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INTERSTATE COMMERCE COMMISSION

EXECUTED IN 10 COUNTERPARTS

OF WHICH THIS IS NO. 10

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1970

among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

CAVAN EQUIPMENT CORPORATION

and

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1970

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,
As Agent

CONDITIONAL SALE AGREEMENT dated as of May 15, 1970 among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 27 hereof), CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter sometimes called the Guarantor or the Lessee).

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease), and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment, constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon

in writing by the Manufacturer, the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

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

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before November 15, 1970 (unless such date is extended by the Company, the Guarantor and the Vendor by appropriate written agreement), 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 (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall

be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or, in case Guarantor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing the purchase, as the Guarantor shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives appointed jointly by the Company and the Guarantor (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof; *provided, however,* that the Manufacturer shall not thereby be relieved of its warranty contained or referred to in Article 14 hereof.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. The base price, which may include freight charges, if any, from the Manufacturer's plant to the point of delivery, is subject to such increase or decrease as is agreed to by the

Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement under this Agreement and the other Conditional Sale Agreements referred to in Item 2 of Annex A hereto (hereinafter called the Other Agreements) has theretofore been and is then being made, would, but for the provisions of this sentence, exceed $9,052,680 (or such higher amount as the Company may at its option agree to), the Manufacturer (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices to not more than $9,052,680 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from the Agreement from the Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale, equipment trust or such other appropriate method of financing as the Guarantor shall determine.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Company as is provided in Item 3 of Annex A hereto (each such group being hereinafter called a Group), unless the Company, the Guarantor and the Manufacturer shall otherwise agree; *provided, however,* that the aggregate Purchase Price of a Group settled for under this Agreement and the Other Agreements (i) prior to July 13, 1970 shall not exceed $2,000,000 plus the amount then payable pursuant to subparagraph (a) of the third paragraph of Article 3 of this Agreement and the Other Agreements, and (ii) prior

to August 27, 1970 shall not exceed $5,500,000 plus the amount then payable pursuant to subparagraph (a) of the third paragraph of Article 3 of this Agreement and the Other Agreements. The term "Closing Date" with respect to any Group shall mean such date, occurring not less than five business days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Company and any assignee of the Manufacturer 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.

The Company 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 with respect to each Group (i) an amount equal to the percentage set forth in Item 7 of Annex A hereto multiplied by the aggregate Purchase Price of such Group plus (ii) the amount by which (x) the percentage set forth in Item 8 of Annex A hereto multiplied by the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Other Agreements for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of $6,646,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreements (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 Agreements,

the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Price payable on such Closing Date under this Agreement is of the aggregate of the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements;

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of Equipment payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on November 15, 1975, and subsequent instalments shall be payable semiannually thereafter on each May 15 and November 15 to and including May 15, 1985 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 9¾% per annum and such interest shall be payable, to the extent accrued, on each May 15 and November 15, commencing November 15, 1970. The payments to be made on each of the 20 semiannual Payment Dates shall be payable in immediately available Baltimore or federal funds. The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a sched-

ule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

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

The Company will pay interest at the rate of 10¾% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

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 5 hereof, the Company shall not have the privilege of prepaying any of the Conditional Sale Indebtedness prior to the date it becomes due.

It is agreed that the obligation of the Company to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the condition precedent that no event of default of the Guarantor specified herein or of the Lessee under the Lease, or any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company 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 Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will, at the expense of the Company, execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will, at the expense of the Company, execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company 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 instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 14 days after it

shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), notify the Vendor with respect thereto. On the interest payment date next succeeding such notice, the Company shall pay to the Vendor a sum equal to the Casualty Value of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, full title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, security title and interest in such unit, in recordable form in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment

in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

Although the Guarantor shall not be required to maintain insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any insurance maintained by it upon the units of the Equipment will be made available to the Company and the Vendor, as their interests may appear, to the extent the Guarantor is permitted to do so under such policies of insurance.

ARTICLE 6. *Obligations of Guarantor.* The Vendor will give to the Guarantor a copy of any notice or other communication given by the Vendor to the Company, at the time of giving such notice or communication to the Company, and the Vendor will not exercise any right, power or remedy with respect to any default hereunder and no notice to the Company of any such default shall be effective, unless the Vendor shall have given to the Guarantor written notice or a copy of its notice to the Company of such default. The Vendor also agrees that, to the extent that the Lessee is authorized to do so pursuant to any provision of the Lease, the Vendor will accept performance by the Guarantor of any covenant, agreement or obligation of the Company contained in this Agreement with the same effect as though performed by the Company including, without limitation, the taking of any action which may be required in order to cure a default of the Company hereunder. In consideration of the foregoing, and for other value received, the Guarantor hereby agrees with the Vendor as follows: The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company and the due and punctual payment of any and all sums payable by the Company under this Agreement (except for the

any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been discontinued, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under Article 17 of the Other Agreements;

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

On this 10th day of June, 1970, before me personally appeared James G. Wells, to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Holbrook
Notary Public
JOHN HOLBROOK
Notary Public, State of New York
No. 31-1831950
Qualified in New York County
Commission Expires March 30, 1971

[NOTARIAL SEAL]

STATE OF MARYLAND
CITY OF BALTIMORE } SS.:

On this 11th day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russell E. Schreiber
Notary Public
RUSSELL E. SCHREIBER
NOTARY PUBLIC
My Commission Expires July 1, 1970

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 9 day of June, 1970, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

My commission expires OCTOBER 28, 1971

[NOTARIAL SEAL]

ANNEX A

ITEM 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.

ITEM 2: Two Conditional Sale Agreements dated as of May 15, 1970, among the Company, the Guarantor and General Motors Corporation (Electro-Motive Division) and one Conditional Sale Agreement dated as of May 15, 1970 among the Company, the Guartor and International RAMCO, Inc.

ITEM 3: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Company hereunder.

ITEM 4: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit to the Company or before such unit has been operated 250,000 scheduled service miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement F. O. B. factory and such correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 4.

ITEM 5: Except to the extent the Manufacturer is obligated under the Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Manufacturer under the Agreement, the Company agrees to indemnify, protect and hold harmless each such 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 each such assignee 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 or other right.

The Manufacturer shall defend any suit or proceeding brought against the Company, the Lessee and/or each assignee of the Manufacturer's rights under the Agreement so far as the same is based on a claim that the Equipment of Manufacturer's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for the defense of same, and the Manufacturer shall pay all damages and costs awarded therein against the Company, the Lessee and/or any such assignee.

In case any unit of the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Manufacturer shall at its option and at its own expense either procure for the Company, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Manufacturer's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 5 of the Agreement .

The Manufacturer will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Manufacturer for patent infringement by the Equipment or any part thereof.

ITEM 6: La Grange, Illinois 60525.

ITEM 7: 26.75%.

ITEM 8: 73.25%.

ANNEX B

Type	Manufacturer's Specification	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Delivery
3000 H.P. Model SD-40 Diesel Locomotive	No. 8054 dated 6/2/69 as amended by No. 8054-3 dated 7/1/68	McCook, Illinois	7	7507-7513	$274,378	$1,920,646	June, 1970 at Lessee's Rockwell Street Yard, Chicago, Illinois

law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension Not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company will (i) prior to the delivery and acceptance hereunder of any unit of the Equipment, cause this Agreement and any assignment hereof by the Company, and any supplements hereto and thereto relating to such unit and (ii) prior to the settlement hereunder for any unit of the Equipment, cause the first assignment by the Manufacturer and any supplements thereto relating to such unit, in each case to be filed, recorded or deposited and refiled, rerecorded or redeposited, with the Interstate Commerce Commission and otherwise as may be 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 security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly cause to be furnished to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to any assignment by the Com-

pany referred to in clause (i) above), satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030,

(b) to the Guarantor, at 2 North Charles Street, Baltimore, Maryland 21201,

(c) to the Manufacturer, at the address specified in Item 6 of Annex A hereto or

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief

place of business is in the State of New York. The Guarantor represents and warrants that its chief place of business is in the State of Ohio.

ARTICLE 24. *Immunities.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Manufacturer (or the Vendor), or against any principal or principals (disclosed or undisclosed) of the Company if the Company is acting in an agency capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or principal or principals being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the Annexes hereto, exclusively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or de-

any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been discontinued, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under Article 17 of the Other Agreements;

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

On this 10th day of June, 1970, before me personally appeared James G. Wells, to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Holbrook
Notary Public
JOHN HOLBROOK
Notary Public, State of New York
No. 31-1831950
Qualified in New York County
Commission Expires March 30, 1971

[NOTARIAL SEAL]

STATE OF MARYLAND
CITY OF BALTIMORE } SS.:

On this 11th day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russell E. Schreiber
Notary Public
RUSSELL E. SCHREIBER
NOTARY PUBLIC
My Commission Expires July 1, 1970

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 9 day of June, 1970, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

My commission expires OCTOBER 28, 1971

[NOTARIAL SEAL]

ANNEX A

ITEM 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.

ITEM 2: Two Conditional Sale Agreements dated as of May 15, 1970, among the Company, the Guarantor and General Motors Corporation (Electro-Motive Division) and one Conditional Sale Agreement dated as of May 15, 1970 among the Company, the Guartor and International RAMCO, Inc.

ITEM 3: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Company hereunder.

ITEM 4: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit to the Company or before such unit has been operated 250,000 scheduled service miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement F. O. B. factory and such correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 4.

ITEM 5: Except to the extent the Manufacturer is obligated under the Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Manufacturer under the Agreement, the Company agrees to indemnify, protect and hold harmless each such 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 each such assignee 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 or other right.

The Manufacturer shall defend any suit or proceeding brought against the Company, the Lessee and/or each assignee of the Manufacturer's rights under the Agreement so far as the same is based on a claim that the Equipment of Manufacturer's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for the defense of same, and the Manufacturer shall pay all damages and costs awarded therein against the Company, the Lessee and/or any such assignee.

In case any unit of the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Manufacturer shall at its option and at its own expense either procure for the Company, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Manufacturer's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 5 of the Agreement .

The Manufacturer will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Manufacturer for patent infringement by the Equipment or any part thereof.

ITEM 6: La Grange, Illinois 60525.

ITEM 7: 26.75%.

ITEM 8: 73.25%.

ANNEX B

Type	Manufacturer's Specification	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Delivery
3000 H.P. Model SD-40 Diesel Locomotive	No. 8054 dated 6/2/69 as amended by No. 8054-3 dated 7/1/68	McCook, Illinois	7	7507-7513	$274,378	$1,920,646	June, 1970 at Lessee's Rockwell Street Yard, Chicago, Illinois

law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension Not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company will (i) prior to the delivery and acceptance hereunder of any unit of the Equipment, cause this Agreement and any assignment hereof by the Company, and any supplements hereto and thereto relating to such unit and (ii) prior to the settlement hereunder for any unit of the Equipment, cause the first assignment by the Manufacturer and any supplements thereto relating to such unit, in each case to be filed, recorded or deposited and refiled, rerecorded or redeposited, with the Interstate Commerce Commission and otherwise as may be 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 security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly cause to be furnished to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to any assignment by the Com-

pany referred to in clause (i) above), satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030,

(b) to the Guarantor, at 2 North Charles Street, Baltimore, Maryland 21201,

(c) to the Manufacturer, at the address specified in Item 6 of Annex A hereto or

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief

place of business is in the State of New York. The Guarantor represents and warrants that its chief place of business is in the State of Ohio.

ARTICLE 24. *Immunities.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Manufacturer (or the Vendor), or against any principal or principals (disclosed or undisclosed) of the Company if the Company is acting in an agency capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or principal or principals being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the Annexes hereto, exclusively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or de-

positing 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 and any rights arising out of the marking on the units of the Equipment.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to

be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

[CORPORATE SEAL]

by .....
Vice President.

Attest:

.....
Assistant Secretary.

CAVAN EQUIPMENT CORPORATION,

[CORPORATE SEAL]

by James G. Wells
President.

Attest:

Michael T. Schaffield
Secretary.

THE CHEASPEAKE AND OHIO RAILWAY COMPANY,

[CORPORATE SEAL]

by .....
Treasurer.

Attest:

.....
Assistant Secretary.

APPROVED AS TO FORM

C. C. Kimball
GENERAL ATTORNEY
6/11/70

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

On this 10th day of June, 1970, before me personally appeared James G. Wells, to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Holbrook
Notary Public
JOHN HOLBROOK
Notary Public, State of New York
No. 31-1831950
Qualified in New York County
Commission Expires March 30, 1971

[NOTARIAL SEAL]

STATE OF MARYLAND
CITY OF BALTIMORE } SS.:

On this 11th day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russell E. Schreiber
Notary Public
RUSSELL E. SCHREIBER
NOTARY PUBLIC
My Commission Expires July 1, 1970

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 9 day of June, 1970, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

My commission expires OCTOBER 28, 1971

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ANNEX A

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ITEM 3: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Company hereunder.

ITEM 4: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit to the Company or before such unit has been operated 250,000 scheduled service miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement F. O. B. factory and such correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 4.

ITEM 5: Except to the extent the Manufacturer is obligated under the Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Manufacturer under the Agreement, the Company agrees to indemnify, protect and hold harmless each such 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 each such assignee 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 or other right.

The Manufacturer shall defend any suit or proceeding brought against the Company, the Lessee and/or each assignee of the Manufacturer's rights under the Agreement so far as the same is based on a claim that the Equipment of Manufacturer's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for the defense of same, and the Manufacturer shall pay all damages and costs awarded therein against the Company, the Lessee and/or any such assignee.

In case any unit of the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Manufacturer shall at its option and at its own expense either procure for the Company, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Manufacturer's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 5 of the Agreement .

The Manufacturer will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Manufacturer for patent infringement by the Equipment or any part thereof.

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ITEM 7: 26.75%.

ITEM 8: 73.25%.

ANNEX B

Type	Manufacturer's Specification	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Delivery
3000 H.P. Model SD-40 Diesel Locomotive	No. 8054 dated 6/2/69 as amended by No. 8054-3 dated 7/1/68	McCook, Illinois	7	7507-7513	$274,378	$1,920,646	June, 1970 at Lessee's Rockwell Street Yard, Chicago, Illinois

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

CAVAN EQUIPMENT CORPORATION

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Dated as of May 15, 1970

LEASE OF RAILROAD EQUIPMENT, dated as of May 15, 1970, between CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Lessor), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Lessee).

WHEREAS the Lessor and the Lessee have entered into a conditional sale agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter referred to as the Manufacturer), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor certain railroad equipment; and

WHEREAS the Manufacturer has assigned its interests in the Conditional Sale Agreement to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter referred to as the Vendor); and

WHEREAS the Lessee desires to lease the units of said equipment described in Schedule A hereto, or such lesser number of such units as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to November 15, 1970 (hereinafter called the Units), at the rentals and for the term and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the

point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery); whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments payable on May 15 and November 15 of each year commencing November 15, 1970. The first such semiannual payment shall be in an amount equal to 0.02218% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from the Closing Date under the Conditional Sale Agreement (as defined in the Conditional Sale Agreement) in respect of such Unit to November 15, 1970; the next nine such semiannual payments shall each be in an amount equal to 3.9919% of the Purchase Price of each Unit subject to this Lease; and the last 20 such semiannual payments shall each be in an amount equal to 6.5012% of the Purchase Price of each such Unit. If any of the payment dates referred to above is not a business day, the payment shall be payable on the next preceding business day.

The Lessor irrevocably instructs the Lessee to make such of the payments provided for in this Lease including but not limited to the payments required under § 6 of this Lease for the account of the Lessor, care of Mercantile-Safe Deposit and Trust Company, Calvert and Baltimore Streets, Baltimore, Maryland 21203, Attention of Corporate Trust Department. Such payments shall be made in immediately avail-

able Baltimore or federal funds and shall be applied to satisfy the obligations of the Lessor under the Conditional Sale Agreement and, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid directly to the Lessor at its offices at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in

and to the Units, upon default by the Lessee hereunder or under the Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination) to the extent that this Lease covers units of the Equipment covered by the Conditional Sale Agreement, all as provided therein unless the Lessee is not in default under this Lease or under the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease, without, however, in any way affecting Lessee's obligations as Guarantor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
AGENT, OWNER"

or other appropriate words designated by the Lessor, 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 Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and the Conditional Sale Agreement and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or Federal taxes (other than any Federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any

other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units,

the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of Number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of $4.50 per gross ton

for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit shall pass to and vest in the Lessee. In the event of a taking or requisition of any Unit by condemnation or otherwise, the Lessor shall be entitled to receive the proceeds of any award receivable in respect thereof; *provided, however,* that in such event the Lessee shall be entitled to a refund (or credit) of an amount equal to the Casualty Value of the Unit in question or to the amount of such award, whichever is less.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit as is set forth in the following schedule opposite the number of such rental payment date:

Payment No.	Percentage	Payment No.	Percentage
1	103.000%	16	86.883%
2	103.000	17	83.889
3	103.000	18	80.631
4	103.000	19	77.237
5	103.000	20	73.747
6	103.000	21	70.124
7	103.000	22	66.352
8	103.000	23	62.424
9	103.000	24	58.336
10	103.000	25	54.078
11	100.579	26	49.646
12	98.047	27	45.021
13	95.422	28	40.218
14	92.690	29	35.214
15	89.845	30	30.000

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before November 1 in each year commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate state-

ment, as of the preceding June 30, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the terms of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have under the provisions of Items 5 and 6 of Annex A to the Conditional Sale Agreement. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the

Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however,* that the Lessee 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 Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep at all times during the term of this Lease each Unit which is subject to this Lease in good order and repair and in such condition as will enable such Unit to be used in interchange service.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense

of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in Article 22 of the Conditional Sale Agreement and § 15 of this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor, within a reasonable time prior to the required date of filing, information reasonably requested by the Lessor for the purpose of making any and all reports to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any of the other covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreement and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the

rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 6.816% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision hereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 70% effective Federal tax rate and the highest effective state and local income tax and/or excess profits tax rates generally applicable to or imposed upon individuals, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 70% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Lease called the Assumed Rates), shall be equal to such sum as, in the reasonable

opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's Interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 14 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any manda-

tory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the

covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of the Vendor (or any assignee of the Vendor) and shall be applied by the Vendor (or such assignee) to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor. All the rights of the Lessor hereunder (including but not limited to rights under §§ 2, 5, 6, 9 and 14) shall inure to the benefit of the Lessor's assigns (including the partners of any such assignee if such assignee is a partnership). Whenever the Lessor is referred to in this Lease, it shall apply and refer to each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired

the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America and that during such period any use of any Unit outside the United States will be limited to incidental and temporary use in Mexico and Canada.

§ 12. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease as to any of the Units, the Lessee will (except to the extent that such Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessor may designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occur-

rence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Units abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit suffering a Casualty Occurrence during the term of this Lease.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Virginia, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recording will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of

notice) with any other Federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of or constitute a default under any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including without limitation, an allowance for the Rapid Amortization Deduction (as defined in § 9 of this Lease), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records

as will enable Lessor to determine whether it is entitled to the full benefit of the Rapid Amortization Deduction with respect to the Units.

The Lessee represents, agrees and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of Section 184 of the Code and at all times thereafter during the term of this Lease, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of Section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of Section 184 of the Code the Units will not have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of Section 184 of the Code from commencing with the Lessor and no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times during the term of this Lease "a domestic common carrier by railroad" within the meaning of Section 184(d) (1) (A) of the Code, and (iv) during the term of this Lease, each Unit will, within the meaning of Section 184(d) (1) (A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit as a result of any of the following events:

(a) Any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein, in the Conditional Sale Agreement, in the related

Assignment (as defined in the Conditional Sale Agreement), in the Finance Agreement (as defined in the related Assignment), or otherwise made in writing in connection herewith or therewith, shall, or in the opinion of the Internal Revenue Service (hereinafter called the IRS) shall, be fraudulent, untrue, incorrect, inaccurate or misleading in whole or in part; or the Lessee (or any officer, employee or agent thereof) shall, or in the opinion of the IRS shall, fail to state any material fact in connection with the transactions contemplated hereby or thereby; or the Lessee shall take any action in respect of its income tax returns or otherwise which shall, or in the opinion of the IRS shall, be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof) shall, or in the opinion of the IRS shall, take any other action whatsoever which shall cause the loss or disallowance or recapture of any portion of the full Rapid Amortization Deduction; or

(b) The failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or the Conditional Sale Agreement, the related Assignment or the Finance Agreement; or

(c) Any use of such Unit which prevents such Unit from being "qualified railroad rolling stock" within the meaning of Section 184(d) of the Code, or any regulations promulgated thereunder;

the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereo, be increased by

such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates as defined in § 9 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease (taxes being calculated at the Assumed Rates) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates) that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Cravath, Swaine & Moore or other independent counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 9¾% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first

have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 14 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor, as a condition to its obligation to lease the Units to the Lessee hereunder, shall have received counterparts of the written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Code, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Code), as provided for in Section 184 of the Code, whichever the Lessor elects.

§ 15. *Recording; Expenses.* Prior to the delivery and acceptance hereunder of any Unit, the Lessee will cause this Lease and any assignment hereof by the Lessor to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and depositing and refiling, rerecording and redepositing required of the Lessor under Article 21 of the Conditional Sale Agreement and will from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or re-

deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the first assignment thereof by the Manufacturer; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to the assignments by the Lessor referred to in said Article 21 and above) satisfactory to the Vendor and the Lessor.

The Lessor will pay the costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the fees and disbursements, if any, of their respective counsel.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10¾% per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030,

if to the Lessee, at 2 North Charles Street, Baltimore, Maryland 21201;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 19. *Execution in Counterparts.* This Lease may be executed in several 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. Although this Lease is dated as of May 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.

§ 20. *Law Governing.* This Lease shall be construed in accordance with the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

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

CAVAN EQUIPMENT CORPORATION,

by .....

[CORPORATE SEAL] *President.*

Attest:

.....

Secretary.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by .....

[CORPORATE SEAL] *Treasurer.*

Attest:

APPROVED AS TO FORM

.....

Assistant Secretary.

.....

GENERAL ATTORNEY

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this day of June, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, 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.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } SS.:

On this day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY 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.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

Type	Manufacturer's Specification	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Delivery
3000 H.P. Model SD-40 Diesel Locomotive	No. 8054 dated 6/2/69 as amended by No. 8054-3 dated 7/1/68	McCook, Illinois	7	7507-7513	$274,378	$1,920,646	June, 1970 at Lessee's Rockwell Street Yard, Chicago, Illinois

AGREEMENT AND ASSIGNMENT dated as of May 15, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of May 15, 1970 (hereinafter called the Finance Agreement and said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS the Manufacturer, CAVAN EQUIPMENT CORPORATION (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex 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 ($1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

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

(a) All the right, security title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and

reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer 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 Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

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

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor 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 Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 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 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of

ment, (iv) the Assignee is vested with all the rights, titles, interests, power, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or, if any approval is necessary it has been obtained, (vii) 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, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or any investor in such certificates of interest may reasonably request;

(e) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, to the effect set forth in clauses (vii) and (viii) of subparagraph (d) above and stating that (i) the Company is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and

delivered on behalf of the Company and is a valid and binding instrument enforceable against the Company in accordance with its terms;

(f) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (d) above, and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and is a valid and binding instrument enforceable against the Guarantor in accordance with its terms;

(g) Opinion dated such Closing Date of counsel for the Manufacturer, addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery by the other party or parties thereto) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms;

(h) In the case of the first Closing Date, the opinion of counsel required by the Pledge Agreement dated as of May 15, 1970, from the shareholder or shareholders of the Company to the Assignee; and

(i) Unless payment of the amount 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 Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) 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' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment 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 Investors named in Schedule A to the Finance Agreement with respect thereto and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale 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 will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall

reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. 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 Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, 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 or 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 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c

ment, (iv) the Assignee is vested with all the rights, titles, interests, power, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or, if any approval is necessary it has been obtained, (vii) 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, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or any investor in such certificates of interest may reasonably request;

(e) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, to the effect set forth in clauses (vii) and (viii) of subparagraph (d) above and stating that (i) the Company is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and

delivered on behalf of the Company and is a valid and binding instrument enforceable against the Company in accordance with its terms;

(f) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (d) above, and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and is a valid and binding instrument enforceable against the Guarantor in accordance with its terms;

(g) Opinion dated such Closing Date of counsel for the Manufacturer, addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery by the other party or parties thereto) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms;

(h) In the case of the first Closing Date, the opinion of counsel required by the Pledge Agreement dated as of May 15, 1970, from the shareholder or shareholders of the Company to the Assignee; and

(i) Unless payment of the amount 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 Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) 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' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment 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 Investors named in Schedule A to the Finance Agreement with respect thereto and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale 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 will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall

reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. 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 Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, 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 or 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 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c

of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing 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 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 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.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

[CORPORATE SEAL]

by .....
Vice President.

Attest:

.....
Assistant Secretary.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

[CORPORATE SEAL]

by .....
SENIOR *Vice President.*

Attest:

.....
Assistant Corporate Trust Officer.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 9 day of June, 1970, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

.....
Notary Public

My commission expires OCTOBER 28, 1971

[NOTARIAL SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } SS.:

On this 11th day of June, 1970, before me personally appeared Alton A. Shide, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1970

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 15, 1970.

CAVAN EQUIPMENT
CORPORATION,

by James G. Wells
President.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY,

by T. C. Pringle
Treasurer.