

CONDITIONAL SALE AGREEMENT

THIS CONDITIONAL SALE AGREEMENT made and entered into as of September 1, 1972, by and between.

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) a Delaware corporation, (hereinafter sometimes variously called the "Seller"), party of the first part, and

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY, a Kentucky corporation, (hereinafter sometimes called the "Buyer"), party of the second part,

WITNESSETH THAT:

For and in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

SECTION I. The Seller hereby agrees to manufacture, sell and deliver to the Buyer, and the Buyer hereby agrees to purchase from the Seller and pay for three (3) new 1,500 horsepower Diesel-Electric switching locomotives (Model SW1500) bearing Buyer's and Seller's identifying numbers, respectively:

<u>Buyer's Road Numbers</u>
77
78
79

<u>Seller's Numbers</u>
7385-1
7385-2
7385-3

RECORDATION NO. _____

6740

SEP 5 1972-1130 A

INTERSTATE COMMERCE COMMISSION

which locomotives (hereinafter called the Locomotives) shall be constructed in accordance with Seller's order No. 7385 and Seller's proposal No. 72-D-1, dated April 7, 1972, and Seller's Specification No. 8036, dated January 3, 1972, and Seller's Specification Amendment No. 8036-2, dated January 3, 1972, and Specification Supplements Revision "A" dated April 4, 1972 and Revision "B" dated April 10, 1972, Locomotive Modifications as listed on Page 2 of Locomotive Proposal No. 72-D-1 dated April 7, 1972, all referred to in Buyer's Purchase Order 2650 dated 4-24-1972 to Seller, and letter to G. E. Everson, Manager Purchases & Stores, K&IT Railroad Company, dated June 8, 1972 over the signature of M. C. Warren, District Manager, General Motors Corporation (EMD) and Mr. Everson's letter dated June 15, 1972 to Mr. Warren in reply to Mr. Warren's letter dated June 8, 1972. This Agreement exclusively and completely states the rights of the Seller and the Buyer with respect to the Locomotives and supersedes all other agreements, oral or written, with respect thereto. The design and quality of material and equipment in the Locomotives shall conform to all Interstate Commerce Commission requirements and specifications interpreted as being applicable to locomotives of this character as of the date of this Agreement.

The Seller will deliver the Locomotives to the Buyer at the Seller's tracks at EMD Plant, McCook, Illinois, consigned to Buyer on Buyer's tracks at Louisville, Kentucky, with freight charges prepaid from McCook, Illinois, to Louisville, Kentucky. The Locomotives shall be so delivered in September 1972. Seller's obligation as to time of delivery is subject, however, to delays due to accident, fire, flood, explosion or other catastrophe, labor troubles, acts of the Government, including embargos, priorities and allocations, war and war conditions, delays of carriers, allocations by suppliers, delays or defaults of sub-contractors or in receipt of materials or to any other cause or causes (whether or not of the same kind as herein specifically enumerated) beyond the Seller's reasonable control, and the Seller shall have no liability for loss of use or for other indirect or consequential damages resulting from any such delays. At or before the delivery of each of the Locomotives, such Locomotive shall be presented to an inspector or other authorized representative of the Buyer for inspection and, if such Locomotive conforms to the requirements hereof, such inspector or representative shall promptly deliver to the Seller a certificate (hereinafter called "the Certificate of Acceptance") stating that such Locomotive has been inspected and is accepted by him on behalf of the Buyer as conforming in all respects to the requirements and provisions of this agreement and such Certificate of Acceptance shall constitute conclusive evidence that such Locomotive has been constructed in accordance with, and conforms to the requirements of this Agreement. The Buyer agrees to assume any risk of loss or damage, and any expense attributable thereto occurring during the movement of the Locomotives from the Seller's plant at McCook, Illinois, to point of arrival on Buyer's tracks at Louisville, Kentucky, as aforesaid.

The Seller will send to said point of arrival a competent person who will assist the Buyer's supervisory personnel in placing the Locomotives in working service at that point. The Buyer shall provide each such person, as well as any person who may be provided by the Seller at the Buyer's request to instruct the Buyer's supervisory personnel in the operation of the Locomotives or who may be sent by the Seller to investigate complaints regarding the

Locomotives, with all necessary labor, materials, supplies and transportation on the lines or tracks owned or controlled by the Buyer, without expense to the Seller.

The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Locomotives and to use the Locomotives in switching service upon its lines of railroad and upon those of any corporation, a majority of whose capital stock shall be at the time directly or indirectly owned by the Buyer, and upon any other lines over which the Buyer or any such corporation at the time shall have trackage or other operating rights; provided, however, that this Agreement and any supplements hereto shall have been filed and/or recorded, in conformity with applicable legal requirements, in each State in which any of the Locomotives shall be so used. The Buyer may receive from any corporation, upon whose lines the Locomotives shall be so used, such compensation for such use as the Buyer may determine; provided, however, that the right to such use shall be subject to all the terms and conditions of this Agreement.

SECTION II. (A). The purchase price of the Locomotives shall be \$192,042.00 per Locomotive, or an aggregate price for all of the Locomotives of \$576,126.00, f.o.b. EMD Plant, McCook, Illinois, plus prepaid freight to Louisville, Kentucky, and interest as hereinafter set forth: provided, however,

That if the Buyer and the Seller shall agree upon any further modifications in the Locomotive specifications not included in Seller's proposal and Buyer's Purchase Order, aforesaid, which shall either increase or decrease the Seller's cost of manufacturing the Locomotives, said purchase price may be increased or decreased by the Seller by such amounts as the Buyer and Seller may agree upon.

(B) The Buyer agrees to pay the Seller the purchase price of the Locomotives as follows:

- (1) The principal sum of Four Hundred and Eighty-eight Thousand Dollars (\$488,000) of the total purchase price of the Locomotives in one hundred and seventy-nine (179) equal monthly installments of Two Thousand Seven Hundred and Eleven Dollars and Eleven Cents (\$2,711.11), and a final monthly installment of Two Thousand Seven Hundred and Eleven Dollars and Thirty-one Cents (\$2,711.31), together with interest on the unpaid principal at a rate equal to one-fourth ($\frac{1}{4}$) of one percent (1%) per annum above the prime commercial rate of interest charged by Citizens Fidelity Bank and Trust Company, Louisville, Kentucky, and adjustable from time to time on the first day of the calendar month next following each change in the said prime commercial rate, with installment payments of both principal and interest commencing on _____, 1972 and on the _____ day of each month thereafter until paid. Notwithstanding the above, the rate of interest shall be not more than eight percent (8%) per annum nor less than five percent (5%) per annum.

The obligation of the Buyer to make payments in accordance with the provisions of this subparagraph shall continue until all installments of principal and interest have been paid.

Monthly payments shall be applied first to the interest then due on the unpaid principal and the balance to the reduction of such unpaid principal.

The "prime commercial rate" is defined as the lowest rate in effect by Citizens Fidelity Bank and Trust Company, Louisville, Kentucky, to substantial and responsible borrowers for short-term loans.

(2) The balance, if any, of the purchase price of each Locomotive (any such balance being hereinafter called "The Initial Cash Payment") shall be paid to the Seller upon the presentation of the invoice for such Locomotive supported by the Certificate of Acceptance in respect of such Locomotive.

(C) In addition to the purchase price, as hereinabove set forth, the Buyer shall pay or reimburse Seller for any and all sales, use or Manufacturer's taxes or licenses imposed by Federal, State, Municipal or other Governmental authority applicable to or measured by the sale, use or manufacture of the Locomotives.

(D) All payments hereinabove provided for shall be made by the Buyer to the Seller at the office of Seller, at LaGrange, Illinois, 60525, or at such other location in the United States of America as the Seller or its Assignee and Buyer may agree upon, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts.

(E) The Buyer may at its option prepay at any time all or any part of the unpaid balance of the purchase price of the Locomotives without any premium except that, if the funds used by the Buyer in order to make such prepayments are borrowed funds or are acquired as the result of any refinancing of this Agreement, then the total unpaid balance of the purchase price of the Locomotives must be paid in full together with a premium of \$1,100.00.

SECTION III. All or any of the Seller's rights under this Agreement, except its right to manufacture, may be assigned as a whole or in part in respect of any one or more of the Locomotives. Upon any such assignment the

Seller and the Assignee shall give written notice to the Buyer, together with a counterpart or copy of such assignment, stating the identity and post office address of the Assignee. The Seller's Assignee, or any successive assignee, shall be entitled to all the rights of the Seller hereunder covered by such assignment; provided, however, that no such assignment shall subject any assignee to, or relieve Seller or the successor or successors to its manufacturing properties and business from any of its obligations to manufacture, sell and deliver the Locomotives or in respect of any of its obligations contained in Sections I, XI, and XII hereof, or relieve the Buyer from its obligations to Seller under Paragraph (2) of Subsection (A) of Section II, Paragraph (2) of Subsection (B) of Section II, Subsection (C) of Section II, Subsection (B) of Section IV, and Section XI hereof.

In the event that this Agreement is assigned by the Seller or re-assigned by any assignee as herein provided, the rights of the assignee against the Buyer shall not be subject to any defence, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Seller or the successor or successors to its manufacturing properties and business to manufacture, sell and deliver the Locomotives, or in respect of any of its obligations contained in Section I, XI and XII hereof, and shall not be 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 Buyer by Seller or the successor or successors to its manufacturing properties and business.

The term "Seller", whenever used in this Agreement, means, before any assignment of any rights of the Seller, hereunder General Motors, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment; and the term "General Motors", whenever used in this Agreement, means, both before and after any such assignment, the party hereto of the first part and any successor or successors for the time being to its manufacturing properties and business.

SECTION IV. (A) The Buyer agrees that, until it has paid in full the purchase price of the Locomotives and has paid all other sums of money payable by it hereunder, it will provide, keep and maintain on each side of each Locomotive a metal plate bearing the name of the then owner of such Locomotive followed by the word "Owner", in letters not less than one inch in height, and will replace promptly any such plate which may be removed or destroyed or become illegible wholly or in part; will keep the Locomotives in good order and repair at its own proper cost and charge; will comply with all laws and regulations of any governmental authority with reference to the Locomotives or the manner of using or operating the same; will keep the Locomotives free from any encumbrance or lien which might be a cloud upon or otherwise affect the Seller's title; will pay all taxes, assessments, charges, fines and penalties of any kind assessed or imposed upon the Locomotives or with reference to the title, ownership, possession or use thereof; provided, however, that the Buyer shall be under no obligation to pay any taxes, assessments, charges, fines or penalties of any kind, so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, charges, fines or penalties and the non-payment thereof does not materially endanger the property or rights of the Seller hereunder; and will not allow the name of any person, association or corporation to be placed on any of the Locomotives as a designation which might be interpreted as a claim of ownership thereof by any person, association or corporation other than the Seller or its assigns; provided, however, that the Buyer may letter the Locomotives "Kentucky & Indiana Terminal Railroad Co." or "K. & I. T. R.R. CO.", or in some other appropriate manner for convenience of identification of the interest of the Buyer or its successor or successors therein. The Buyer agrees that it will keep the Locomotives numbered with the identifying road numbers as set out in Section I hereof, and that it will not change, or permit to be changed, such identifying road numbers, except with the consent of the Seller and in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been filed with the Seller by the Buyer. The Buyer agrees, upon the Seller's request, at least once in every year during the continuance of this Agreement, to furnish an accurate inventory of the Locomotives (which shall

accurately describe the condition of each Locomotive and its then existing location), whether originally delivered or replaced. Nothing in this Section IV, however, shall relieve Seller of the obligation imposed by Section XII hereof to replace, as therein provided, any part or parts of the Locomotives warranted by Seller which may fail under normal use and service within the period specified, and under the conditions set out in said Section XII.

(B) The Buyer agrees that it will, subject to the provisions of Section XI hereof, indemnify and save the Seller (and also General Motors after the assignment of all or any of its rights hereunder) harmless from any and all liabilities, damages, claims, suits, judgments, costs and expenses that may arise out of or in connection with the use or operation of the Locomotives after their acceptance by the Buyer and during the continuance of this Agreement and said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Seller shall have the right but shall be under no obligation to inspect the Locomotives, at the then existing locations thereof, at any reasonable time or times during the continuance of this Agreement.

SECTION V. In the event of loss or destruction of, or irreparable damage to, any of the Locomotives from any cause whatsoever during the continuance of this Agreement, the Buyer shall promptly and fully inform the Seller in regard to such loss, destruction or damage, and the Buyer shall, at its election either replace such Locomotive or Locomotives with other Locomotives of similar type and construction and of equal value, title to such new Locomotive or Locomotives to be taken and vested in the name of the Seller, by proper bills of sale, free from all liens, and such Locomotives thereupon immediately to come under and be subject to all of the terms and conditions of this Agreement as though part of the original Locomotives accepted hereunder, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance of purchase

price applicable to such Locomotive or Locomotives, without payment of any premium but with interest thereon to the date of such payment. The Buyer will cause any such new Locomotive to be marked and numbered as hereinabove provided with respect to the Locomotive replaced and shall execute and file, register and record all such documents and do any and all such acts as may be necessary to cause such new Locomotive to come under and become subject to this Agreement.

SECTION VI. The Buyer will insure and keep insured each Locomotive against loss or damage by fire in an amount at least equal to the aggregate of the unpaid installments of the purchase price of such Locomotive, and the Buyer agrees to furnish to the Seller proper evidence of such insurance. All such insurance shall be taken for the benefit of the Seller and the Buyer, as their respective interests may appear. All insurance moneys paid thereunder to the Seller shall, at the option of the Buyer, be applied to the then unpaid balance of purchase price applicable to the Locomotive in respect of which such insurance moneys shall be paid or, upon delivery to the Seller by the Buyer of proof satisfactory to the Seller of the proper replacement or repair of such Locomotive, be paid over to the Buyer. No insurance or payment of insurance moneys on account of any loss or damage to any of the Locomotives shall affect the obligations of the Buyer as provided in Section V hereof.

SECTION VII. The Seller shall and hereby does retain the full legal title to all the Locomotives until the Buyer shall have made all the payments and shall have kept and performed all the agreements in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the Locomotives to, and the possession and use thereof by, the Buyer as herein provided. Any and all replacements of the Locomotives and of parts thereof, and additions thereto, shall constitute accessions to the Locomotives and be subject to all the terms and conditions of this Agreement and included in the term "Locomotives" as used in this Agreement. When and only when the Buyer has paid the full purchase price of all of the Locomotives, with interest accrued thereon, and has made all other payments as herein provided, title to all the

Locomotives shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer at the Buyer's expense a bill or bills of sale of all the Locomotives, transferring to the Buyer all the Seller's right, title and interest in and to the Locomotives, free and clear of all liens and encumbrances in favor of the Seller or any one claiming under or against the Seller (other than any liens and encumbrances against the Seller arising from the Buyer's use and possession of, or interest in, the Locomotives), together with all rights and claims, in respect of the title to the Locomotives, of the Seller against any predecessor in title of the Seller, and covenanting that the Seller has not done or knowingly suffered to be done anything whereby the Seller's right, title and interest in and to the Locomotives have been subjected to any lien or encumbrance, and shall execute for record or filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to all of the Locomotives under the laws of any jurisdiction.

SECTION VIII. If the Buyer shall refuse or fail to perform any agreement herein on its part to be performed, the Seller may perform the same and give to the Buyer notice in writing of the expense incurred in such performance and the Buyer agrees to repay promptly after such notice all expenses so incurred with interest at the rate applicable to the purchase price of the Locomotives.

SECTION IX. The Buyer shall not assign or transfer any interest in this Agreement without the written consent of the Seller first had and obtained. An assignment to a railroad company which shall acquire all or substantially all the lines of railroad of the Buyer and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each and all the obligations and covenants of the Buyer hereunder shall not be deemed a breach of this covenant. The appointment of a temporary receiver or receivers in equity or a temporary trustee or trustees in bankruptcy for the

Buyer or for its property shall not be deemed an unauthorized assignment by the Buyer of its rights and interests hereunder and shall not be deemed a breach of this covenant but the appointment of a permanent receiver or receivers in equity or permanent trustee or trustees under any provisions of the Bankruptcy Act or under any amendment or revision thereof for the Buyer or for its property shall be deemed an unauthorized assignment and a breach of this covenant if (1) the Seller shall have demanded of the Buyer in writing that action be taken in respect thereof and (2) within thirty (30) days after such demand neither (a) such permanent receivers or trustee or trustees shall be discharged, nor (b) such permanent receiver or receivers or trustee or trustees shall adopt and assume and agree to perform each and all of the obligations and covenants of the Buyer hereunder pursuant to due authority of the Court of his or their appointment.

SECTION X. In case

(A) The Buyer shall make default in the payment of any sum payable by the Buyer as herein provided and such default shall continue for more than thirty (30) days after the same shall become due and payable, or

(B) A default shall occur under Section IX of this Agreement, or

(C) The Buyer shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and agreements herein on its part to be kept and performed, or to make provisions satisfactory to the Seller for such compliance,

Then the Seller may, by written notice to the Buyer, declare the entire unpaid balance of the purchase price of the Locomotives immediately due and payable and upon any such declaration the entire unpaid balance of the purchase price of the Locomotives shall forthwith become due and payable together with interest thereon at the rate per annum set forth in Paragraph (1) of Subsection (B) of Section II hereof to the date of such declaration and the aggregate of such balance of purchase price and interest

shall bear interest from the date of such declaration at the rate of interest set forth in Paragraph (1) of Subsection (B) of Section II hereof, and the Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Locomotives so payable, with interest thereon as aforesaid, and to collect such judgment out of any property of the Buyer wherever situated. The Seller may, at its election (and, if before sale or lease or before completion of other enforcement of this Agreement, all costs and expenses of the Seller incident to any such default and to the enforcement by the Seller of the provisions hereof and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of the purchase price of the Locomotives and interest thereon as shall have become due only because of a declaration of default under this Section X as aforesaid, shall have been paid by the Buyer and all other existing defaults shall have been remedied or provision therefore satisfactory to Seller shall have been made, then and in every such case, the Seller shall) waive any such default and its consequences and rescind and annul any such declaration, by written notice to Buyer, but no such waiver, rescission and annulment shall extend to or affect any subsequent default or impair any rights or remedies consequent thereon. If the Buyer shall make default as hereinabove provided, then, at any time after such notice of declaration of default and during the continuance of such default and upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Seller, the Seller at its option may take or cause to be taken by its agent or agents immediate possession of the Locomotives and may lease or sell, at public or private sale, the Locomotives or any thereof free from all claims of the Buyer at law or in equity, upon such terms and in such manner as the Seller may determine but subject to any mandatory requirements of law applicable thereto, either without or before or after taking possession of the Locomotives and without having the Locomotives at the place of sale; provided, however, that the Buyer may and shall have a reasonable opportunity: (1) in the case of any such public sale, to bid at such sale; (2) in the case of any such proposed private sale, to purchase or provide a purchaser for the Locomotives, within ten

days after notice by the Seller to the Buyer of such sale, at the same or a better price than that offered by the proposed purchaser at such sale; and

- (3) in the event of any such proposed lease, to lease or provide a lessee for the Locomotives, within ten days after notice by the Seller to the Buyer of such proposed lease, at the same or a better rental than that offered by the proposed lessee.

To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Seller may itself bid for and become the purchaser of the Locomotives or any of them offered for sale without accountability to the Buyer (except to the extent of surplus money received as hereinafter provided in the last sentence of this paragraph) and in payment of such purchase price the Seller shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Seller from the Buyer. The proceeds of any such lease or sale after deducting all charges and expenses, including counsel fees, incurred in connection therewith shall be applied to the payment, first, of the expenses of retaking, keeping and storing the Locomotives, and second, of the purchase price of the Locomotives and any interest accrued thereon, and third, of all other sums payable by the Buyer hereunder. If any surplus of such proceeds remains after the payment of the sums hereinabove mentioned, the Seller agrees to pay such surplus to the Buyer; and in case of a deficiency, the Buyer agrees to pay such deficiency forthwith to the Seller.

In case the Seller shall rightfully demand possession of the Locomotives or lease or sell the Locomotives pursuant to this Agreement, and shall reasonably designate a point or points upon the lines of railroad of the Buyer for the delivery of the Locomotives to it or to the purchaser or lessee of the Locomotives, the Buyer will, at its own expense, forthwith and in the usual manner and at the usual speed cause the Locomotives to be moved to such point or points and will there deliver the same to the Seller or to such purchaser or lessee and the Seller or such purchaser or lessee shall have the right to enter upon the premises of the Buyer and retake the Locomotives wherever the

same may be found and to store the Locomotives upon the premises of the Buyer, without charge, until arrangements for the removal thereof can conveniently be made. The assembling and delivery of the Locomotives by the Buyer upon the exercise by the Seller of Seller's remedies in the event of default as hereinbefore provided are of the essence of this Agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree requiring specific performance of such acts. The Buyer agrees that neither upon the retaking of the Locomotives by the Seller or the purchaser or lessee thereof in the event of a default hereunder by the Buyer, nor as a condition precedent to such retaking shall the Seller be required to refund to the Buyer any portion of the purchase price of the Locomotives theretofore paid by the Buyer and the Buyer expressly waives any right it may have by law or by statute to the return of any part of such purchase price upon the retaking of the Locomotives by the Seller or such purchaser or lessee thereof as aforesaid. The sale, lease or retaking of the Locomotives shall not affect any right or cause of action which the Seller may have or release the Buyer from any obligation or liability upon or under this agreement.

The powers and remedies herein provided in case of default are not to be exclusive of any other powers or remedies now or hereafter existing at law or in equity or under any statute. No delay or omission of the Seller in the exercise of any power or remedy shall be deemed to be a waiver of any default or of the right to exercise such power or remedy, nor shall the acceptance by the Seller of any security or of any payment of or on account of any installment of the purchase price of the Locomotives or of interest thereon maturing or accruing after any default or of any payment on account of any past default be deemed a waiver of any right to take advantage of any other past or any future default.

SECTION XI. The Seller shall defend any suit or proceeding brought against the Buyer so far as based on a claim that equipment of Seller's specification, or any part thereof, furnished under this contract constitutes an

infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and the Seller shall pay all damages and costs awarded therein against the Buyer.

In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall at his option and at his own expense, either procure for the Buyer the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing, or remove the entire equipment and refund the purchase price and the transportation and installation costs thereof.

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

The foregoing states the entire liability of the Seller for patent infringement by said equipment or any part thereof.

SECTION XII. Seller warrants to the original user that the Locomotives are of the kind and quality described in the specification referred to herein and are suitable for the ordinary purposes for which such equipment is used.

Seller further warrants each Locomotive to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before the Locomotive has been operated 250,000 miles whichever event shall first occur. Seller agrees to correct such defects, which examination shall disclose to Seller's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Seller's obligation with respect to such defect under this warranty.

Seller warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Seller.

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

SECTION XIII. The Buyer shall at its expense promptly cause this Agreement and any supplements hereto and the first assignment thereof to be filed, registered or recorded in the State of Kentucky and in any other State in which any of the Locomotives shall be used or with the Interstate Commerce Commission pursuant to Section 20 (c) of the Interstate Commerce Act; and the Buyer shall at its expense, from time to time, do and perform any other act, and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or requested by the Seller for the purpose of protecting its title and rights or carrying out the intention of this Agreement; and the Buyer will promptly furnish to the Seller certificates or other evidence of all such filing, registration and recording, satisfactory to the Seller, together with the opinion of counsel to the Buyer that such steps have been taken as aforesaid.

SECTION XIV. 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 an instrument other than an agreement of conditional

sale, shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Buyer to the full extent permitted by law.

SECTION XV. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Seller shall impair or affect the Seller's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Buyer shall not otherwise alter or affect the Seller's rights or the Buyer's obligations hereunder. The Seller's acceptance of any payment after it becomes due hereunder shall not be deemed to alter or affect the Buyer's obligations or the Seller's rights hereunder with respect to any subsequent payments or default therein.

SECTION XVI. There are no understandings, agreements, representations or warranties, express or implied, not specified or referred to herein. No modification of any of the terms or conditions of this Agreement shall be valid in any event, and the Seller and Buyer expressly waive the right to rely thereon, unless made in writing duly executed by the Seller and Buyer.

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

SECTION XVIII. This Agreement shall inure to the benefit of and remain binding upon, the successors and assigns of the parties hereto, respectively.

SECTION XIX. Any notice hereunder to the Buyer shall be deemed to be properly served if delivered or mailed to the Buyer at 2910 North Western Parkway,

Louisville, Kentucky, 40212, or at such other address as may have been furnished in writing to the Seller by the Buyer. Any notice hereunder to the Seller shall be deemed to be properly served if delivered or mailed to General Motors Corporation, Electro-Motive Division, at LaGrange, Illinois, 60525, or at such other address as may have been furnished in writing to the Buyer by the Seller. Any notice hereunder to any assignee of the Seller or of the Buyer shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Buyer or the Seller, as the case may be, by such assignee.

SECTION XX. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience Sept. 1, 1972, the actual date or dates of execution hereof by the parties hereto is, or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS THEREOF, the Seller and the Buyer have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By *S. D. [Signature]* *[Signature]*
Vice President

ATTEST:

[Signature]
Asst. Secretary

KENTUCKY & INDIANA TERMINAL
RAILROAD COMPANY

By Joseph J. Gaynor
Joseph J. Gaynor
President

ATTEST:

K. I. Williams
K. I. Williams
Secretary

STATE OF Illinois)
COUNTY OF Cook) SS

I, Zula C. Clair, a Notary
Public duly commissioned, qualified and acting within and for the State and
County aforesaid, do hereby certify that on August 15, 1972,
before me, the subscriber, a Notary Public as aforesaid, personally appeared
in said County of Cook,

B. B. Brownell, Vice President of
General Motors Corporation, one of the corporations which executed the fore-
going instrument in writing, bearing the date of Sept. 1, 1972, whose name is
signed thereto and said B. B. Brownell who
is personally well-known to me as Vice President of General Motors Corporation
and being by me duly sworn, and I having first made known to him the contents
of said instrument, did depose and say that he resides at _____

904 Chanticleer Lane, Hinsdale, Illinois,
that he is Vice President of said General Motors Corporation, one of the
corporations described in said foregoing instrument, authorized by said corpora-
tion to execute and acknowledge deeds and other writings of said corporation;
that he knows the contents of said instrument; that he knows the seal of said
corporation; that one of the seals affixed to said instrument is the corporate
seal of said corporation; that said instrument was signed sealed and delivered
by him as Vice President in behalf of said corporation by its authority, duly

given, and by authority of its Board of Directors; and that he acknowledged said foregoing instrument to be the free and voluntary act and deed of said General Motors Corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed my notarial seal the day and year aforesaid.

Julia C. Clair
Notary Public
My Commission Expires July 11, 1976

STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

I, Elizabeth C. Smith, a Notary Public duly commissioned, qualified and acting within and for the State and County aforesaid, do hereby certify that on the 14th day of August, 1972, before me, the subscriber, a Notary Public as aforesaid, personally appeared in said Jefferson County, Kentucky, Joseph J. Gaynor, President of the Kentucky & Indiana Terminal Railroad Company, one of the corporations which executed the foregoing instrument in writing, bearing date of Sept. 1, 1972, whose name is signed thereto, and said Joseph J. Gaynor, who is personally well-known to me as President of the Kentucky & Indiana Terminal Railroad Company, and being by me duly sworn, and I having first made known to him the contents of said instrument, did depose and say that he resides at 2550 Dundee Road, Louisville, Kentucky, 40205; that he is President of said Kentucky & Indiana Terminal Railroad Company, one of the corporations described in said foregoing instrument, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation; that he knows the contents of said instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is the corporate seal of said corporation; that said instrument was signed, sealed, and delivered by him as President in behalf of said corporation by its authority duly given, and by authority of its Directors; and that he acknowledged

said foregoing instrument to be the free and voluntary act and deed of said
Kentucky & Indiana Terminal Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and
affixed my notarial seal the day and year aforesaid.

Elizabeth C. Smith
Notary Public
My Commission Expires _____

Notary Public, Jefferson County, Ky.
My Commission expires May 16, 1976