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## **Conditional Sale Agreement**

Dated as of March 15, 1970

between

**T. F. O'CONNELL AND K. M. PHILLIPS**

and

**THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY**

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## **Agreement and Assignment**

Dated as of March 15, 1970

between

**T. F. O'CONNELL AND K. M. PHILLIPS**

and

**PROVIDENT NATIONAL BANK,  
*As Agent***

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**CONDITIONAL SALE AGREEMENT** dated as of March 15, 1970, between the parties named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Owners, as more particularly set forth in Article 25 hereof), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Vendee).

WHEREAS, the Owners have agreed to acquire, construct, sell and deliver to the Vendee and the Vendee has agreed to purchase the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment);

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

ARTICLE 1. *Construction and Sale.* The Owners have acquired or will acquire and will sell and deliver the Equipment to the Vendee and the Vendee will purchase from the Owners and accept delivery of and pay for (as hereinafter provided), pursuant to this Agreement, the Equipment, each unit of which has been or will be constructed in accordance with the applicable specifications and in accordance with such modifications thereof as may have been agreed upon in writing by the Owners and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment will conform to all Department of Transportation (Federal Railroad Administration) requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit of the Equipment as of the date of this Agreement, and each unit of the Equipment is rebuilt railroad equipment, not put into service earlier than April 8, 1970.

ARTICLE 2. *Inspection and Delivery.* The Owners will deliver the various units of the Equipment to the Vendee, freight charges, if any, prepaid, at such point or points within the United States of America outside the State of New York as specified by the Vendee. Upon each settlement for a Group (as hereinafter defined) of units of the Equipment, the units of the Equipment in such Group shall be deemed to have been delivered hereunder to the Vendee on the Closing Date (as hereinafter defined) at such point or points.

Any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof before December 31, 1970, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendor and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Vendee. From time to time, upon completion of the construction of each unit or of a number of units of the Equipment, such unit or units have been or shall be presented to an inspector or other authorized representative of the Vendee for inspection at the place designated for delivery of such unit or units and, if each such unit or units conformed or conform to the Specifications, such inspector or representative has executed and delivered or shall execute and deliver to the Owners, in such number of counterparts or copies as may reasonably have been requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted by him on behalf of the Vendee, are marked in accordance with Article 6 hereof and meet the specifications, requirements and standards referred to in Article 1 hereof.

On delivery of each of the units of Equipment hereunder, the Vendee will assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The price per unit of the Equipment, exclusive of interest, is set forth in Schedule B hereto. The price of each unit is subject to increase or decrease in accordance with the contract under which the Equipment is rebuilt. The term "Purchase Price" as used herein shall mean the price set forth in Schedule B, as so increased or decreased.

For the purpose of making settlement, the Equipment shall be divided into groups of units of the Equipment delivered to and accepted by the Vendee as specified in Item 2 of Schedule A hereto (each such group being herein called a Group).

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

(a) On each Closing Date (as hereinafter defined) with respect to each Group, the amount by which (x) the Purchase Price of all units of the Equipment covered by this agreement and the purchase price of the railroad equipment covered by the Agreement referred to in Item 3 of Schedule A hereto (hereinafter called the Other Agreement), for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being hereinafter called the Interim Invoiced Purchase Prices), exceeds (y) the sum of \$13,400,000 and any amount or amounts previously paid or payable with respect to Interim Invoiced Purchase Prices pursuant to this subparagraph (a) or subparagraph (a) of the third paragraph of Article 3 of the Other Agreement

(said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreement, the amount payable pursuant to this subparagraph (a) shall be the Excess Amount multiplied by a fraction the numerator of which is the Interim Invoiced Purchase Price payable on such Closing Date under this Agreement and the denominator of which is the aggregate of the Interim Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreement;

(b) Upon receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the Final Certificate (hereinafter called the Final Invoiced Purchase Price), shall exceed the aggregate of the Interim Invoiced Purchase Prices under this Agreement;

(c) In 12 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 12, result in an amount ending in an integral cent) annual instalments commencing March 15, 1971, as hereinafter provided, an amount equal to the Interim Invoiced Purchase Price of each Group, less the amounts paid with respect thereto pursuant to subparagraph (a) of this paragraph and repaid by the Owners to their assignee pursuant to subparagraph (i) of the sixth paragraph of this Article 3; and

(d) Inasmuch as the prices of the materials and the wages of labor used or employed in the construction of the Equipment may not be final at the time of presenta-

tion of the Final Certificate and suppliers or laborers may be entitled to additional payments, provision is hereby made for supplemental invoices which may be presented to the Vendee by the Owners subsequent to the presentation of the Final Certificate, and the Vendee shall within 30 business days following the presentation of any such invoice pay to the Owners the sum of money set forth therein.

If this Agreement shall be assigned by the Owners, the obligations of the Vendee under subparagraphs (a), (b) and (d) of the preceding paragraph of this Article 3 shall be unsecured obligations and the Owners shall not have any lien on, or claims against, the Equipment or any part thereof with respect to such obligation.

The first instalment of the portion of the Purchase Price of each Group payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on March 15, 1971, and subsequent instalments shall be payable annually thereafter on March 15 of each year to and including March 15, 1982. The unpaid portion of the Purchase Price payable pursuant to said subparagraph (c) shall bear interest from the respective Closing Dates at the rate of 10 % per annum. Such interest shall be payable, to the extent accrued, on March 15 and September 15 in each year, commencing September 15, 1970.

The Final Certificate shall be delivered on or before December 31, 1970. In the event that the Final Invoiced Purchase Price as shown by the Final Certificate shall be less than the aggregate of the Interim Invoiced Purchase Prices under this Agreement, the difference (hereinafter called the Price Decrease) shall be repaid as follows:

- (i) if this Agreement shall have been assigned by the Owners, the Owners shall repay to their assignee the Price Decrease less any amount paid by the Vendee

pursuant to subparagraph (a) of the third paragraph of this Article 3 (and the Vendee hereby warrants to any such assignee that it will cause the Owners so to do). The amount so repaid to such assignee shall be deemed to be a repayment of the last amounts paid to the Owners by such assignee pursuant to such assignment. The Vendee agrees to pay to such assignee interest at the rate of 10% per annum on the amount so repaid to such assignee from the date such amount was paid by such assignee to the Owners pursuant to such assignment to the date of such repayment; *provided, however*, that nothing herein shall be construed to require the Vendee to pay interest on any amount on which interest shall previously have been paid pursuant to the fifth paragraph of this Article; and

(ii) the balance, if any, of the Price Decrease shall be repaid to the Vendee.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after April 8, 1970, and on or before December 31, 1970), not more than ten business days following presentation by the Owners to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Vendee by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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

The Vendee will pay, to the extent legally enforceable, interest at the rate of 10% 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 7 hereof, the Vendee shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expenses to the Vendor with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts in the nature of or in lieu of sales taxes], excess profits and similar taxes) or license fees, fines or penalties hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes, license fees, fines and penalties the Vendee assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Vendee will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Vendee or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Vendee shall be under no obligation to pay taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in

the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor on presentation of an invoice therefor and any sums so paid by the Vendor shall be secured by and under this Agreement; *provided further*, that the Vendee shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor), or unless the Vendee shall have approved the payment thereof.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Vendee shall have made all of the payments hereunder 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 Vendee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed by the Vendee, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. How-

ever, the Vendor, if requested by the Vendee so to do, will execute a bill of sale of the Equipment transferring the Vendor's title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Article 22 hereof, and at the Vendee's expense will execute in the same manner and deliver at the same place, for filing or recording in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee 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 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 such instrument or instruments within a reasonable time after written demand of the Vendee.

ARTICLE 6. *Marking of Equipment.* The Vendee will cause each unit to be kept plainly, distinctly, permanently and conspicuously marked by metal plate, stenciling or otherwise, in letters not less than one inch in height, with appropriate words designated by the Vendor to indicate the limited interest of the Vendee therein with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. Such marks shall be such as to be readily visible and as to indicate plainly that ownership of the Equipment is not in the Vendee. The Vendee will not place any unit of

the Equipment in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and in case any of such marks shall at any time be removed, defaced or destroyed, the Vendee will cause the same to be promptly restored or replaced.

The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number thereof as set out in Schedule B hereto and will not change or permit the change of the numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Vendee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Vendee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership, but the Vendee may permit the Equipment to be lettered in some appropriate manner for convenience of identification of the interest of the Vendee therein or to indicate the nature of the service furnished thereby.

ARTICLE 7. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, condemned or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences), 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, the Vendee shall, within 10 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Vendor in regard

thereto. When the aggregate Casualty Value (as defined herein and in the Other Agreement) of all units of the Equipment, and all units of equipment covered by the Other Agreement, having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7 or Article 7 of the Other Agreement) shall exceed the greater of \$100,000 or 1% of the then aggregate outstanding indebtedness in respect of the Purchase Price of the Equipment and the purchase price of the railroad equipment covered by the Other Agreement, the Vendee, within 30 days of such event, shall pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment which have suffered a Casualty Occurrence, determined as of the date of the Casualty Occurrence or Occurrences with respect thereto, as to which no payment shall previously have been made to the Vendor pursuant to this Article 7.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be the original Purchase Price thereof multiplied by a fraction the numerator of which is the number of instalment payment dates remaining as of the date of the occurrence of such Casualty Occurrence to and including March 15, 1982, and the denominator of which is 12. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be the cost thereof (provided through the application of moneys paid to the Vendor pursuant to the first paragraph of this Article 7) multiplied by a fraction the numerator of which is the number of instalment payment dates remaining as of the date of the occurrence of such Casualty Occurrence to and including March 15, 1982, and the denominator of which is the number of such instalment payment dates remaining as of the date of the acquisition of such replacement unit.

Any money paid to the Vendor pursuant to the first paragraph of this Article 7 shall, so long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Vendee may direct in a written instrument filed with the Vendor in such number of counterparts or copies as may reasonably be requested, to prepay on or after March 15, 1971, the indebtedness of the Vendee in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units or new or rebuilt standard-gauge railroad equipment (other than passenger or work equipment) to replace such unit or units having suffered a Casualty Occurrence. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the interest payment date next following receipt by the Vendor of such written direction, to reduce instalments of the Purchase Price thereafter falling due in the inverse order of maturity thereof, but without premium, whether or not such amount shall be sufficient to prepay one or more entire instalments. In the case of replacement, the amount to be paid by the Vendor with respect to any replacement unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of the money to be paid therefor was paid to the Vendor, and the Vendee shall pay any additional cost of such unit. The amount which any such new replacement unit would cost if acquired on the earliest date when any of the money to be paid therefor was paid to the Vendor shall be conclusively determined by a certificate of a Vice President, an Assistant Vice President, the Treasurer, an Assistant Treasurer or the Chief Mechanical Officer of the Vendee to be filed as hereinafter provided.

The Vendee will cause any replacement unit or units to be plated or marked as provided in Article 6 hereof. Title

to all such replacement units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor, subject to the provisions hereof, and the Vendee shall promptly execute, acknowledge, deliver, file and record 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 and to protect the title of the Vendor to such replacement units. All such replacement units shall be warranted as being free from defects in materials, workmanship or design under normal use and service; *provided, however,* that such warranty may be limited to making good at the plant of the builder of such units any part or parts of such units which shall, within one year after delivery thereof to the Vendee, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective.

Whenever the Vendee shall file with the Vendor, pursuant to the foregoing provisions of this Article 7, a written direction to apply money to or toward the cost of a replacement unit, the Vendee shall file therewith, in such number of counterparts or copies as may reasonably be requested:

(a) a certificate of a Vice President, an Assistant Vice President, the Treasurer, an Assistant Treasurer or the Chief Mechanical Officer of the Vendee certifying that such replacement is a new or rebuilt unit of standard-gauge railroad equipment (other than passenger or work equipment) and has been plated or marked as required by the provisions of this Article 7 and certifying the cost of such replacement unit, the amount which such replacement unit would have cost if acquired on the earliest date when any of the money to be paid

therefor was paid to the Vendor, and that the cost thereof does not exceed the fair value of such equipment; and

(b) an opinion of counsel for the Vendee that title to such replacement unit is vested in the Vendor free and clear of all liens and encumbrances except the rights of the Vendee under this Agreement and that such unit has been warranted as required by the fourth paragraph of this Article 7 and has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Vendee shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated prime by a national credit agency or (iii) in certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Vendee may in writing direct. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Vendor for application pursuant to this Ar-

ticle 7, and unless a default hereunder shall have occurred and be continuing any excess shall be paid to the Vendee. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Vendee will promptly pay to the Vendor an amount equal to such deficiency. The Vendee will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 (including for this purpose Investments 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.

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

ARTICLE 8. *Maintenance and Repair.* The Vendee will at all times maintain the Equipment, or cause it to be maintained, in good order and repair without expense to the Vendor.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Vendee will comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads 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 the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Vendee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* Once in every twelve month period, the Vendee will furnish to the Vendor an accurate statement signed by an authorized officer, (i) showing, as of the preceding December 31, the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding calendar year (or since the date of delivery hereunder in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (ii) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, but shall be under no obligation, to inspect the Equipment and the records of the Vendee with respect thereto at any reasonable time during the continuance of this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by the Vendee or over which the Vendee has trackage or other operating rights and upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement. The Vendee, with the prior written consent of the Vendor, may lease the Equipment, *provided, however,* that the rights of the lessee under such lease shall be expressly subordinated to the rights and remedies of the Vendor under the Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise hereunder. Any sums of money paid by the Vendor in discharge of liens and charges on 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 (such liens being herein called permitted liens).

ARTICLE 13. *Indemnities.* The Vendee guarantees that the units of the Equipment will be built in accordance with the specifications, requirements and standards set forth in Article 1 hereof and warrants that the Equipment will be free from defects in material and workmanship under normal use and service.

The Vendee further agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of the retention by the Vendor of title to the Equipment, or out of the use and operation thereof by the Vendee during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 14. *Patent Indemnities.* The Vendee agrees to indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design which infringes or is claimed to infringe on any patent or other right. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and dis-

charge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 15. *Assignments.* Except as provided in Article 11 hereof and in the seventh paragraph of this Article 15, the Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of Equipment, without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad or other company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Vendee, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Vendee hereunder, shall not be deemed a breach of this covenant, provided, however, that the Vendee shall remain liable for such performance as a principal and not as a surety.

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 Vendee, 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 Owners from, any of the obligations of the Owners to deliver the Equipment in accordance herewith or to respond to their agreements contained in this Agreement, or relieve the Vendee of its obligations to the Owners under Articles 3, 4, 13 and 14 hereof and this Article 15 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, 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 or a portion, as the case may be, of the assignor's rights, benefits and advantages under this Agreement including all of the Vendor's right, title and interest in and to the Equipment, 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 Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

The Vendee recognizes that it is the custom of railroad equipment manufacturers and vendors to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the ~~V~~ <sup>VENDOR</sup> hereunder, is contemplated. The Vendee expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement, or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation <sup>OF</sup> the Owners with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any idemnity 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 the Vendee by the Owners or arising out of any other matter whatsoever. Any and all such obligations, howsoever arising, shall be and remain

*Karl  
D.B.A. Jr.  
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*Karl  
D.B.A. Jr.  
4 gen.  
K*

respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Owners. In furtherance of the foregoing assignment and transfer, the Owners hereby authorize and empower 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 Owners, 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 Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owners covenant and agree that the Equipment has been or will be constructed in accordance with the Conditional Sale Agreement and will be delivered to the Vendee under the Conditional Sale Agreement (but only after filing of the Conditional Sale Agreement and this Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act); and that, notwithstanding this Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owners. The Owners further covenant and agree that they will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment to the Vendee under the Conditional Sale Agreement they 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 Vendee under the Conditional Sale Agreement; and the Owners further covenant and agree that they will defend the title to such unit against the demands of all persons whomsoever based

on claims originating prior to said delivery of such unit by the Owners to the Vendee under the Conditional Sale Agreement; all *subject, however*, to the rights of the Vendee under the Conditional Sale Agreement.

SECTION 3. The Owners covenant and agree with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement or to recover any other sums due from the Vendee thereunder, the Owners will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Owners of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Owners. Any and all such obligations shall be and remain enforceable by the Vendee against and only against the Owners and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of the Owners under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The Owners agree that any amount payable to them by the Vendee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any units of the Equipment.

SECTION 4. The Owners will cause to be plainly, distinctly, permanently and conspicuously marked, by metal plate or otherwise, on each side of each unit of the Equip-

ment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

“PROVIDENT NATIONAL BANK, AGENT, OWNER”

SECTION 5. Upon request of the Assignee, its successors and assigns, the Owners will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Owners therein or in the Equipment.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Owners an amount equal to that portion of the Interim Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Vendee pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, at least five days prior to such Closing Date, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Owners to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Vendee that at the time of delivery of such units to the Vendee under the Conditional Sale Agreement, the Owners had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature, except only the rights of the Vendee under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 2 of the Conditional Sale Agreement stating that the units of Equipment are marked in accordance with Section 4 hereof;

(c) Invoice of the Owners for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee as to the correctness of the prices of such units as set forth in said invoice;

(d) Opinion of Messrs. Sullivan, Donovan, Hanrahan, McGovern & Lane, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Assignee and the Vendee and, assuming due authorization, execution and delivery by the Investors named therein, is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interest, powers and privileges purported to be assigned to the Assignee by this Assignment, (v) title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Vendee under the Conditional Sale Agreement, (vi) the Conditional Sale 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 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, or, if any such approval is necessary, it has been obtained; and (viii) registration of the Conditional Sale Agreement or this Assignment or of the interest acquired herein is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended (ix) the investment in the payments to be made under the Conditional Sale Agreement is a legal investment for savings banks pursuant to subdivision 7(e) of Section 235 of the Banking Law of the State of New York; and said opinion shall cover such other matters as shall be reasonably requested by the Assignee;

(e) Opinion of counsel for the Vendee, dated as of such Closing Date, covering the matters and to the effect set forth in subparagraph (d) of this Section 6, and stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of Delaware, its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Vendee relating to or affecting the execution and delivery by the Vendee of the Conditional Sale Agreement or the enforceability there-

of in accordance with its terms or requiring any approval of stockholders in respect thereof, (iii) neither the execution and delivery of the Finance Agreement, the Conditional Sale Agreement and this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Vendee is now a party or constitute a default thereunder and (iv) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement; and

(f) Unless payment of the amount, if any, payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendee, a receipt from the Owners for such payment.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' right generally. In giving the opinion specified in subparagraph (d) of the first paragraph of this Section 6, counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Vendee as to such matter.

The obligation of the Assignee hereunder to make any payment as hereinbefore provided is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee 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 the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by them and lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement, binding upon the Owners and the Vendee in accordance with its terms and that it is now in force without amendment thereto; and

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

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

SECTION 10. Although this Assignment is dated as of March 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Assignment may be executed in any number of counterparts, it being understood, however, that the counterpart delivered to the Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the Owners have executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

Witnessed:

*J. J. Callahan* ..... *T. F. O'Connell*  
T. F. O'Connell  
*J. M. Phillips* ..... *K. M. Phillips*  
K. M. Phillips

Attest:

ASSISTANT SECRETARY

*Joseph Robinson*  
PROVIDENT NATIONAL BANK,  
as Agent

By

*J. Harold Hynes*  
Vice President

COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On this *8th* day of April 1970, before me personally appeared T. F. O'CONNELL and K. M. PHILLIPS, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

HARRY CHRISTENSEN . . . . .  
Notary Public, Philadelphia County  
135 S. Broad St., Philadelphia, Pa. 19109  
My Commission Expires March 15, 1973

*Harry Christensen*  
Notary Public

Notary Public, Philadelphia  
County, Pennsylvania

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On this *8th* day of April 1970, before me personally appeared ~~.. HAROLD STEPHENS~~ to me personally known, who, being duly sworn, says that he is a Vice President of PROVIDENT NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Alberta E. Flavell*  
ALBERTA E. FLAVELL  
Notary Public ~~Notary Public, Philadelphia, Philadelphia Co.~~  
My Commission Expires June 26, 1972

Notary Public, Philadelphia  
County, Pennsylvania

My Commission Expires

with Section 148 of the Railway Act of Canada (and forthwith after such deposit, will cause notice of such deposit to be given in the *Canada Gazette* pursuant to said Section 148); and the Vendee shall, without cost to the Vendor, promptly from time to time do and perform any other act and shall execute, acknowledge, deliver, file, register, record and deposit 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 title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish or cause to be furnished to the Vendor certificates or other evidences of such filing, registering, recording and depositing, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Vendee will pay all reasonable costs and expenses, except the fees and expenses of counsel for the Owners, incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related thereto, including all fees and expenses of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interest in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to the Vendee shall be deemed to be properly served if delivered or mailed to the Assistant Treasurer of the Vendee at P & LE

Terminal Building, Pittsburgh, Pennsylvania 15219 or at such other address as may have been furnished in writing by the Vendee to the Vendor. Any notice hereunder to the Owners shall be deemed to be properly served if delivered or mailed to the Owners at the address specified in Item 4 of Schedule A hereto, or at such other address as may have been furnished in writing to the Vendee by the Owners. Any notice hereunder to any assignee of the Vendor shall be deemed to be properly served if delivered or sent by registered mail to such assignee at such address as may have been furnished in writing to the Vendee by such assignee. An affidavit by any person so delivering or mailing such notice with respect to such delivering or mailing shall be deemed to be and shall be conclusive evidence of the giving and receipt of such notice.

ARTICLE 23. *Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Laws Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Vendee warrants that its chief place of business is in Pittsburgh, Pennsylvania.

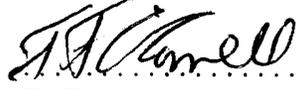
ARTICLE 25. *Definitions.* The term "Vendor" whenever used in this Agreement means, before any assignment

of its rights hereunder, the parties named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations, and, after any such assignment both any assignee or assignees for the time 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; and the term "Owners" whenever used in this Agreement means, both before and after any such assignment, the parties named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations.

ARTICLE 26. *Effect and Modification.* This Agreement, and the schedules attached hereto, exclusively and completely state the rights and agreements to the Vendor and the Vendee with respect to the sale of the Equipment and supersede all other agreements, oral or written, with respect to the sale of 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 on behalf of the Vendor and the Vendee.

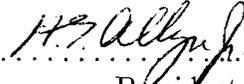
IN WITNESS WHEREOF, the Owners have executed this Agreement and the Vendee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

Witnessed:

	.....		.....
		T. F. O'Connell	
	.....		.....
		K. M. Phillips	

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

Attest:

	By		.....
SECRETARY		President	

COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On this *8th* day of April 1970, before me personally appeared T. F. O'CONNELL and K. M. PHILLIPS, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

*Harry C. ...*  
Notary Public  
135 S. Broad St., Philadelphia, Pa. 19109  
My Commission Expires March 15, 1973  
Notary Public, Philadelphia County,  
Pennsylvania

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF ALLEGHENY } ss.:

On this *6th* day of April 1970, before me personally appeared H. G. ALLYN, JR., to me personally known, who, being by me duly sworn, says that he is President of THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Donald E. Miller*  
Notary Public  
Notary Public, Allegheny County,  
Pennsylvania

My Commission Expires  
Notary Public, Pittsburgh, Allegheny County  
My Commission Expires June 20, 1970

**SCHEDULE A—O'CONNELL AND PHILLIPS**

- Item 1: T. F. O'Connell of 1112 Ormond Avenue, Drexel Hill, Pennsylvania, and K. M. Phillips of 18 Ruscombe Court, Willingboro, New Jersey.
- Item 2: For the purpose of making settlement, the Equipment shall be divided into Groups of units of the Equipment delivered to and accepted by the Vendee hereunder, each Group to consist of not less than 50 units of the Equipment, except the last Group which may be less; provided, however, that, if there shall at any time have been delivered to and accepted by the Vendee units of the Equipment and the Owners shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 15 days or more following the last day of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute a Group for the purpose of settlement.
- Item 3: The Conditional Sale Agreement dated as of March 15, 1970, between the Vendee and Thomas F. Harvey and Edward G. Seaman.
- Item 4: 1112 Ormond Avenue, Drexel Hill, Pennsylvania.

**SCHEDULE B—O'CONNELL AND PHILLIPS**

<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Vendee's Road Numbers (both inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>
50' 55-ton, rebuilt box cars with 10' doors.	P&LE Specifications, dated February 6, 1970	100	31,700-31,799	\$9,328	\$932,800
50' 55-ton, rebuilt box cars with 8' doors.	P&LE Specifications, dated February 6, 1970	48	32,300-32,347	\$9,914	\$475,872



**AGREEMENT AND ASSIGNMENT** dated as of March 15, 1970, between the two parties whose names first appear at the foot hereof (hereinafter called the Owners), and PROVIDENT NATIONAL BANK, a Pennsylvania corporation, with its chief place of business at Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101, acting as Agent under an agreement dated as of March 15, 1970 (hereinafter called the Finance Agreement) (said Bank, so acting, being hereinafter called the Assignee).

WHEREAS, the Owners and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement dated as of March 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the sale, on the conditions therein set forth, by the Owners and the purchase by the Vendee of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

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

SECTION 1. The Owners hereby sell, assign, transfer and set over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Owners in and to each unit of the Equipment when and as delivered and accepted and upon payment by the Assignee to the Owners of the amount required to be paid under Section 6 hereof with respect thereto;

(b) All the right, title and interest of the Owners in and to the Conditional Sale Agreement (except the right to deliver the Equipment and the right to receive the payments specified in subparagraphs (a), (b) and (d) of the third paragraph of Article 3 thereof and the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Owners as provided in Article 4 thereof), and in and to any and all amounts which may be or become due or owing by the Vendee to the Owners under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Owners' rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Owners for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Owners to deliver the Equipment in accordance with the Conditional Sale Agreement or relieve the Vendee from its obligations to the Owners under Articles 3, 4, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Owners to the Vendee with

respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Owners. In furtherance of the foregoing assignment and transfer, the Owners hereby authorize and empower 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 Owners, 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 Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owners covenant and agree that the Equipment has been or will be constructed in accordance with the Conditional Sale Agreement and will be delivered to the Vendee under the Conditional Sale Agreement (but only after filing of the Conditional Sale Agreement and this Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act); and that, notwithstanding this Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owners. The Owners further covenant and agree that they will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment to the Vendee under the Conditional Sale Agreement they 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 Vendee under the Conditional Sale Agreement; and the Owners further covenant and agree that they will defend the title to such unit against the demands of all persons whomsoever based

on claims originating prior to said delivery of such unit by the Owners to the Vendee under the Conditional Sale Agreement; all *subject, however*, to the rights of the Vendee under the Conditional Sale Agreement.

SECTION 3. The Owners covenant and agree with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement or to recover any other sums due from the Vendee thereunder, the Owners will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Owners of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Owners. Any and all such obligations shall be and remain enforceable by the Vendee against and only against the Owners and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of the Owners under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The Owners agree that any amount payable to them by the Vendee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any units of the Equipment.

SECTION 4. The Owners will cause to be plainly, distinctly, permanently and conspicuously marked, by metal plate or otherwise, on each side of each unit of the Equip-

ment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

“PROVIDENT NATIONAL BANK, AGENT, OWNER”

SECTION 5. Upon request of the Assignee, its successors and assigns, the Owners will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Owners therein or in the Equipment.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Owners an amount equal to that portion of the Interim Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Vendee pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, at least five days prior to such Closing Date, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Owners to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Vendee that at the time of delivery of such units to the Vendee under the Conditional Sale Agreement, the Owners had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature, except only the rights of the Vendee under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 2 of the Conditional Sale Agreement stating that the units of Equipment are marked in accordance with Section 4 hereof;

(c) Invoice of the Owners for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee as to the correctness of the prices of such units as set forth in said invoice;

(d) Opinion of Messrs. Sullivan, Donovan, Hanrahan, McGovern & Lane, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Assignee and the Vendee and, assuming due authorization, execution and delivery by the Investors named therein, is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interest, powers and privileges purported to be assigned to the Assignee by this Assignment, (v) title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Vendee under the Conditional Sale Agreement, (vi) the Conditional Sale 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 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, or, if any such approval is necessary, it has been obtained; and (viii) registration of the Conditional Sale Agreement or this Assignment or of the interest acquired herein is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended (ix) the investment in the payments to be made under the Conditional Sale Agreement is a legal investment for savings banks pursuant to subdivision 7(e) of Section 235 of the Banking Law of the State of New York; and said opinion shall cover such other matters as shall be reasonably requested by the Assignee;

(e) Opinion of counsel for the Vendee, dated as of such Closing Date, covering the matters and to the effect set forth in subparagraph (d) of this Section 6, and stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of Delaware, its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Vendee relating to or affecting the execution and delivery by the Vendee of the Conditional Sale Agreement or the enforceability there-

of in accordance with its terms or requiring any approval of stockholders in respect thereof, (iii) neither the execution and delivery of the Finance Agreement, the Conditional Sale Agreement and this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Vendee is now a party or constitute a default thereunder and (iv) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement; and

(f) Unless payment of the amount, if any, payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendee, a receipt from the Owners for such payment.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' right generally. In giving the opinion specified in subparagraph (d) of the first paragraph of this Section 6, counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Vendee as to such matter.

The obligation of the Assignee hereunder to make any payment as hereinbefore provided is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee 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 the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by them and lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement, binding upon the Owners and the Vendee in accordance with its terms and that it is now in force without amendment thereto; and

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

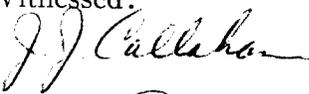
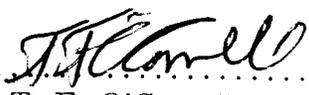
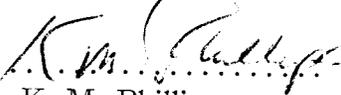
SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

SECTION 10. Although this Assignment is dated as of March 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Assignment may be executed in any number of counterparts, it being understood, however, that the counterpart delivered to the Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the Owners have executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

Witnessed:

	.....		.....
		T. F. O'Connell	
	.....		.....
		K. M. Phillips	

Attest:

ASSISTANT SECRETARY

  
 PROVIDENT NATIONAL BANK,  
 as Agent

By

  
 Vice President

COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On this *8th* day of April 1970, before me personally appeared T. F. O'CONNELL and K. M. PHILLIPS, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

HARRY CHRISTENSEN . . . . .  
Notary Public, Philadelphia County  
135 S. Broad St., Philadelphia, Pa. 19109  
My Commission Expires March 15, 1973

*Harry Christensen*  
Notary Public

Notary Public, Philadelphia  
County, Pennsylvania

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On this *8th* day of April 1970, before me personally appeared ~~.. HAROLD STEPHENS~~ to me personally known, who, being duly sworn, says that he is a Vice President of PROVIDENT NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Alberta E. Flavell*  
ALBERTA E. FLAVELL  
Notary Public ~~Notary Public, Philadelphia, Philadelphia Co.~~  
My Commission Expires June 26, 1972

Notary Public, Philadelphia  
County, Pennsylvania

My Commission Expires

**ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT**

The Pittsburgh and Lake Erie Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of March 15, 1970.

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

By .. *H. S. Allgren, Jr.* .....  
President