee, transferee or assignee. The cost of obtaining and attaching the first series of such substituted plates shall be borne by Seller. The cost of obtaining and attaching plates in connection with any subsequent assignment shall be borne by such subsequent vendee, transferee or assignee.

The term "Seller" whenever used in this Agreement means General Motors Corporation (Electro-Motive Division), provided, however, to the extent that the rights of Seller hereunder shall have been assigned with respect to said locomotives theretofore accepted by Buyer as hereinafter provided, the term "Seller" with respect to such rights shall mean the assignee or assignees for the time being thereof, but this proviso shall not limit or affect the obligations or liability of General Motors Corporation (Electro-Motive Division) under the terms of this Agreement.

(13) SUCCESSORS TO, AND ASSIGNMENTS OF, BUYER. Buyer hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the obligations, duties and liabilities hereof, have been expressly authorized, and that all the obligations then existing or to accrue to Buyer under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of Buyer, and that upon

any sale, lease, transfer or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

Buyer covenants and agrees that it will not sell, assign, transfer, or otherwise dispose of its rights under this Agreement, nor transfer possession of said equipment to any other firm, person or corporation without first obtaining the written consent of Seller to such sale, assignment or transfer.

Buyer hereby covenants and agrees that it will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said equipment.

The term "Buyer" whenever used in this Agreement means Houston Belt & Terminal Railway Company before any assignment of the rights of the Buyer hereunder as hereinbefore provided, and after any such assignment shall include any assignees thereof except only insofar as Seller may specifically, in writing, relieve Buyer or any such assignee from the obligations hereof.

(14) DEFAULTS AND REMEDIES. In the event of default by or on the part of Buyer in prompt payment of any of the installment payments hereunder, or in the due or proper performance of, or compliance with, any of the conditions, terms or stipulations provided herein, and such default is not cured within ten (10) days after written notice thereof to Buyer, or in the event that a proceeding in bankruptcy or insolvency be instituted by or against Buyer or its property and the debtor in reorganization, or any trustee or receiver appointed therein, fails to adopt and become

bound by the terms, provisions and conditions of this Agreement within sixty (60) days after such appointment, Seller shall have the right at its option to declare each and all of said installment payments and all other sums of money payable hereunder to be forthwith due and payable, and Seller may take immediate possession of said locomotives, including any equipment or parts substituted, added or attached thereto, without demand, process or further notice and, for this purpose, Seller shall have the right to enter upon the premises wherever said locomotives may be found, remove the same, employ any available trackage and similar facilities or means of removing same, or cause Buyer to assist in removing same by its delivery thereof to such place on its railroad as Seller may reasonably designate for said purpose.

Seller may, at its election (and, if before sale or before full performance of this Agreement all costs and expenses of Seller incidental to any such default and to the enforcement by Seller of the provisions hereof, and all sums which shall have become due and payable by Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this section as aforesaid, shall have been paid by Buyer, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to Seller shall have been made, then and in every such case Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed

and no such declaration or termination has been made; but no such waiver, rescission or annulment shall limit or affect Seller's right, upon any other default, or impair any right or remedy consequent thereon.

In the event said locomotives are retaken hereunder, Seller shall be entitled to retain or collect any and all payments theretofore made or payable hereunder by Buyer, and, after giving such notice, if any, as may be required by law, Seller shall sell said locomotives at public or private sale, with or without having said locomotives at the place of sale, and upon such reasonable terms and in such manner as Seller may determine; Seller may bid at such public sale. From the proceeds of any such sale Seller shall deduct all expense for retaking, repairing and selling said locomotives. The balance thereof shall be applied to the total amount due hereunder; any surplus shall be paid over to Buyer, and in case of a deficiency, Buyer shall pay the same with interest.

In addition to and cumulative of the remedies granted to Seller in the event of default hereunder, Seller shall have all of the remedies, rights and privileges granted to a secured party under the provisions of the Texas Uniform Commercial Code.

(15) APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an Agreement of conditional sale shall, as to such State, be ineffective without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived they

are hereby waived by Buyer to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

(16) EXTENSION NOT A WAIVER. Any extension of time granted by Seller to Buyer for the payment of any sums due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall apply to the particular instance only and shall not be deemed a waiver of the title of Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

(17) RECORDING. Buyer shall cause this Agreement and the first assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, with the Secretary of State of Texas in accordance with the Texas Uniform Commercial Code, and with the County Clerk of Harris County, Texas, in accordance with Sections 35.01 - 35.08 of the Texas Business and Commercial Code, and Buyer shall, from time to time, do and perform any other act, including the execution, acknowledgment, delivery, filing, registering and/or recording of any and all further instruments required by law, or reasonably requested by Seller, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement.

(18) PAYMENT OF EXPENSES. Buyer shall pay all costs, charges and expenses, except the counsel fees of Seller, incident to the preparation, execution and acknowledgment of this Agreement and the first assignment or assignments by Seller of title to the equipment, and all such costs, charges and expenses in connection

with any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full for the purchase money due hereunder.

(19) EXECUTION OF COUNTERPARTS. This agreement may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be an original and, such counterparts together, shall constitute but one and the same agreement which shall be sufficiently evidenced by any such original counterpart. Although this Conditional Sale and Security Agreement is dated for convenience May 10, 1971, 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.

(20) ARTICLE HEADINGS. All article, section, paragraph or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(21) MODIFICATION OF AGREEMENT. This Agreement of conditional sale constitutes the entire agreement between Buyer and Seller with respect to the sale of the equipment herein referred to. 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 the duly authorized officers of Seller and Buyer.

(22) POSSESSION AND USE OF THE EQUIPMENT BY BUYER. So long as Buyer shall not be in default under this Agreement, Buyer shall be entitled to such possession of the equipment as is incident to the use thereof upon the lines of railroad aforesaid from and after delivery of the equipment by Seller to Buyer, but only upon

and subject to all terms and conditions of this Agreement.

(23) LAW GOVERNING. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, General Motors Corporation (Electro-Motive Division) has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and Houston Belt & Terminal Railway Company has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By: *D. F. Deannell*  
Vice President

ATTEST:

*H. A. Vank*  
Assistant Secretary

HOUSTON BELT & TERMINAL RAILWAY COMPANY

By: *[Signature]*  
President & General Manager

ATTEST:

*W. W. McKeen*  
Secretary

THE STATE OF ILLINOIS )  
COUNTY OF Cook )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared B. B. BROWNELL, Vice President of General Motors Corporation (Electro-Motive Division), known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said General Motors Corporation (Electro-Motive Division), a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 20th day of May, 1971.

  
\_\_\_\_\_  
Notary Public in and for  
Cook County, Illinois

My Commission Expires October 28, 1971

THE STATE OF TEXAS )  
COUNTY OF HARRIS )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared R. H. Anderson, President & General Manager of Houston Belt & Terminal Railway Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Houston Belt & Terminal Railway Company, a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 26th day of May, 1971.

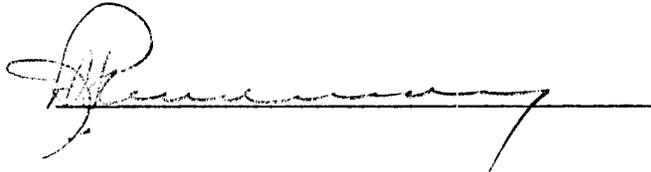
  
\_\_\_\_\_  
J. J. Wood  
Notary Public in and  
Harris County, Texas.

THE STATE OF TEXAS            )  
  )  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared R. H. Anderson, known to me to be a credible person, who, being by me first duly sworn, on oath said:

My name is R. H. Anderson, and I am the President and General Manager of Houston Belt & Terminal Railway Company.

The foregoing instrument entitled "Conditional Sale and Security Agreement" dated as of May 10, 1971, between General Motors Corporation (Electro-Motive Division) and Houston Belt & Terminal Railway Company, was duly executed by Houston Belt & Terminal Railway Company, a Utility as said term is defined in Section 35.01 of the Texas Business and Commerce Code.



SUBSCRIBED AND SWORN TO before me on this the 26<sup>th</sup> day of May, 1971.

 J. J. Wood  
Notary Public in and for  
Harris County, Texas.

AGREEMENT AND ASSIGNMENT dated as of May 10, 1971, by and between General Motors Corporation, a corporation of the State of Delaware (Electro-Motive Division) (hereinafter called the "Builder"), and Texas Commerce Bank National Association, a national banking association (hereinafter called the "Assignee").

WHEREAS, the Builder and Houston Belt & Terminal Railway Company, a corporation (hereinafter called the "Railroad"), have entered into a Conditional Sale and Security Agreement dated as of May 1, 1971 (hereinafter called the Conditional Sale and Security Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described or referred to in the Conditional Sale and Security Agreement (hereinafter called the Equipment):

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

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 the Equipment and each unit thereof when and as severally delivered and accepted and, as to each such unit upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale and Security Agreement in respect of the Equipment (except the right to manufacture, the right to reimbursement for prepaid freight charges as provided in Article (1) thereof, and the right to

reimbursement 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 Conditional Sale and Security Agreement on account of the Railroad's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale and Security Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale and Security Agreement (without any recourse, however, 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 Conditional Sale and Security Agreement); 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 the Equipment in accordance with the Conditional Sale and Security Agreement or in respect of its obligations contained in Articles (3) and (11) of the Conditional Sale and Security Agreement, or relieve the Railroad from its obligations to the Builder under Articles (1), (5) and (11) (except that the Assignee shall also be entitled to the benefit of the Railroad's obligation under Article (11) of the Conditional Sale and Security Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article (13) of the Conditional Sale and Security Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns,

against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale and Security Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale and Security Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale and Security Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale and Security Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale and Security Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the

demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale and Security Agreement and the rights of the Railroad thereunder.

Section 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale and Security Agreement for any installment of, or interest on, indebtedness in respect of the purchase price or to enforce any provision of the Conditional Sale and Security Agreement, the Builder will save, indemnify and keep 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 in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles (3) and (11) of the Conditional Sale and Security Agreement, 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. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale and Security Agreement shall vest by reason of this assignment or of successive assignments.

The Builder will indemnify, protect and hold harmless the

Assignee from and against any and all liability, claims, demands, 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 the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe on any patent right, except for any design, article or material specified by the Railroad and not manufactured by the Builder.

The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale and Security Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof.

Section 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

"TEXAS COMMERCE BANK NATIONAL ASSOCIATION,  
OWNER"

Section 5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale and Security Agreement or any other instrument

evidencing any interest of the Builder therein or in the Equipment.

Section 6. The Assignee covenants and agrees that, as and when each locomotive is delivered to and accepted by the Railroad, pursuant to the Conditional Sale and Security Agreement, it will pay to the Builder the purchase price for such locomotive so delivered and accepted upon receipt by the Assignee of the following listed documents in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the locomotive and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Builder had legal title to such locomotive and good and lawful right to sell such locomotive and that title to such locomotive was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale and Security Agreement;

(b) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the locomotive has been delivered to the Railroad in accordance with the Conditional Sale and Security Agreement and has been inspected and accepted by him on behalf of the Railroad and further stating that the locomotive has been marked as required by Section 4 hereof;

(c) An invoice or invoices for the locomotive accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price

of such locomotive;

(d) An opinion of counsel for the Railroad stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the State of Texas and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale and Security Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding upon the Railroad and enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale and Security Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, with the Secretary of State of Texas in accordance with the Texas Uniform Commercial Code, and with the County Clerk of Harris County, Texas, in accordance with Sections 35.01 - 35.08 of the Texas Business and Commercial Code and that 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, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale and Security Agreement, and (v) title to the locomotives is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale and Security Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of Incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale and Security Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale and Security Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the locomotive is validly vested in the Assignee, and that such locomotive, at the time of delivery thereof to the Railroad, was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale and Security Agreement.

Section 7. The Assignee may assign all or any of its rights under the Conditional Sale and Security Agreement, 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 any such subsequent or successive assignee or assignees shall, to the

extent of such assignment, enjoy all of the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 8. The Builder hereby:

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

(b) covenants and 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, title and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Texas; provided, however, that the parties shall be entitled

to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

Section 10. This Agreement and Assignment may be simultaneously 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 instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified in the introductory paragraph of this Agreement and Assignment, 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 these presents to be signed 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 day, month and year first above written.

ATTEST:

*W. B. Cumber*  
Assistant Secretary

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By: *D. B. Dammann*  
Vice President

ATTEST:

*J. M. H. H.*  
Assistant Cashier

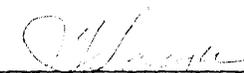
TEXAS COMMERCE BANK NATIONAL ASSOCIATION

By: *R. Jerry Shirley*  
Vice President

THE STATE OF ILLINOIS }  
COUNTY OF Cook }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared B. B. BROWNELL, Vice President of General Motors Corporation (Electro-Motive Division), known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said General Motors Corporation (Electro-Motive Division), a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 20th day of May, 1971.

  
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Notary Public in and for  
Cook County, Illinois  
My Commission Expires October 29, 1971

THE STATE OF TEXAS }  
COUNTY OF HARRIS }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared R. Jerry Sharkey, Vice President of Texas Commerce Bank National Association, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Texas National Bank of Commerce of Houston, a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 28th day of May, 1971.

  
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Notary Public in and for  
Harris County, Texas.  
EVAN S. McLAIN  
Notary Public in and for Harris County, Texas  
My Commission Expires June 1, 1971