

CONDITIONAL SALE AGREEMENT, dated as of May 1, 1971, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof) and THE WESTERN PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of California (hereinafter called the Railroad).

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

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

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality, and component parts of the Equipment will conform to all requirements and specifications of the United States Department of Transportation and the Interstate Commerce Commission and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of such units as of the date of delivery thereof.

ARTICLE 2. Delivery. The Manufacturer will deliver the Equipment to the Railroad, freight charges, if any, prepaid, at such point or points within the United States of America as shall be specified by the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto, provided that Manufacturer shall have no obligation to deliver any unit of Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act and prior to the assumption, adoption or affirmation of the obligations of Railroad under this agreement by a trustee or trustees acting pursuant to a court order or decree in any proceeding under said Section 77.

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 September 1, 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 Vendor and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder. If the Manufacturer's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the next preceding paragraph, the Railroad shall nevertheless be obligated to accept all such Equipment and to pay the full purchase price therefor, determined as provided herein, if and when such Equipment shall be completed and delivered by the Manufacturer, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad, and the Manufacturer shall grant to such inspector or other authorized representatives reasonable access to its plant. The Manufacturer agrees to inspect all materials entering into the construction of the Equipment. 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 an inspector or other authorized representative of the Railroad for inspection at the place designated in Schedule B for acceptance of such unit or units and, if such unit or units conform 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 acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 6 hereof.

On delivery of each of the units of Equipment hereunder, the Railroad assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. Purchase Price and Payment. The base price or prices per unit of the Equipment, exclusive of interest, are set forth in Schedule B hereto. The base price or prices, which may include freight charges, if any, from the Manufacturer's plant to the point of acceptance, are subject to such increase or decrease as may be or has been agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, plus freight charges to the point of acceptance.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each Closing Date being hereinafter called a Group).

The Railroad 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 the amount, if any by which the estimated purchase price of the Equipment in such Group, as stated in the invoice or invoices therefor (hereinafter called the Interim Invoiced Purchase Price), exceeds the amount set forth in Item 3 of Schedule A hereto (hereinafter called the Committed Amount);

(b) Upon receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) for all groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (c) of this paragraph; and

(c) In 20 equal quarterly installments, as hereinafter provided, an amount equal to the lesser of (i) the Committed amount or (ii) the

Final Invoiced Purchase Price of the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

If this Agreement shall be assigned by the Manufacturer, the obligation of the Railroad under subparagraph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligation, subject, however, to the assignee having complied with its obligations under the terms of the instrument of assignment.

The first installment of the portion of the Purchase Price of each Group payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on September 1, 1971, and subsequent installments shall be payable quarterly thereafter on the first day of December, March, June and September of each year to and including June 1, 1976. The unpaid portion of the Purchase Price shall bear interest from the respective Closing Dates at the rate of one per cent (1%) per annum above the prime rate charged from time to time by Crocker-Citizens National Bank, to responsible corporate borrowers, each change in said interest rate to become effective on the first day of the first month following the effective date of a change in the prime rate announced by Crocker-Citizens National Bank. Such interest shall be payable to the extent accrued, on the 1st day of September, December, March and June in each year, commencing September 1, 1971.

Railroad shall have the right from time to time on the due date of any installment of the Purchase Price on thirty (30) days' prior written notice, to anticipate payments either in whole or in the amount of one or more installments of the Purchase Price then unpaid. Any such anticipated payments other than in whole shall be applied sequentially to the next maturing installment or installments of the Purchase Price, but Railroad shall continue to pay an installment of the Purchase Price quarterly as provided herein notwithstanding any anticipated payment, together with interest on the unpaid portion of the Purchase Price after application of such anticipated payment.

The Final Certificate shall be delivered on or before September 1, 1971. The Manufacturer agrees that the

Interim Invoiced Purchase Prices shall be so fixed that they will not exceed in the aggregate the Final Invoiced Purchase Price.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to September 1, 1971), not more than ten business days following presentation by the Manufacturer to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in this Article and in Article 7 hereof, the Railroad shall not have the privilege of prepaying any installment 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 Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than income, gross receipts [except Indiana gross income taxes or other gross income or gross receipts taxes in the nature of sales taxes], excess profits and similar taxes) or licenses 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 licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor

solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the 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, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto, or unless the Railroad shall have approved the payment thereof.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the 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 Vendor shall have been paid the full indebtedness in respect of the Purchase Price of 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 Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale for the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof, and will 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 Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or 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 to file such certificate 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 numbered with its identifying number as set out in Schedule B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, by metal plate or otherwise, in letters not less than one inch in height, the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such names and word or 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 Railroad will not change the numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the 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 name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered "Western Pacific Railroad" or "Western Pacific" or "W.P.", or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 7. Replacement of Equipment. In the event

that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as herein defined) of units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$50,000, the Railroad, within 30 days of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of a Vice President or the General Auditor or other Chief Accounting Officer of the Railroad setting forth the Casualty Value of each unit of Equipment suffering a Casualty Occurrence. Upon such payment the Vendor shall not thereafter have any interest in any material salvageable from such units.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied, in whole or in part, to prepay installments of indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof or toward the cost of a unit or units of other new standard-gauge railroad equipment (other than passenger equipment or work equipment of types other than locomotives) to replace such unit or units suffering a Casualty Occurrence; provided that, if at any time after the last Closing Date the total amount of such moneys on deposit with the Vendor shall exceed the total amount of the remaining unpaid installments hereunder plus an amount equal to six months' interest on such installments, the Vendor shall on request of the Railroad pay the amount of such excess to the Railroad. In case any money is applied to prepay indebtedness, it shall be so applied, on the installment date next following receipt by the Vendor of such written direction, to reduce installments thereafter falling due in the inverse order of maturity thereof, after payment by the Railroad of all interest then accrued on each installment or portion thereof so prepaid, but without premium.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be that proportion of the original Purchase Price thereof payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof as the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including June 1, 1976, bears to 20. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be that proportion of the cost thereof provided through the application of moneys paid to the Vendor pursuant to the first paragraph of this Article 7 as the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including June 1, 1976, bears to the number of such installment payment dates remaining as of the date of the acquisition of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 6 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement. All such replacement units shall be warranted in like manner as the original Equipment delivered hereunder, and the manufacturer of such replacement units shall, if other than the Manufacturer, duly consent to the subjection thereof to this Agreement and shall agree to be bound by all the terms and provisions contained herein with respect to such replacements in like manner as the Manufacturer is with respect to the original Equipment delivered hereunder. Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall

file therewith executed counterparts of an opinion of counsel covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have happened and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, maturing in not more than one year from the date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any interest received by the Vendor on any Government Securities shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Government Securities, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Government Securities.

If one of the events of default specified in Article 16 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 (including for this purpose Government Securities) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

ARTICLE 8. Maintenance and Repair. The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 9. 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, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the 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 Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. Reports and Inspections. On or before August 1 in each year, commencing with the year 1972, the Railroad will furnish to the Vendor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding year (or since the date of this Agreement in the case of the first such statement) ending June 30, and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced as so required. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. Possession and Use. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it or over which it has trackage rights and upon connecting and other railroads or carriers in the usual interchange of traffic and equipment or in connection with the movement of the Equipment from the point of acceptance and upon connecting and other railroads or other carriers over which through service may from time to time be afforded from and after delivery of the Equipment by the Manufacturer to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, and the Railroad may receive compensation for such use.

ARTICLE 12. 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 Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

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

ARTICLE 13. Indemnities and Warranties. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The 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 unit of or all the Equipment after delivery thereof to the Railroad.

The Manufacturer warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties

incorporated therein specified by the Railroad and not manufactured by the Manufacturer) or workmanship or design (except as to designs specified by the Railroad and not developed or purported to be developed by the Manufacturer) under normal use and service, the Manufacturer's obligation under this paragraph, subject to any additional agreement set forth in Schedule A hereto, being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after delivery of such unit to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. This warranty, as modified by any additional agreement set forth in Schedule A hereto, is expressly in lieu of all other warranties, expressed or implied (including warranties of merchantability and fitness), and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14 hereof, and the Manufacturer 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. The Manufacturer agrees with the Railroad that the acceptance of any unit by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this paragraph.

ARTICLE 14. Patent Indemnities. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer 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 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. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment,

or any unit thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer 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 Manufacturer has or hereafter shall have against the originator of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer 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 Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages

of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 13 and 14 and Schedule A hereof, or relieve the Railroad of its obligations to the Manufacturer under Articles 1, 2, 4, 13 and 14 hereof 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 Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the 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 or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment.

whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer.

In the event of any such assignment, or successive assignments by the Vendor, of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such transfer or assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make full payment to the Manufacturer with respect to units of Equipment as provided in the instrument making such assignment, the Manufacturer will promptly notify the

Railroad of such event and, if such payment shall not have been previously made by the assignee, the Railroad will not later than 90 days after the date such payment was due pay or cause to be paid to the Manufacturer that portion of the aggregate Purchase Price of such units not so paid by the assignee, 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 on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due hereunder; or

(b) The Railroad shall, for more than 30 days after the Vendor 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 and performed or to make provision satisfactory to the Vendor 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 all the obligations of the Railroad under this Agreement shall not have been duly assumed by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations assumed by such a 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 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 readjustment of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly

assumed by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed 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) 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 Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 9% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the aggregate 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 Vendor may 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, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed 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 17. Remedies. If an event of default shall have occurred and be continuing as hereinbefore

provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or 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 17 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 Vendor 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 Vendor, 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 Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the aggregate Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all the Railroad's rights in the Equipment will thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, within 20 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; or the Vendor, with or without the retaking of 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 Vendor may determine; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Railroad by mail addressed to the Railroad as provided in Article 22 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

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 Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by registered mail addressed to the Railroad as provided in Article 22 hereof, together with such other notice, if any, as may be necessary to comply with any such mandatory legal requirements. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Vendor may 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 17), and in payment of the purchase price therefor the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor 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 Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

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

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any 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.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind; notice of intention to take possession of or to sell 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 19. Extension not a Waiver. No delay or omission in the exercise of any power or remedy herein

provided or otherwise available to the Vendor shall impair or affect the Vendor'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 Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. Recording. The Railroad will cause this Agreement, the first assignment hereof (a counterpart of such assignment being attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record with said Commission any and all further instruments required by law or reasonably requested by the Vendor, for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Manufacturer and the first assignee of this Agreement, but including the fees and expenses of counsel for any other parties acquiring interests in the first assignment by the Vendor 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 the Purchase Price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including stamp and other taxes, if any, of the first assignee of this

Agreement 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 21, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 22. Notice. Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad, at 526 Mission Street, San Francisco, California 94105.

(b) to the Manufacturer, at the address specified in Item 4 of Schedule A hereto,

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

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

ARTICLE 24. Effect and Modification of Agreement. This Agreement, and the schedules relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad 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 and the Railroad.

ARTICLE 25. Law Governing. The Railroad warrants that its chief place of business is within the State of

California. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 26. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing business and properties, 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 said Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing business and properties.

ARTICLE 27. 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 for convenience as of May 1, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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 or representatives and their respective corporate seals to be hereunto

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

GENERAL ELECTRIC COMPANY,

By

General Manager  
Locomotive & ~~Parts~~ Products  
Department

Attest:

(CORPORATE SEAL)

Attesting Secretary

THE WESTERN PACIFIC RAILROAD  
COMPANY,

By

Vice President - Finance

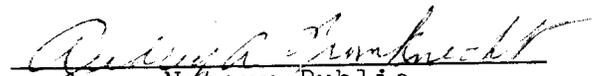
Attest:

(CORPORATE SEAL)

~~Assistant~~ Secretary

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF ERIE ) ss.

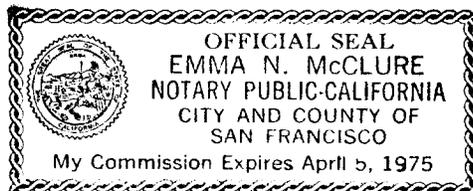
On this 15<sup>th</sup> day of June, 1971, before me personally appeared Olaf F. Veal, to me personally known, who, being by me duly sworn, says that he is General Manager, Locomotive & <sup>Products</sup> ~~Parts~~ Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its 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:

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO ) ss.

On this 8<sup>th</sup> day of June, 1971, before me personally appeared F. A. Tegeler, to me personally known, who, being by me duly sworn, says that he is the Vice President-Finance of THE WESTERN PACIFIC RAILROAD 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 Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



  
Notary Public

## SCHEDULE A

- Item 1: General Electric Company, a New York corporation.
- Item 2: For the purpose of making settlement, the Equipment shall be settled for in one Group of units of the Equipment delivered to and accepted by the Railroad hereunder; provided, however, that, if there shall at any time have been delivered to and accepted by the Railroad units of the Equipment and the Manufacturer shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last day of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute a Group for the purpose of settlement.
- Item 3: The Committed Amount: \$370,000
- Item 4: 2901 East Lake Road  
Erie, Pennsylvania 16501

### Additional Agreements

It is understood and agreed by the parties hereto that the following Manufacturer's warranty supersedes the warranty of the Manufacturer set forth in Article 13 hereof:

The Manufacturer warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof.

The Manufacturer warrants each unit of the Equipment specified herein to be free from defects in material and workmanship (except as to materials or parts provided or furnished by the Railroad and not manufactured by the Manufacturer) under normal use and service and will be of the kind and quality designated in Article 1 and Schedule B of the Conditional Sale Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether

written, oral, statutory or implied (including any warranty of merchantability or fitness for purpose).

If it appears, within one (1) year after delivery of such unit of the Equipment to the Railroad, or before such unit of the Equipment has been 125,000 miles in operation, whichever event shall first occur, that such unit does not meet the warranties specified above, and the Railroad notifies the Manufacturer promptly, the Manufacturer, after verification as to condition and usage, shall correct any defect including non-conformance with the specifications, at its option, either by repairing any defective part or parts made available to the Manufacturer, or by making available at the Manufacturer's plant or warehouse, a repaired or replacement part. If requested by the Manufacturer, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by the Manufacturer.

The liability of the Manufacturer to the Railroad (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the unit of Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. The Manufacturer shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than the Manufacturer. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of the Manufacturer.

It is understood that the Manufacturer has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at Manufacturer's expense, the same on other units of equipment sold by said Manufacturer.

The Manufacturer agrees with the Railroad that the acceptance of any units of the Equipment by the

Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under the warranty set forth in this Schedule A.

The Railroad will at all times after delivery and acceptance of each unit of the Equipment pursuant to this Agreement and prior to the payment of the full indebtedness in respect to the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, keep or cause to be kept each unit of the Equipment insured in a reputable insurance company or companies against fire, wreck, derailment, collision and other risks normally insured against by railroad companies in the amounts normally insured by Railroad. Such insurance may provide that the losses shall be adjusted with the Railroad and shall provide that the proceeds thereof shall be payable to the Vendor and the Railroad as their interests shall appear.

It is further understood and agreed that any net insurance proceeds received by the Vendor in respect of insurance carried by the Railroad on a unit or units suffering a Casualty Occurrence (as defined in Article 7 hereof) shall be deducted from the amounts payable by the Railroad to the Vendor in respect of Casualty Occurrences pursuant to the first paragraph of said Article 7. If the Vendor shall receive any other net insurance proceeds in respect of insurance carried by the Railroad in respect of such units suffering a Casualty Occurrence after the Railroad shall have made payment pursuant to Article 7 without deduction for such net insurance proceeds, the Vendor shall pay such insurance proceeds to the Railroad. All net proceeds of insurance received by the Vendor with respect to any unit or units of Equipment suffering a Casualty Occurrence shall be held by the Vendor for application pursuant to Article 7 hereof. All net proceeds of insurance received by the Vendor with respect to any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Railroad upon proof satisfactory to the Vendor that any damage to any unit or units of Equipment with respect to which such net proceeds were paid has been fully repaired.

SCHEDULE B - GENERAL ELECTRIC COMPANY

Type	Specifications	Manu- facturer's Plant	Quantity	Railroad's Road Numbers Both Inclu- sive	Unit Base Price	Total Base Price*	Delivery**
3000 H.P. Model U 30B Diesel Electric Loco- motives	Test G.E. locomo- tives remanufactured to Model U 30B design similar to Specifi- cation No. 3330C	Erie, Pa.	2	770-771	\$184,163	\$368,326	May/June 1971

\* (Price quoted excludes freight charges. Freight charges to be added from Erie, Pa. to point of delivery.)

\*\* Delivery at Erie, Pa. on delivery to a common carrier for shipment to final destination at Chicago, Illinois. Inspection and acceptance shall take place at final destination, notwithstanding prior delivery to carrier in Erie, Pa., General Electric warrants that each unit will meet inspection requirements at final destination. General Electric will retain risk of loss or damage to the units prior to delivery at Chicago, Illinois.

AGREEMENT AND ASSIGNMENT dated as of May 1, 1971, between the corporation first named in the testimonium below (hereinafter called the Manufacturer) and CROCKER-CITIZENS NATIONAL BANK, a corporation organized and existing under the laws of the United States of America, with an address at 1 Montgomery Street, San Francisco, California 94104 (hereinafter called the Assignee).

WHEREAS, the Manufacturer and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of May 1, 1971 (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 Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$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, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section 5 hereof with respect thereto;

(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 rights to receive the payments specified in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 15 thereof

and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement on account of its 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 Railroad 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 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 Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and indemnities contained in Articles 13 and 14 and Schedule A of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 1, 2, 3, 4, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, 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, in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement 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, security interests and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Manufacturer 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 said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery or warranty thereof, or under Articles 13 and 14 and Schedule A 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 Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer 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 Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by the Assignee herein described, and shall promptly move or take other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad therein, and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee shall promptly notify the Manufacturer of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Manufacturer shall thereafter be given the right by the Assignee, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to 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 Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"Crocker-Citizens National Bank,  
Owner".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale

Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Interim Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Railroad pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and 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;

(b) Certificate of Acceptance signed by an inspector or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been inspected and accepted by him on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked on each side of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Crocker-Citizens National Bank,  
Owner".

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

(d) Opinion of counsel for the Railroad, dated as of such Closing Date, 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) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement, (iv) assuming due authorization, execution and delivery by the parties thereto, this Assignment is a valid and binding instrument; (v) title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens, and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, and (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this assignment;

(e) Opinion of counsel for the Manufacturer dated as of such Closing Date, to the effect set forth in clause (iv) of subparagraph (d) above, and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its 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 and this Assignment have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms, and (iii) the Assignee is vested with all the rights, titles, interests, power, privileges and remedies purported to be assigned to it by this Assignment; and

(f) 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 Railroad, the receipt from the Manufacturer for such payment.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 5 counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

After delivery to the Assignee of the Final Certificate (as defined in the Conditional Sale Agreement) accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein, the Assignee shall pay to the Manufacturer the amount (hereinafter called the Final Payment), if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) payable pursuant to subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement exceeds the amount or amounts theretofore paid to the Manufacturer pursuant to the foregoing provisions of this Section 5. The Final Certificate shall be delivered on or before September 1, 1971.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee; provided, however, that, if the Assignee has made the payment with respect to such units provided for in the first paragraph of this Section 5 but does

not make the payment provided for in the third paragraph of this Section 5 the Assignee shall, in lieu of such reassignment of title to such units, assign to the Manufacturer, without recourse to the Assignee, the right to receive from the Railroad an amount equal to the payment provided for in said third paragraph of this Section 5 as an unsecured obligation.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

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 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 Railroad) it is a valid and existing agreement binding upon the Manufacturer, 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. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all the rights conferred

by Section 20c of the Interstate Commerce Act.

SECTION 9. This Assignment 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 instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Assignment is dated for convenience as of May 1, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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 or representatives and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY,

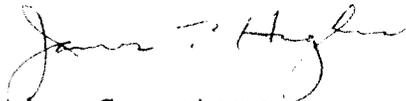
By



General Manager  
Locomotive Products Department

(CORPORATE SEAL)

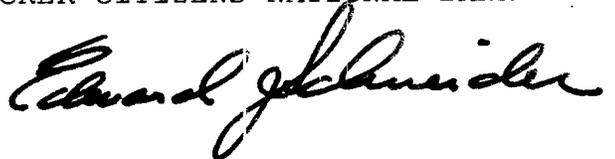
Attest:



Attesting Secretary

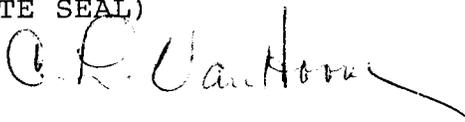
CROCKER-CITIZENS NATIONAL BANK

By



(CORPORATE SEAL)

Attest:



Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA) ) ss.  
COUNTY OF ERIE )

On this 15th day of June, 1971, before me personally appeared Olat F. Veal, to me personally known, who, being by me duly sworn, says that he is General Manager, Locomotive & ~~Parts~~ <sup>Products</sup> Department, of GENERAL ELECTRIC 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 Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Anthony J. Frankfort*  
Notary Public

My Commission Expires:

*[Faint notary seal text]*

STATE OF CALIFORNIA ) ) ss.  
CITY AND COUNTY OF SAN FRANCISCO )

On this 10 day of June, 1971, before me personally appeared Edward J. Schneider, to me personally known, who, being by me duly sworn, says that he is a Vice President of CROCKER-CITIZENS NATIONAL BANK, 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.

*Maria G. Rice*  
Notary Public

My Commission Expires:

Nov 18, 1974

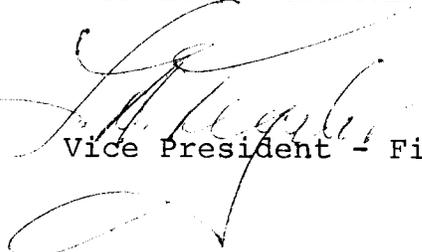
*[Notary Seal: MARY G. RICE, NOTARY PUBLIC, CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO, Commission Expires 11-18-1974]*

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 1, 1971.

THE WESTERN PACIFIC RAILROAD COMPANY

By

  
Vice President - Finance

CONSENT AND STATEMENT OF NEW NUMBERS FOR  
 EQUIPMENT SUBJECT TO CONDITIONAL SALE  
 AGREEMENT DATED AS OF MAY 1, 1971 BETWEEN  
 GENERAL ELECTRIC COMPANY AND THE WESTERN  
 PACIFIC RAILROAD COMPANY; CROCKER-CITIZENS  
 NATIONAL BANK, AGENT, OWNER

6197-a

RECORDATION NO.

JUL 26 1972 2 40 PM

The following described equipment subject to the  
 above-mentioned Conditional Sale Agreement recorded with  
 the Interstate Commerce Commission on June 18, 1971 at  
 12:50 p.m., Recordation number 6197 has been renumbered  
 as follows:

<u>No. of Units</u>	<u>Description</u>	<u>Old Road Numbers</u>	<u>New Road Numbers</u>
2	3000 h.p. U30B diesel electric locomotives	W.P. 770 771	W.P. 3070 3071

Dated: July 17, 1972

THE WESTERN PACIFIC RAILROAD COMPANY

By F. A. TEGELER  
 Vice President-Finance

Consent to the above renumbering is hereby granted.

Dated: July 19, 1972

CROCKER NATIONAL BANK (formerly  
 Crocker-Citizens National Bank)

By C. R. Henderson  
 Vice-President

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO ) ss

On this 17th day of July, 1972, before me, personally appeared F. A. TEGELER, to me personally known, who, being by me duly sworn, says that he is the Vice President - Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that the seal 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.



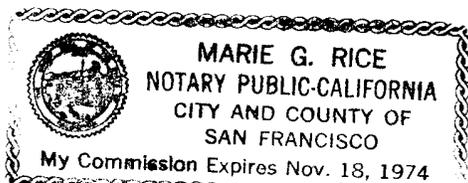
Diane L. Fafoutis  
Notary Public

in and for the City and County of  
San Francisco, State of California

My Commission expires December 14, 1975.

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO ) ss

On this 19th day of July, 1972, before me, personally appeared C. L. VanHorne, to me personally known, who, being by me duly sworn, says that he is the Vice President of CROCKER NATIONAL BANK, that the seal affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association 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 association.



Marie G. Rice  
Notary Public

in and for the City and County of  
San Francisco, State of California

My Commission expires Nov 18, 1974.