

RECORDATION NO. 7938 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1975

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

AND

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

For the Purchase of 15 1500 H.P.
DIESEL-ELECTRIC SWITCHING LOCOMOTIVES

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1975

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

AND

PITTSBURGH NATIONAL BANK, AS AGENT

CONDITIONAL SALE AGREEMENT dated as of May 15, 1975, between General Motors Corporation (Electro-Motive Division), a corporation organized under the laws of the State of Delaware, (hereinafter called the Vendor or Owner, as more particularly set forth in Article 26 hereof), and The Pittsburgh and Lake Erie Railroad Company, a corporation organized under the laws of the State of Delaware (hereinafter called the Railroad),

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

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

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

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

ARTICLE 2. *Inspection and Delivery.* The Owner will deliver the various units of the Equipment to the Railroad, f.o.b. Owner's Plant, McCook, Illinois. Such delivery shall have been completed no later than June 15,

1975, unless such date is extended by the Owner and Railroad by appropriate written agreement.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad. An authorized representative of the Railroad shall promptly after the execution hereof furnish to the Owner a certificate of acceptance, hereinafter called the "Certificate of Acceptance," in such number of counterparts or copies as may reasonably be requested, stating that such unit delivered to and accepted by the Railroad has been inspected and found to be completely in accordance with this Agreement and the Specifications and that each unit of the Equipment described in said Certificate has been delivered to and fully and finally accepted on the Railroad's behalf by such representative at the place therein specified, and that each such unit is marked in accordance with Article 6 hereof; provided, however, that the Owner shall not thereby be relieved of its warranty contained in Article 13 hereof.

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

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Schedule A hereto. The base price is subject to increase as more fully set forth herein. The base price is based upon the price of basic equipment and standard modifications. The base price is subject to increase in accordance with the terms of Locomotive Proposal 74668-A, dated May 21, 1974 (Purchase Order), a copy of which terms are set forth in Schedule B hereto. The term "Purchase Price" of the Equipment shall mean the base price as finally so increased, exclusive of interest.

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 the Closing Date, \$817,668, representing the down payment of not less than 20% of the total base price on presentation of invoice for the Equipment supported by Certificate of Acceptance in respect thereof; and

(b) The sum of \$3,270,672, representing not more than 80% of the total base price of the Equipment, payable in twelve consecutive quarterly installments of \$272,556 each on the 15th day of each Feb-

For assignee
L.W.M. for Vendor
J.J.D. for Railroad

ruary, May, August and November, beginning ~~November~~ 15, 1975, to and including ~~August~~ 15, 1978.

MAY L.W.M. for Vendor J.J.D. for Railroad For assignee

The Railroad shall have the right, at its option, to prepay without penalty or premium the amount outstanding hereunder in whole at any time or in part from time to time. Partial prepayments shall be applied to the installments of the amount outstanding in the inverse order of their maturities. In addition to the payment of the installments of the total purchase price as hereinabove provided, interest on the balance of the total purchase price of the Equipment from time to time remaining unpaid, at the rate set forth in Schedule C attached hereto, determined on the basis of an actual 365/366 day year, shall become due and payable by the Railroad to the Vendor quarterly on each February 15, May 15, August 15 and November 15 subsequent to the date of this Agreement until the principal has been paid in full. Such interest on the unpaid balance shall accrue from the Closing Date.

(c) The balance of the Purchase Price, being the amount of any additional increases in the base price determined to be due after the Closing Date in connection with the Equipment, upon submission of proper data to the Railroad substantiating such additional charge, notwithstanding any assignment by the Owner of its rights to receive the installment payments under subparagraph (b) hereinabove. Further, the Railroad shall have the right, at any time within 90 days from the Closing Date, to audit the records of the Owner with respect to the adjustments of the base price as provided in the aforesaid Purchase Order, Exhibit B. The Railroad shall pay to the Owner any increase in price disclosed by such audit.

The term Closing Date shall mean June 10, 1975 or such earlier date as shall occur two days following notice and presentation by the Owner to the Railroad of the invoice and Certificate or Certificates of Acceptance for the Equipment.

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 in respect of the amount of any local, state, Federal, Canadian (Dominion or Provincial) or Mexican taxes (other than income, gross receipts, excess profits and similar taxes [except gross receipts taxes in the nature of or in lieu of sales taxes]) assessments, duties, charges, fines, penalties or license fees ("impositions") hereafter levied

or imposed upon or measured by this Agreement, or any sale, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof, all of which expenses, taxes and impositions the Railroad assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor, or result in a lien upon any unit of the Equipment, except the lien of taxes and assessments not due and payable; *provided, however,* that the Railroad shall be under no obligation to pay any taxes or impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes or impositions and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, or impositions shall have been charged or levied against the Vendor directly and paid by the Vendor; the Railroad shall reimburse the Vendor on presentation of an invoice therefor and any sums of money so paid by the Vendor shall be secured by and under this Agreement as a lien on the Equipment; *provided, however,* that the Railroad shall be under no obligation to reimburse the Vendor for any sums of moneys so paid, nor shall any such sums of money so paid be secured by and under this Agreement as a lien on the Equipment, unless the Vendor shall, by at least thirty days written notice given to the Railroad of its intention to make any such payment, afford a reasonable opportunity to the Railroad to contest in good faith any such expenses, taxes, or impositions, which may have been so charged or levied against the Vendor.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full Purchase Price of all the Equipment together with interest and all other payments as herein provided, (collectively "Indebtedness") 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 so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof, and will execute and deliver at the same place, for recording or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver all such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* So long as title to and property in the Equipment is retained by Vendor, the Railroad will cause each unit of the Equipment to be kept plainly, distinctly, permanently and conspicuously marked on each side thereof in letters not less than one inch in height with appropriate words designated by the Vendor to indicate the limited interest of the Railroad therein, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and their rights under this Agreement.

The Railroad will cause each unit of the Equipment to be kept numbered with the identifying number thereof as set out in Schedule A hereto and will not change or permit the change of numbers of any such units except with the consent of the 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 provided above, the Railroad will not allow the name of any person, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership by the Railroad or anyone other than the Vendor, provided, however, that the Railroad may cause the Equipment to bear the designation "P&LE," "Pittsburgh & Lake Erie Railroad" or "The Pittsburgh and Lake Erie Railroad Company", together with such insignia as the Railroad customarily displays on the side of other railroad equipment owned or leased by the Railroad.

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

In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, requisitioned or taken by condemnation or otherwise or rendered unfit for use from any cause whatsoever during the continuance of this Agreement (such occurrences being hereinafter called "Casualty Occurrence"), the Railroad shall promptly and fully inform the Vendor in regard thereto. Within sixty (60) days of the Casualty Occurrence, the Railroad shall pay to the Vendor a sum equal to the then unpaid balance applicable to such unit or units of Equipment having suffered a Casualty Occurrence, including accrued and unpaid interest on such balance on the date of payment thereof (all remaining quarterly installments shall be correspondingly reduced).

ARTICLE 8. *Advances, Loans, Investments, Dividends.* While Indebtedness is outstanding hereunder, the Railroad shall not make any loan or advance to or purchase of or investment in or otherwise acquire any obligations of or stock of or any other interest in, or guaranty the indebtedness of, any person, trust, firm, corporation or other entity whatsoever including but not limited to the Penn Central Transportation Company or its Trustees or any Company affiliated therewith, except: (i) loans or advances to or guaranties of the indebtedness of any subsidiaries of the Railroad, whether or not wholly owned, not to exceed in the aggregate \$10,000,000.00, and (ii) obligations incurred in connection with the acquisition of interests in track and other railroad operating properties, not to exceed in the aggregate \$20,000,000.00, (loans, advances, guaranties, and obligations under (i) and (ii) hereof collectively hereinafter called "Permitted Advances"); provided, however, that Railroad shall notify Vendor of the Permitted Advances in writing or in the next quarterly financial statement required by Article 10 hereof. While any Indebtedness is outstanding hereunder, the Railroad shall

not declare or pay any dividends, except out of income actually earned during the fiscal period in which the dividend is declared.

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 and with all lawful rules of the Interstate Commerce Commission, Department of Transportation (Federal Railroad Administration) and interchange rules of the Association of American Railroads, if applicable, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before March 31 in each year, the Railroad will furnish to the Vendor an accurate statement showing as of the preceding December 31, the amount, description and railroad numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding calendar year, the numbers of the units then undergoing repairs and awaiting repairs, and such additional information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request. Together with such statement the Railroad will also furnish to the Vendor a statement specifying that, in the case of all Equipment repainted during the preceding calendar year, the marks required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

The Railroad will furnish to the Vendor, within 120 days after each fiscal year of the Railroad, a copy of the annual audited report of the Railroad prepared by an independent certified public accountant, and within 30 days after each of its fiscal quarters, unaudited financial statements showing its financial condition at the close of such fiscal quarter and the results of its operations for the period ended certified by a proper accounting officer of the Railroad.

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 and control of the Equipment and the use thereof upon the lines of railroad owned or operated by the Railroad or over which the Railroad has trackage or other operating rights, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement. The Railroad, with the prior consent of the Vendor may lease the Equipment; provided, however, that the right of the lessee under such lease shall be expressly subordinated to the rights and remedies of the Vendor under this Agreement; and provided further, that prior to such lease, the Railroad shall fully comply with the conditions of Article 20 hereof.

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

ARTICLE 13. *Warranties, Indemnities and Assumption of Liability.* 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 or as the result of the entering into or of the performance of this Agreement, the retention by the Vendor of title to the Equipment, or the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment during the period when title thereto remains in the Vendor, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant here-

under by the Owner. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment 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.

The Owner warrants that the Equipment is of the kind and quality described in the Specifications, and is suitable for the ordinary purposes for which such equipment is used. Owner further warrants each unit of the Equipment to be free from defects in material and workmanship under normal use and service which may develop within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. Owner agrees to correct such defects, which examination shall disclose to Owner's satisfaction to be defective, by repair or replacement f.o.b. Owner's plant and such correction shall constitute fulfillment of Owner's obligation with respect to such defect under this warranty. Owner warrants specialties not of its own specifications or design to the same extent that the suppliers of such specialties warrant such items to Owner. The foregoing warranty is expressly in lieu of all other warranties, express, or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Owner, except for its obligations expressly set forth in this Agreement, and the Owner 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 Owner further agrees with the Railroad that neither the inspection as provided in Article 2 hereof, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 hereof shall be deemed a waiver or a modification by the Railroad of any of its rights under this paragraph.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Owner, and articles or materials specified by the Railroad and not manufactured by the Owner, the Owner agrees to indemnify, protect and hold harmless the Railroad from and against any and all liabilities, 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 by Owner in or about the construction of the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other similar right. The Owner 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 Owner has or hereafter shall have against the originator of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Owner or against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials so specified by the Railroad purchased or otherwise acquired by the Owner for use in or about the construction of the Equipment, or any unit thereof, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right and the Owner further agrees to execute and deliver to the Railroad 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 Railroad will give notice to the Owner of any claim known to the Railroad from which liability may be charged against the Owner hereunder.

In cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Owner, and articles or materials specified by the Railroad and not manufactured by the Owner, the Railroad agrees to indemnify, protect and hold harmless the Owner and Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design which infringes or is claimed to infringe on any patent or other right. Said 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.

ARTICLE 15. *Assignments.* Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, nor transfer possession of any unit of the Equipment

to any other firm, person or corporation without first obtaining the written consent of the Vendor to such sale, assignment or transfer.

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 Owner from, any of the obligations of the Owner to the Railroad contained in this Agreement, or relieve the Railroad of its obligations to the Owner contained in this Agreement or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, 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 or a portion, as the case may be, of the assignor's rights, benefits and advantages under this Agreement including all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the 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 or for the account of the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers and vendors to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents and agrees, for the purpose of assurance to the Owner and 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 Owner to enter this Agreement and of inducing any 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 Owner with respect to the Equipment or the 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 Owner or arising out of any other matter whatsoever. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Owner.

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, at its expense, whenever requested by each assignee, change or cause the change of the markings to be maintained on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment and the rights of such assignee thereunto, such markings to bear such words or legend as shall reasonably be specified by such assignee. The cost of such markings 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 such markings in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

If the assignee under that certain Agreement and Assignment dated as of May 15, 1975 between the Owner and Pittsburgh National Bank, Assignee, shall not make the payment to the Owner with respect to units of Equipment provided in the instrument making such assignment on the Closing Date, the Owner will promptly notify the Railroad of such event and notwithstanding anything to the contrary in Article 3 Subparagraph (b) the Railroad will, not later than 30 days after the date such payment was due, pay or cause to be paid to the Owner in cash that portion of the purchase price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the rate of interest set forth on Schedule C hereto; *provided, however*, that nothing in this paragraph contained shall be construed as constituting a consent by the Railroad to such failure or refusal by such assignee to make such payment.

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

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

(b) The Railroad shall, for more than 30 days after the 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 or performed (other than the failure to make payments as provided in subparagraph (a) hereinabove or otherwise specifically provided for hereinafter) 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, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue); all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

(f) The Railroad shall merge into or consolidate with any other corporation or other entity or any other corporation or other entity shall merge into the Railroad; or

(g) Any action is taken pursuant to the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, or any similar statute enacted hereafter, which shall, in the sole discretion of the Vendor, constitute a material risk to the credit extended to the Railroad hereunder or materially change the present ownership or operation of the Railroad;

(h) Any representation or warranty made by the Railroad under this Agreement, or in any certificate, report or opinion delivered under this Agreement or under any assignment of this Agreement shall prove to be incorrect in any material respect when made and corrective measures satisfactory to Vendor with respect thereto shall not have been taken and completed within 15 days after written notice to Railroad by Vendor;

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 mandatory legal requirements then in force and applicable to such action by the Vendor declare the entire amount of the unpaid 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 the Purchase Price and such interest shall bear interest from the date of such declaration at the rate set forth in the second paragraph of Schedule C hereto, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had occurred and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence in 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 the Railroad shall have defaulted as hereinbefore provided, then at any time after the entire unpaid portion of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the 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 whatever, 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. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the 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 units of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire unpaid portion of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit (including, if the Vendor so elect, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however,* that, if the Railroad, within 30 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as herein-after provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the Purchase Price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Vendor, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisements as the Vendor may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the 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 telegram or registered mail addressed to the Railroad as provided in Article 22 hereof, at any time during a period of 30 days after the entire unpaid portion of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given the Vendor shall be deemed to have been 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 Equipment 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 as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the 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 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.

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

The Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of the units of Equipment and to sell them and any other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Vendor's rights hereunder, except such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

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.

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 obligations of the Railroad hereunder. The acceptance by the Vendor of any payment after it shall have become due hereunder shall not be deemed to alter or impair the obligations of the Railroad or the Vendor's rights hereunder with respect to any subsequent payments or default herein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interests herein, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada and will cause notice of such deposit to be given in the *Canada Gazette*; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record and deposit any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of their 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 and recording and depositing satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Owner, but including the fees and expenses of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interests in the first assignment by the 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 purchase price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to such agent shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Treasurer of the Railroad at P&LE Terminal Building, Pittsburgh, Pennsylvania 15219, or at such other address as may have been furnished in writing to the Vendor by

the Railroad. Any notice hereunder to the Owner shall be deemed to be properly served if delivered or mailed to its offices at LaGrange, Illinois 60525, or at such other address as may have been furnished in writing to the Railroad by the Owner. Any notice hereunder to any assignee of the Vendor or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee.

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 Modifications of Agreement.* This Agreement exclusively and completely states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to and only to the extent of the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 26. *Definitions.* The term Vendor, whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Motors Corporation (Electro-Motive Division), and any successor or successors for the time being to its business interest and its rights, powers, duties and obligations thereby, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment, and the term "Owner", whenever used in this Agreement, mean, both before and after any such assignment, General Motors Corporation (Electro-Motive Division), and any successor or successors for the time being to its business interest and its rights, powers, duties and obligations thereby.

ARTICLE 27. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute

but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 15, 1975, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

P.K. Hoglund
.....
VICE PRESIDENT

ATTEST:

W. Scott
.....
ASSISTANT Secretary

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

J.J. Dan
.....
VICE President

ATTEST:

W.S. Larkin
.....
Asst. Secretary

SCHEDULE A

Equipment included in Conditional Sale Agreement, dated as of May 15, 1975, between General Motors Corporation (Electro-Motive Division) and The Pittsburgh and Lake Erie Railroad Company.

<u>No. of Units</u>	<u>Description</u>	<u>Specifications</u>	<u>Railroad Numbers</u>	<u>Per Unit Price</u>	<u>Total Price</u>
15	1500 H.P. Diesel- Electric Switch- ing Locomotives	General Motors Specifications 8097, as modified by Locomo- tive Proposal No. 74668-A	1584 through 1598	\$272,556*	\$4,088,340*

* Including modifications listed on page 2 of Locomotive Proposal No. 74668-A.

SCHEDULE B

PRICE ADJUSTMENTS

The price for the equipment herein described is subject to the following:

(a) Upon acceptance of this proposal by the Buyer within 60 days from its date, the price set forth herein for the basic equipment and standard modifications shall remain firm for shipments delivered within 210 days from the date of this proposal.

(b) Price of basic equipment and standard modifications delivered more than 210 days from the date of this proposal may be adjusted to the price currently in effect on the date of shipment, limited however, to a maximum cumulative escalation of 5% per year from the date of this proposal.

(c) Prices of specialties and modifications not included in the basic specifications of the equipment and not of Seller's design and manufacture are subject to adjustment by the Seller at any time prior to the delivery of the equipment.

Seller shall in no event be responsible for, and no protection against escalation is afforded for, default or delay in delivery occasioned by any cause beyond its control such as outlined in the "Delays" clause.

Conversely, if delivery delays result through fault of Seller the prices determined as set forth above, and as though no delay in delivery had occurred, will prevail.

Seller and Buyer referred to in the above schedule shall mean "Owner" and "Railroad" respectively, as those terms are defined in the Agreement.

SCHEDULE C

RATE OF INTEREST CHARGED BY VENDOR

Three-fourths of one percent ($\frac{3}{4}\%$) above the prime rate on 90-day loans to substantial and responsible borrowers in effect from time to time at Pittsburgh National Bank in Pittsburgh, Pennsylvania (Prime Rate), such interest rate to change automatically from time to time effective without notice to the Railroad on the effective date of such change of such Prime Rate.

The Railroad will pay interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms of this Agreement at the rate of two percent (2%) above the Prime Rate, but in no event will such rate be less than eight percent (8%) per annum.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

On this 30th day of May, 1975, before me personally appeared J.J. Daw, to me personally known, who being by me duly sworn, says that he is Vice President of THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by 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.

Donna R. Smocer
Notary Public

My Commission Expires:

DONNA R. SMOCCER, Notary Public
Pittsburgh, Allegheny Co., Pa.
My Commission Expires
February 3, 1976

STATE OF ILLINOIS }
COUNTY OF Cook } ss.:

On this 29th day of May, 1975, before me personally appeared P. K. HOGLUND, to me personally known, who being by me duly sworn, says that he is VICE President of GENERAL MOTORS CORPORATION (Electro-Motive Division) that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by 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.

Zula C. Clair
Notary Public

My Commission Expires: JULY 11, 1976

AGREEMENT AND ASSIGNMENT, dated as of May 15, 1975, between General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525 (hereinafter called the Owner) and Pittsburgh National Bank, a national banking association with a mailing address at Pittsburgh National Building, Pittsburgh, Pennsylvania 15230, acting under a certain Participation Agreement, dated as of May 15, 1975 (hereinafter called the "Participation Agreement"), a copy of which has been delivered to the Owner (said bank being hereinafter called the Assignee).

WHEREAS, the Owner and The Pittsburgh and Lake Erie Railroad Company, a Delaware corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of May 15, 1975 (hereinafter called the Conditional Sale Agreement) covering the sale, on the conditions therein set forth, by the Owner and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment hereinafter called the Equipment).

NOW, THEREFORE, this Agreement and 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 Owner, the receipt of which is hereby acknowledged, as well as the mutual covenants herein contained:

SECTION 1. The Owner hereby sells, assigns, transfers and sets over to the Assignee, its successors and assigns:

(a) All the right, title and interest of the Owner in and to the Equipment and each unit thereof when and as severally delivered to and accepted by the Railroad and as to each such unit upon payment to the Owner of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Owner in and to the Conditional Sale Agreement in respect of the Equipment (except the right to deliver the Equipment and the right to receive the payment specified in sub-paragraphs (a) and (c) of the second paragraph of Article 3 thereof and in the last paragraph of Article 15 thereof, and reimbursement for taxes paid or incurred by the Owner, as provided in Article 4 thereof) and in and to any and all amounts which may become due or owing by the Railroad to the Owner under the Conditional Sale Agreement on account of the Railroad's obligations in respect of the purchase price of

the Equipment and interest thereon and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement other than those hereinabove excluded; and

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

without any recourse, however, against the Owner for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Owner to deliver the Equipment in accordance with the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Owner under Articles 3, 13 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Owner to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Owner. In furtherance of the foregoing assignment and transfer, the Owner hereby authorize and empower the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owner, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owner covenants and agrees that the Equipment is constructed in accordance with the Conditional Sale Agreement and has been or will be delivered to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owner. The Owner further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and

good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Owner further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Owner to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Owner 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, the unpaid portion of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Owner will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owner of any obligation in respect of the equipment or the reconstruction, delivery, guaranty or warranty thereof, or under Article 14 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 Owner. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Owner 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 Owner under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Assignee shall give notice to the Owner of any suit or proceeding by the Assignee herein described and will move or take other appropriate action on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off or counterclaim asserted by the Railroad therein, and if the Court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, set-off or counterclaim as a tryable issue in such suit or proceeding, the Assignee will notify the Owner thereof and the Owner will thereafter be responsible under its indemnity and will be given the right by the Assignee, at the Owner's expense, to settle or defend such defense, set-off or counterclaim.

Except in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Owner, and articles and materials specified by the Railroad and not manufactured by the Owner, the Owner 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 construction of the Equipment by Owner, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Owner agrees that any amount payable to it by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Owner the amount to be paid under Section 5 hereof.

SECTION 4. The Owner covenants and agrees that it will cause to be plainly, distinctly, and conspicuously marked on each side of each unit of the Equipment, at and from the date of this Assignment, in letters not less than one inch in height, the following legend:

PITTSBURGH NATIONAL BANK, OWNER OR AGENT, UNDER A SECURITY AGREEMENT FILED PURSUANT TO THE INTERSTATE COMMERCE ACT, SECTION 20C.

SECTION 5. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement but in no event later than June 10, 1975 shall pay to the Owner the sum of \$3,270,672 provided that there have been delivered to the Assignee and its counsel hereinafter mentioned 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 counsel:

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

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

(c) Duplicate invoice or invoices for the units of the Equipment having endorsed thereon an approval by the Railroad as to the correctness of the invoice price of such units;

(d) An opinion of Tucker, Arensberg & Ferguson, Pittsburgh, Pa., Special Counsel for the Assignee, stating that (i) the Conditional Sale Agreement and the Railroad's Acknowledgement of Notice annexed at the foot of this Agreement and Assignment have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the Owner and is a valid and binding instrument enforceable in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the Owner in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (vi) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada and will cause notice of such deposit to be given in the *Canada Gazette*; that no other filing or recordation or depositing is necessary for the protection of the rights of the Assignee in any State of the United States of America, (vii) no marking of the Equipment other than as provided in Section 4 is required to protect the rights of the Assignee in and to the Equipment, (viii) registration of the Conditional Sale Agreement or the Agreement and Assignment or the interest required therein is not required under

the Securities Act of 1933, as amended, and (ix) the Participation Agreement has been duly authorized and executed by the Assignee, the execution and delivery by the Assignee in accordance with the Participation Agreement of Certificates of Interest have been duly authorized by the Assignee by all requisite corporate action and whenever a Certificate of Interest shall have been duly executed and delivered by the Assignee in accordance with the Participation Agreement, such Certificate will be the valid and binding obligation of the Assignee in accordance with its terms;

(e) An opinion of counsel for the Owner stating that (i) the Conditional Sale Agreement has been duly executed and delivered by the Owner and is a valid instrument binding upon the Owner and enforceable against it in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by the Owner and is a valid instrument binding upon the Owner and enforceable against it in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the Owner in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment and (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; and

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale

Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) An opinion of counsel for each participant under the Participation Agreement that said Participation Agreement has been duly authorized, executed and delivered by the participant and is a valid and binding obligation of the participant in accordance with its terms.

(h) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owner for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owner and counsel for the Railroad.

In giving the opinions specified in subparagraph (c) of this Section 5, counsel may rely, as to any matter governed by the law of Pennsylvania, on the opinion of counsel for the Railroad as to such matter, and shall not be required to opine as to the law of any jurisdiction other than the United States of America or the State of Illinois.

The obligation of the Assignee to make payment hereunder is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Participation Agreement, of the funds to be furnished to the Assignee by the participants under the Participation Agreement.

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 Owner hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that: (i) the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owner is concerned, a valid and existing agreement binding upon the Owner and the Railroad in accordance with its terms and that it is now in force without amendment thereto, and (ii) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or government instrumentality, domestic or foreign, or of any agreement or instrument to which the Owner is now a party or constitute a default thereunder; and

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

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

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

as of May 1, 1975, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By *P.K. Highland*
VICE PRESIDENT

ATTEST:
J. Scott
ASSISTANT Secretary

PITTSBURGH NATIONAL BANK

By *Francis J. Murray*
V.P.

ATTEST:
Secretary

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

On this *29th* day of May, 1975, before me personally appeared
 P. K. HOGLUND , to me personally known, who being by me
 duly sworn, says that he is *VICE* President of GENERAL MOTORS CORPORATION
 (Electro-Motive Division) that the seal affixed to the foregoing instrument
 is the corporate seal of said corporation, and that said instrument was signed
 and sealed on behalf of said corporation by 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.

Zula C. Clair
 Notary Public

My Commission Expires: JULY 11, 1976

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF ALLEGHENY } ss.:

On this *30th* day of May, 1975, before me personally appeared
Francis J. Murray , to me personally known, who being by me
 duly sworn, says that he is *VICE* President of PITTSBURGH NATIONAL BANK,
 that the seal affixed to the foregoing instrument is the corporate seal of said
 National Banking Association, and that said instrument was signed and sealed
 on behalf of said National Banking 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 National Banking Association.

Donna R. Smocer
 Notary Public

My Commission Expires:

DONNA R. SMOCCER, Notary Public
 Pittsburgh, Allegheny Co., Pa.
 My Commission Expires
 February 3, 1976

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

The Pittsburgh and Lake Erie Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of May 15, 1975.

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

By

J. J. Daw
VICE President