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~~INTERSTATE COMMERCE COMMISSION~~

**CONDITIONAL SALE AGREEMENT**

*Dated as of January 1, 1971*

BETWEEN

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

AND

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

For the Purchase of 10 1,500 H.P.  
Diesel-Electric Switching Locomotives

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**AGREEMENT AND ASSIGNMENT**

Dated as of January 1, 1971

BETWEEN

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

AND

DOLLAR SAVINGS BANK,  
As AGENT

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CONDITIONAL SALE AGREEMENT dated as of January 1, 1971, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation organized under the laws of the State of Delaware, (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 27 hereof), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware (hereinafter called the Railroad),

WHEREAS, Builder has agreed to construct and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment), and

WHEREAS, the Manufacturer and the Railroad have agreed that this Conditional Sale Agreement (hereinafter called the Agreement) shall exclusively and completely state the rights of the Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

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

ARTICLE 1. *Construction and Sale.* The Builder will construct and will sell and deliver the Equipment to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule A hereto, which specifications are, by reference, made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the "Specifications". The design, quality and component parts of each unit of the Equipment shall conform to all Department of Transportation (Federal Railroad Administration) requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Builder will deliver the various units of the Equipment to the Railroad on the tracks of the Indiana Harbor Belt Railway Company at Gibson, Indiana, consigned to the Railroad at Youngstown, Ohio, or at such other point or points within the United States as shall be specified by the Railroad, with freight charges prepaid from the Builder's plant at LaGrange, Illinois, to the point of delivery. Such delivery shall be completed not later than February 15, 1971.

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

Notwithstanding the preceding provisions of this Article 2, any unit or units of the Equipment not delivered, accepted and settled for on or before February 15, 1971, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad. Upon delivery of each unit of the Equipment at the point of delivery, an authorized representative of the Railroad shall furnish to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance), in such number of counterparts or copies as may reasonably be requested, stating that such unit has been inspected and found to be completed in accordance with this Agreement and the Specifications and that each unit of the Equipment described in such Certificate has been delivered to and fully and finally accepted on the

Railroad's behalf by such representative at the place therein specified and that each such unit is marked in accordance with Article 6 hereof. Such Certificate of Acceptance shall be final and conclusive evidence that such unit conforms in workmanship, material and construction and all other respects to the requirements and provisions of this Agreement, without prejudice to the rights of the Railroad under the Builder's warranty of materials and workmanship hereinafter set forth in Article 9 hereof.

On acceptance of each unit of Equipment hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The total purchase price of the Equipment delivered on tracks at Gibson, Indiana, with freight charges prepaid, exclusive of interest, is set forth in Schedule A hereof.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay to the Manufacturer at such place as the Manufacturer may designate, the total purchase price of the Equipment as follows:

(a) On the Closing Date (as hereinafter defined) the sum of \$232,080 representing the down payment of not less than 14% of the purchase price on presentation of an invoice for the Equipment supported by a Certificate of Acceptance in respect thereof; and

(b) The sum of \$1,400,000 representing not more than 86% of the total purchase price of the Equipment, together with interest (calculated on a 360-day basis) from the Closing Date at the rate of  $9\frac{3}{4}\%$  per annum on the balance of the total purchase price remaining unpaid from time to time, in 16 consecutive semi-annual instalments in the sum of \$128,031.10 each (except for appropriate adjustment of the first instalment). The first such instalment shall be payable on July 22, 1971, and shall include the sum of \$59,781.10 to be applied in reduction of principal together with interest calcu-

lated as above provided, and subsequent instalments shall be payable semi-annually thereafter on January 22, and July 22 of each year to and including January 22, 1979. Each of said subsequent instalments shall be in the sum of \$128,031.10 and shall be applied to pay interest as above provided and the balance of each such instalment shall be applied in reduction of principal.

The term "Closing Date" shall mean such date (on or after January 22, 1971 and on or before February 15, 1971) not more than three business days following the presentation by Builder to the Railroad of the invoice and the Certificate of Acceptance with respect thereof as shall be fixed by the Railroad by written notice delivered to the Builder at least three business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

If this Agreement shall have been assigned by the Builder, the obligation of the Railroad under subparagraph (a) of the second paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claims against, the Equipment or any part thereof with respect to such obligation.

The Railroad will pay interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

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

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Manu-

facturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or Federal taxes (other than income, gross receipts, excess profits and similar taxes) or license fees hereafter levied or imposed upon or measured by this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees the Railroad assumes and agrees to pay on demand in addition to the purchase price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result in a lien upon any unit of the Equipment, except the lien of taxes and assessments not due and payable; *provided, however*, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of an invoice therefor and any sums of money so paid by the Manufacturer shall be secured by and under this Agreement as a lien on the Equipment; *provided, however*, that the Railroad shall be under no obligation to reimburse the Manufacturer for any sums of money so paid, nor shall any such sums of money so paid be secured by and under this Agreement as a lien on the Equipment, unless the Manufacturer shall, by at least thirty days written notice given

to the Railroad of its intention to make any such payment, afford a reasonable opportunity to the Railroad to contest in good faith any such expenses, taxes, assessments, licenses, charges, fines or penalties which may have been so charged or levied against the Manufacturer.

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

When and only when the Manufacturer shall have been paid the full purchase price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 23 hereof, and will execute and deliver at the same place, for recording or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may

be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept plainly, distinctly, permanently and conspicuously marked by metal plate, stencil or otherwise, in letters not less than one inch in height, with appropriate words designated by the Manufacturer to indicate the limited interest of the Railroad therein with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. Such marks shall be such as to be readily visible and as to indicate plainly that ownership of the Equipment is not in the Railroad. The Railroad will not place any unit of the Equipment in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and in case any of such marks shall at any time be removed, defaced or destroyed, the Railroad will cause the same to be promptly restored or replaced.

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

Except as above provided, the Railroad will not allow the names of any persons, associations or corporations to be placed on any of the Equipment as a designation which

might be interpreted as a claim of ownership by the Railroad or anyone other than the Manufacturer; provided, however, that the Railroad may cause the Equipment to bear the designation "P&LE", "Pittsburgh And Lake Erie" or "Pittsburgh And Lake Erie Railroad Company" together with such insignia as the Railroad customarily displays upon the sides of other railroad equipment owned or leased by the Railroad.

ARTICLE 7. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause it to be maintained in good order and repair without expense to the Manufacturer.

ARTICLE 8. *Lost or Destroyed Equipment.* In the event of loss or destruction of, or irreparable damage to, any unit of the Equipment from any cause whatsoever during the continuance of this Agreement (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Manufacturer in regard thereto. Following receipt of such information, the Manufacturer may, at its discretion, make a demand upon the Railroad in writing requiring the Railroad to substitute other railroad equipment for each such lost, destroyed or irreparably damaged unit of equipment. Within 30 days of the date of such demand the Railroad shall replace each such lost, destroyed or irreparably damaged unit of equipment with another unit or units of standard gauge railroad equipment (other than passenger or work equipment) of a value equal to the unpaid balance of the purchase price of such lost, destroyed or irreparably damaged unit of equipment, together with the interest accrued and unpaid thereon, title to such unit or units to be taken and vested in the name of the Manufacturer, by proper bill of sale, free from all liens, and such unit thereupon immediately to come under and be subject to all of the terms and conditions of this Agreement as though one of the original units of Equipment accepted hereunder, and the Railroad will cause each such replacement unit to be marked and numbered in the same manner as hereinabove provided with respect to the unit replaced thereby.

The Railroad further agrees to furnish to the Manufacturer, if requested, once in each year as long as this Agreement shall be in force, an accurate inventory of the Equipment in actual service and the Railroad's numbers of such of them as may have been lost, destroyed or irreparably damaged.

The Railroad further agrees to furnish the Manufacturer four executed counterparts of

(1) a certificate of a Vice-President or the Comptroller of the Railroad certifying that such replacing unit or units is standard guage railroad equipment and has been marked and numbered as required by the provisions of Article 6 and certifying the value thereof to be equal to the unpaid balance of the purchase price of such unit of Equipment being replaced, together with interest accrued and unpaid thereon; and

(2) an opinion of counsel for the Railroad that title to such replacing unit or units is vested in the Manufacturer free and clear of all liens and encumbrances, and that such unit or units has come under and become subject to this Agreement.

*ARTICLE 9. Builder's Warranty of Material and Workmanship.* The Builder guarantees that the Equipment will be built in accordance with the Specifications and warrants the Equipment to be free from defects in material and workmanship under normal use and service; the Builder's obligation under this Article 9 being limited to making good at its factory any part or parts of any unit of the Equipment which shall, within two years after the delivery of such unit to the Railroad, or before such unit shall have been 250,000 miles in service, whichever event shall first occur, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2 and 15 hereof,

and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. Such warranty shall not apply to any components of the Equipment which shall have been repaired or altered unless repaired or altered by the Builder or by its authorized service representative, if, in its judgment, such repairs or alterations affect the stability or reliability of the Equipment, or if the Equipment shall have been subject to misuse, negligence or accident.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend and with all lawful rules of the Interstate Commerce Commission, Department of Transportation (Federal Railroad Administration) and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 11. *Reports and Inspections.* On or before March 31 in each year, the Railroad will furnish to the Manufacturer an accurate statement showing as at the preceding December 31, the amount, description and Railroad numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed or irreparably damaged, whether by accident or otherwise, during the preceding calendar year, the numbers of the units then under-

going repairs and awaiting repairs, and such additional information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request. Together with such statement the Railroad will also furnish to the Manufacturer a statement specifying that, in the case of all Equipment repainted during the preceding calendar year, the marks required by Article 6 hereof have been preserved or replaced. The Manufacturer shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 12. *Possession and Use.* The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession and control of the Equipment and the use thereof upon the lines of railroad owned or operated by it, either alone or jointly with another and whether under lease or otherwise, or over which the Railroad has trackage rights, and upon the lines of railroad owned or operated by any railroad company, a majority of the capital stock of which is at the time owned or controlled by the Railroad, or over which such company has trackage rights but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 13. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

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

ARTICLE 14. *Railroad's Indemnities.* The Railroad agrees to indemnify and save harmless the Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment, or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price and the transfer of title to the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all units of the Equipment; *provided, however,* that the Builder shall not be relieved from its guaranty covering material and workmanship hereinbefore in Article 9 set forth.

ARTICLE 15. *Patent Indemnities.* Except in cases of designs, articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its successors or assigns, because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing, or claimed to infringe, on any patent or other right; and the Railroad likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any

design, article or material specified by the Railroad and not manufactured by the Builder which infringes, or is claimed to infringe, on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Railroad, its successors or assigns, all and every such further assurance as may be reasonably requested by the Railroad, its successors or assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 16. *Assignments.* Except as provided in the second paragraph of this Article 16, nothing contained in this Agreement shall limit or prevent any merger of the Railroad into, or consolidation of the Railroad with, any other corporation and the transfer of all the Railroad's rights under this Agreement and the sale, lease or transfer of possession of all the Equipment to such corporation into which the Railroad shall have merged or with which the Railroad may have been consolidated, if, as a condition to

any such merger or consolidation, such other corporation (1) shall be organized and existing under the laws of the United States of America or of one or more States thereof and (2) shall expressly assume by written agreement satisfactory to the Manufacturer the due and punctual payment of the principal of, and interest on, the entire unpaid purchase price of the Equipment and the due and punctual performance and observance of all of the obligations, duties and covenants specified in this Agreement to be performed by the Railroad.

In the event of a merger of the Railroad into, or consolidation of the Railroad with, any other corporation, or a subsidiary or successor thereof, which has filed, or against which there has been filed, within the ten years preceding such merger or consolidation, a petition for reorganization under Section 77 of the Bankruptcy Act, the Manufacturer shall have the right, in addition to all other rights, benefits and advantages conferred under this Agreement, to declare the entire amount of the unpaid purchase price of the Equipment, together with interest thereon then accrued and unpaid, immediately due and payable without further demand, and thereafter the aggregate of the unpaid balance of the purchase price and such interest shall bear interest from the date of such declaration at the rate of ten percent (10%) per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Equipment so payable, with interest as aforesaid.

Except in the case of the merger or consolidation of the Railroad into or with such other corporation upon the condition above set forth, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, nor (except as provided in Article 12 hereof) transfer possession of any unit of the Equipment to any other firm, person or corporation without first obtaining the written consent of the Manufacturer to such sale, assignment or transfer.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 9 and 15 hereof, or relieve the Railroad of its obligations to the Manufacturer under Articles 2, 14 and 15 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

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

The Railroad recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer as hereinbefore pro-

vided the rights of such assignee to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such transfer or assignment, or successive transfers or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such transferee or assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such markings to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such markings for use on railroad equipment covered by conditional sale agreements. The cost of changing any such markings in the event of any transfer or assignment of title to the Equipment to the first assignee of this Agreement and the first assignee of such first assignee shall be borne by the Railroad, and, in the event of any subsequent transfer or assignment of title to the Equipment, such cost shall be borne by the transferee or assignee.

If this Agreement shall have been assigned by the Builder and the assignee shall not make the payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and if such payment shall not have been previously paid by such assignee,

the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder that portion of the purchase price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of leading New York City banks in effect the date such payment was due; *provided, however*, that nothing in this paragraph contained shall be construed as constituting a consent by the Railroad to such failure or refusal by such assignee to make such payment.

ARTICLE 17. *Defaults.* In the event that one or more of the following events of default shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full for more than five (5) days after the same shall become due and payable hereunder, any sum payable by the Railroad as herein provided in respect of the purchase price of the Equipment or interest thereon; or

(b) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed (other than the failure to make payments as provided in subparagraph (a) hereinabove) or to make provision satisfactory to the Manufacturer for such compliance; or

(c) 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 Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed 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

(d) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such 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) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Manufacturer, declare the entire amount of the unpaid purchase price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and pay-

able, without further demand, and thereafter the aggregate of the unpaid balance of the purchase price and such interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

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

ARTICLE 18. *Remedies.* If the Railroad shall make default as hereinbefore provided, then at any time after the entire unpaid portion of the purchase price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises where the Equipment may be located

and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire unpaid portion of the purchase price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then

in force and applicable thereto retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however*, that, if the Railroad, within 30 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the purchase price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof, at any time during a period of 30 days after the entire unpaid portion of the purchase price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be

deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the Equipment to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others.

No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency, the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of the assignment of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

The Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of the units of Equipment and to sell them and any other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Manufacturer's rights hereunder, ex-

cept such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

ARTICLE 20. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Railroad hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

ARTICLE 21. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interests herein, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be filed in such other places as the Manufacturer shall reasonably request; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record and deposit any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose

of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording and depositing satisfactory to the Manufacturer.

ARTICLE 22. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interests in the first assignment by the Manufacturer of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of the indebtedness in respect of purchase price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 22, if the first assignee is an agent, then any successor agent to such agent shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Treasurer of the Railroad at P&LE Terminal Building, Pittsburgh, Pennsylvania 15219, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder

to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at its offices at La Grange, Illinois, or at such other address as may have been furnished in writing to the Railroad by the Builder. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

ARTICLE 24. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 25. *Effect and Modification of Agreement.* Except as herein otherwise provided, this Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

ARTICLE 26. *Law Governing.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 27. *Definitions.* The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Motors Cor-

poration (Electro-Motive Division), 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 as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, General Motors Corporation (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of January 1, 1971, 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 these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be

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

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By *J. D. Deane*  
.....  
Vice-President

[CORPORATE SEAL]

Attest:

*W. A. Nunkes*  
.....  
Assistant Secretary

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

By *H. S. Allgier*  
.....  
President

[CORPORATE SEAL]

Attest:

*W. A. Nunkes*  
.....  
~~Assistant~~ Secretary

STATE OF *Illinois* }  
COUNTY OF *Clark* } ss.:

On this *14* day of January, 1971, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is **VICE PRESIDENT** of General Motors Corporation (Electro-Motive Division), that the seal 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 the 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.

*[Signature]*  
.....  
Notary Public  
My Commission Expires October 28, 1971

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

On this *18* day of January, 1971, before me personally appeared H. G. ALLYN, JR., to me personally known, who, being by me duly sworn, says that he is President of The Pittsburgh and Lake Erie Railroad Company, that the seal 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 the authority of the Executive Committee of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Donna R. Smocer*  
.....  
Notary Public

DONNA R. SMOCKER, Notary Public  
Pittsburgh Railway Co., Pa.  
My Commission Expires  
January 24, 1972

**Schedule A**

Equipment included in Conditional Sale Agreement dated as of  
 January 1, 1971 Between GENERAL MOTORS CORPORATION  
 (Electro-Motive Division) and THE PITTSBURGH AND  
 LAKE ERIE RAILROAD COMPANY

<u>No.</u> <u>Units</u>	<u>Description</u>	<u>Specifications</u>	<u>Railroad</u> <u>Numbers</u>	<u>Price</u>	
				<u>Per Unit</u>	<u>Total</u>
10	1,500 H. P. Diesel- Electric Switching Locomotives	P&LE Specifications dated December 16, 1969, as mod- ified by Memorandum of Conference dated March 5, 1970	9280-9289	\$163,208	\$1,632,080

AGREEMENT AND ASSIGNMENT dated as of January 1, 1971, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the Builder) and DOLLAR SAVINGS BANK, a Pennsylvania corporation, with a mailing address at Fourth and Smithfield Streets, Pittsburgh, Pa. 15222, acting as Agent under an Agreement dated January 1, 1971 (hereinafter called the Finance Agreement), a copy of which has been delivered to the Builder (said Bank, so acting, being hereinafter called the Assignee).

WHEREAS, the Builder and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of January 1, 1971 (hereinafter called the Conditional Sale Agreement) covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described or referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of One Dollar (\$1) and other good and valuable considerations paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered to and accepted by the Railroad and, as to each such unit, upon payment to the Builder of the amounts required to be paid under Section 5 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment

(except the right to manufacture and the right to receive the payments specified in subparagraphs (a) and (b) of the second paragraph of Article 3 thereof and in the last paragraph of Article 16 thereof, and reimbursement for taxes paid or incurred by the Builder as provided in Article 4 thereof except that the Builder shall not have a lien on the Equipment with respect thereto), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's obligations in respect of the purchase price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); *provided, however*, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the

Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad until the filings and recordations referred to in Section 5(d)(vi) hereof have been effected.

SECTION 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, the unpaid portion of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense,

set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or under Articles 9 and 15 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right, except for any design, article or material specified by the Railroad which is not covered by patent rights in favor of the Builder which the Builder has power to extend to the Railroad.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously marked on each side thereof, in letters not less than one inch in height:

“DOLLAR SAVINGS BANK, AGENT, OWNER”.

SECTION 5. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement shall pay to the Builder an amount equal to that portion of the total Purchase Price not payable by the

Railroad pursuant to subparagraph (a) of the second paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 16 of the Conditional Sale Agreement, at least three business days prior to such Closing Date, the following documents in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A Bill of Sale from the Builder to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to delivery of such units under the Conditional Sale Agreement.

(b) The Certificates of Acceptance with respect to the units of Equipment contemplated by Article 2 of the Conditional Sale Agreement;

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

(d) An opinion of Messrs. Blaxter, O'Neill, Houston & Nash, who are acting as special counsel for the Assignee, stating that (i) the Conditional Sale Agreement and the Railroad's Agreement and Acknowledgment of Notice of Assignment annexed at the foot of this Agreement and Assignment have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and

Assignment has been duly authorized, executed and delivered by the Builder and is a valid and binding instrument enforceable in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission is necessary for the execution and delivery of the Conditional Sale Agreement, (vi) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation or depositing is necessary for the protection of the rights of the Assignee in any State of the United States of America, and (vii) the Finance Agreement has been duly authorized and executed by the Assignee, the execution and delivery by the Assignee in accordance with the Finance Agreement of Certificates of Interest have been duly authorized by the Assignee by all requisite corporate action and whenever a Certificate of Interest shall have been duly executed and delivered by the Assignee in accordance with the Finance Agreement, such Certificate will be the valid and binding obligation of the Assignee in accordance with its terms.

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the

Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (v) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (vi) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Builder is now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceabil-

ity thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the second 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 Railroad, a counterpart of the receipt from the Builder for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Messrs. Blaxter, O'Neill, Houston & Nash may rely on the aforementioned opinions of counsel for the Builder as to (i) the due authorization, execution and delivery by the Builder of the Conditional Sale Agreement and this Agreement and Assignment and (ii) the units of Equipment being, at the time of delivery thereof to the Railroad, free of all claims, liens, and encumbrances, except for the rights of the Railroad under the Conditional Sale Agreement. In giving the opinions specified in subparagraph (d) of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment of the purchase price of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties

to the Finance Agreement, or, if any of such parties default in furnishing such funds, the prior receipt by the Assignee of such funds as provided in Paragraph 3 of the Finance Agreement; and, in the event of failure of any such party to the Finance Agreement to furnish any such funds, the Closing Date shall be postponed for 4 business days. To the extent that the Railroad shall pay to the Assignee, in accordance with Paragraph 3 of the Finance Agreement, any amount or amounts on account of the purchase price of the Equipment, the Railroad shall be relieved of its indebtedness in respect of such purchase price under subparagraph (b) of Article 3 of the Conditional Sale Agreement to the extent of the amount or amounts so paid by the Railroad. By any such payment, however, the Railroad shall not acquire any rights under this Agreement and Assignment.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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 Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it has no reason to believe that the Conditional Sale Agree-

ment is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

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

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of January 1, 1971, 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)

By *J. D. [Signature]*  
.....  
Vice-President

*(W)*

[CORPORATE SEAL]

Attest:

*W. A. [Signature]*  
.....  
Assistant Secretary

DOLLAR SAVINGS BANK

By *Ray Walker*  
.....  
Vice-President

[CORPORATE SEAL]

Attest:

*Richard H. [Signature]*  
.....  
Assistant Secretary

STATE OF ILLINOIS }  
COUNTY OF *Cook* } ss.:

On this *14* day of January, 1971, before me personally appeared **B. B. BROWNELL** to me personally known, who, being by me duly sworn, says that he is **VICE PRESIDENT** of General Motors Corporation (Electro-Motive Division), that the seal 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 the 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.

*[Signature]*  
.....  
Notary Public  
My Commission Expires October 28, 1971

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF ALLEGHENY } ss.:

On this *18th* day of January, 1971, before me personally appeared *Ray Walker* to me personally known, who, being by me duly sworn, says that he is Vice-President of Dollar Savings Bank, that the seal 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 the 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.

*Kathryn E. Mangon*  
.....  
Notary Public

KATHRYN E. MANGAN, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES JAN. 20, 1973  
Member, Pennsylvania Association of Notaries

**Acknowledgment of Notice of Assignment**

The Pittsburgh and Lake Erie Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of January 1, 1971.

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

By ... *H. S. Allright* .....  
*President*