

NOTICE OF ASSIGNMENT

MAR 14 1980 -4 35 PM

INTERSTATE COMMERCE COMMISSION

This is to advise that, effective April 1, 1976, 12:01 a.m., the Financing Agreement described below has been assigned to the Consolidated Rail Corporation by the Trustees of:

Erie Lackawanna Railway Company
Midland Building
Baltimore, Maryland 21201

The Financing Agreement is a Conditional Sale Agreement, dated November 21, 1972, bearing the ICC recordation number 6816

The payee's name and address is:

Morgan Guaranty Trust Company of New York
23 Wall St.
New York, New York 10015

This Notice of Assignment has been placed in the file of the ICC recordation number listed above and the entire assignment is contained in the ICC recordation file stamped in the margin of this assignment. A copy hereof will be promptly mailed to the payee listed above for distribution to the beneficial holder(s) of the Financing Agreement described in this Notice of Assignment.

Consolidated Rail Corporation

CONDITIONAL SALE AGREEMENT

RECORDATION NO. 6816 Filed & Recorded
NOV 29 1972 - 1 00 PM
INTERSTATE COMMERCE COMMISSION

BETWEEN

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

AND

THOMAS F. PATTON and RALPH S. TYLER, JR.,

Trustees of the Property of

ERIE LACKAWANNA RAILWAY COMPANY, Debtor

DATED AS OF NOVEMBER 21, 1972

13 Diesel Electric Locomotives

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of November 21, 1972, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (hereinafter, as more particularly set forth in Section 13 hereof, sometimes called the "Manufacturer"), party of the first part, and THOMAS F. PATTON and RALPH S. TYLER, JR., as Trustees of the property of ERIE LACKAWANNA RAILWAY COMPANY, Debtor, and the successors of said Trustees, or of any of them (such Trustees, or such successors, during the time in which they act in such capacity, being herein sometimes collectively called the "Railroad", as further defined in Section 16), party of the second part.

WHEREAS the Manufacturer has agreed to construct or cause to be constructed and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment more particularly described below; and

WHEREAS the Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Manufacturer and the Railroad with respect to the railroad equipment more particularly described below and shall supersede all other agreements, oral or written, with respect to such equipment;

WHEREAS, the aforesaid THOMAS F. PATTON and RALPH S. TYLER, JR. have been duly appointed Trustees of the property of Erie Lackawanna Railway Company by order of the United States District Court for the Northern District of Ohio, Eastern Division, in a proceeding under Section 77 of the Bankruptcy Act entitled "In the Matter of Erie Lackawanna Railway Company, Debtor", No. B72-2838, and said appointment has been duly ratified by order of the Interstate Commerce Commission, and said Trustees have duly qualified as such and are now in possession of and operating the property of said Company pursuant to the provisions and directions contained in orders of said Court; and

WHEREAS, by order of said Court, granted upon petition by the aforesaid Trustees with notice, and filed October 30, 1972, the form and terms of this Agreement were approved by said Court in substantially the present form hereof, and the aforesaid Trustees were duly authorized and directed to execute and deliver this Agreement, and otherwise to make and carry out the covenants and agreements on their part herein contained; and

WHEREAS, the Railroad represents that all acts and things necessary to make this Agreement valid and binding upon the Railroad have been done and performed;

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

Section 1. Manufacture, Sale and Delivery.

Subject to the terms and conditions of this Agreement, the Manufacturer hereby agrees to construct, sell and deliver to the Railroad and the Railroad agrees to purchase from the Manufacturer and accept delivery of and pay for at the final purchase price determined as provided in Section 2 hereof thirteen (13) 3,600 horsepower Model SD45-2 diesel-electric locomotives bearing Manufacturer's serial numbers 7381-1 to 7381-13, both inclusive, and railroad road numbers EL 3669 to 3681, both inclusive, each unit of which shall be constructed in accordance with the Manufacturer's Specification No. 8088, dated January 3, 1972, as amended by Specification Amendment No. 8088-3, dated January 3, 1972, with the Modifications set forth in the Manufacturer's Proposal No. 72-B-1 dated February 16, 1972 and accepted by the Railroad on March 23, 1972 (said thirteen (13) locomotives being hereinafter sometimes collectively called the "Locomotives"). Said Specification may from time to time be further modified by written agreement between the Manufacturer and the Railroad (said Specification, Specification Amendment, and Modifications, with such further modifications

therein as may be so agreed to, being hereinafter called the "Specifications"). The Manufacturer will mark and will place on each side of each Locomotive a road number conforming to the provisions of Section 5 hereof. The design and quality of the material and other components incorporated in each Locomotive shall conform to all requirements and specifications of the Interstate Commerce Commission interpreted as being applicable to new locomotives of the same character as the Locomotives as of the date of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each Locomotive a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer will deliver the Locomotives to the Railroad, F.O.T. McCook, Illinois, or at such other place or places as may be mutually agreed upon; and thereupon, subject to Section 4 hereof, the Railroad will accept delivery of the Locomotives hereunder. The Manufacturer will so deliver the Locomotives during the months of November and December 1972. The Manufacturer's obligation as to the time of delivery is subject, however, to delays due to acts of God, acts of Government such as embargoes, priorities

and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor troubles, fires, floods, damage to plant, equipment or facilities, explosions or other accidents, or to delays of carriers or of sub-contractors, or in the receipt of material, or to any other cause or causes (whether or not herein specifically enumerated) beyond the Manufacturer's reasonable control.

Notwithstanding the preceding provisions of this Section 1, any Locomotives not settled for on or before December 31, 1972 shall be excluded from this Agreement and not included in the term "Locomotives" as used in this Agreement. In the event of any such exclusion this Agreement shall terminate as to any Locomotives not delivered and accepted hereunder prior to such termination, regardless of the reason therefor. In the event of any such termination the Manufacturer and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the Locomotives delivered and accepted prior to such termination. If the Manufacturer's failure to deliver any Locomotive or Locomotives on or before December 31, 1972 resulted from one or more of the causes referred to in the next preceding paragraph, the Railroad and the Manufacturer shall execute a separate agreement or agreements providing for the purchase of such excluded Locomotive or Locomotives by the Railroad, on the terms

herein specified, payment to be made in cash, upon delivery and acceptance of such Locomotive or Locomotives, either directly or by means of a conditional sale, equipment trust, or such other appropriate method of financing such purchase as the Railroad shall determine and as shall be reasonably acceptable to the Manufacturer.

Section 2. Purchase Price. The basic purchase price (hereinafter called the "basic purchase price"), exclusive of interest, for each Locomotive delivered and accepted hereunder is \$337,598.00, or an aggregate basic purchase price for the thirteen Locomotives of \$4,388,774.00, F.O.T. McCook, Illinois.

The basic purchase price shall be subject to increase or decrease as to any Locomotive by reason of modifications in the Specifications initially agreed upon between the Manufacturer and the Railroad, notice of which increase or decrease shall be furnished to the Assignee (as defined in Section 13 hereof). The final purchase price for each Locomotive shall be an amount (herein called the "final purchase price") determined by adjusting in such manner the basic purchase price for such Locomotive; and such final purchase price shall be paid as provided in Section 3 hereof.

Section 3. Payment of Purchase Price. For the purpose of making settlement for the Locomotives, the

Locomotives may be divided into two groups (each such group being hereinafter called "Group"), the first Group to consist of not fewer than five Locomotives and the second Group to consist of the remainder of the thirteen Locomotives; provided that, if there have been delivered to and accepted by the Railroad some, but not all, of the Locomotives constituting a Group, and the Manufacturer shall be prevented by any one or more of the causes referred to in the third paragraph of Section 1 from delivering additional Locomotives for a period of thirty days or more following the last date of delivery with respect to such delivered and accepted Locomotives, such delivered and accepted Locomotives shall constitute a Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Owner (as defined in Section 13 hereof) in the amount of, and hereby agrees to pay in cash, in immediately available funds, to the Owner, the purchase price of the Locomotives as follows:

A. With respect to each Locomotive, the amount of \$337,598.00 (hereinafter called the "deferred purchase price") shall be paid to the Owner in fifty-nine (59) consecutive quarterly instalments of \$5,626.64 each beginning on February 1, 1973, with subsequent instalments

payable on the first day of each February, May, August and November in each year to and including August 1, 1987 and a final sixtieth instalment payable on November 1, 1987 for the balance of the deferred purchase price then unpaid; provided, however, that if the final purchase price is less than the basic purchase price the deferred purchase price with respect to each Locomotive shall be \$337,598.00 less such difference and each quarterly instalment shall be equal to the quotient derived from dividing such reduced amount by sixty, with appropriate adjustment to the final instalment, if necessary.

B. If the final purchase price of each Locomotive exceeds the basic purchase price such excess shall be paid in cash by the Railroad to the Manufacturer on the Closing Date as hereinafter defined with respect to the Locomotives included in any Group being settled for on a particular Closing Date. The obligation of the Railroad to make such cash payment shall be an unsecured obligation and the Manufacturer shall have no lien on, or claim against, any Locomotive in respect of such

obligation and the failure of the Railroad to perform such obligation shall not constitute an event of default under Section 14 hereof.

The term "Closing Date" with respect to any Group shall mean such date, not more than ten business days following presentation by the Manufacturer to the Railroad of the invoice for such Group and the Certificate of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer at least five business days prior to the Closing Date designated therein. The term "business days" shall mean calendar days, excluding Saturdays, Sundays and holidays on which banking institutions in the City of New York are authorized by law to be closed.

C. Interest computed at the rate of 8.7705% per annum shall be paid quarterly by the Railroad to the Owner on the unpaid instalments of the deferred purchase price of each Locomotive from the date of its delivery and acceptance hereunder. Such interest payments are to be made contemporaneously with the payments of the instalments of the deferred purchase price of such Locomotive provided for in the preceding Subsection A. Interest under this Agreement shall be computed upon the basis of a 360-day year of

twelve 30-day months. The Railroad will pay, to the extent legally enforceable, interest at the rate of 8.7705% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding, such payment to be made concurrently with the payment of the amounts overdue.

D. In case any Locomotive shall be lost, worn out, destroyed or damaged beyond repair, the Railroad shall promptly pay, in immediately available funds, to the Owner an amount equal to the unpaid deferred purchase price of such Locomotive, together with interest accrued thereon to the date of such payment, which shall be applied by the Owner to the prepayment of the deferred purchase price with respect to such Locomotive.

E. All payments provided for herein shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

F. All payments provided for herein shall be made at the office of the Manufacturer at the address of the Manufacturer set forth in Section 20 hereof, or at such other place or places as may be specified in writing by the person entitled to such payments, free of expense for collection and other charges; provided, however,

that, after an assignment of all or any of the rights hereunder of the Manufacturer, all payments hereunder to any Assignee shall be made, in immediately available funds, at the office of such Assignee at its address specified in the assignment to such Assignee until such time as such Assignee shall specify in writing to the Railroad some other place for the making of such payments.

Section 4. Inspection and Acceptance. The Manufacturer will tender each Locomotive for delivery to the Railroad at the agreed place of delivery therefor. The Railroad agrees that it will have an authorized representative at such place of delivery who will, when such Locomotive is tendered for delivery, inspect the same and, if such Locomotive is found to be in good order, will accept delivery thereof and execute and deliver to the Manufacturer a Certificate of Acceptance, substantially in the form of Annex 1 hereto, with respect to such Locomotive.

The Railroad's inspection and acceptance of each Locomotive shall be conclusively presumed from the execution and delivery by an authorized representative of the Railroad of a Certificate of Acceptance with respect to such Locomotive.

Prior to the delivery of the first Locomotive, the Railroad will deliver to the Manufacturer a certificate of the Railroad, substantially in the form of Annex 2

hereto, setting forth the names and specimen signatures of its representatives who are authorized to execute Certificates of Acceptance, and the Manufacturer and any Assignee shall be entitled, until further notice, to rely conclusively upon any Certificate of Acceptance signed by any such representative with respect to the correctness of the statements contained therein.

Section 5. Marking, Lettering and Numbering.

The Railroad will cause each side of each Locomotive to be kept plainly, distinctly, permanently, prominently and conspicuously marked, by a metal plate or otherwise, with the name of the Owner followed by the word "OWNER" (or, if the title to such Locomotive has been theretofore assigned hereunder, by appropriate wording designated by the Assignee, including the words "ASSIGNEE, OWNER"), in letters not less than 1 inch in height. The Railroad will not place any Locomotive or Locomotives which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such Locomotive unless each side of such Locomotive shall have been so marked.

In the event of an assignment by an Owner of its title to any Locomotive and its rights hereunder in respect thereof, the Railroad shall, whenever requested by the Assignee, change the markings on such Locomotive to indicate the title of the Assignee thereto and its succession to such rights and the Railroad will cause to be

delivered to such Assignee a certificate of such change, but the expense of making such change in the markings shall be borne by the Railroad in the event of any assignment of title to not less than all of the Locomotives at the time covered by this Agreement and by the party requesting such change in the event of any assignment of title to less than all of such Locomotives.

In case, during the continuance of this Agreement, such markings on any Locomotive shall be at any time removed, defaced or destroyed, the Railroad shall immediately, at its own expense, cause the same to be restored or replaced on such Locomotive; and if, by reason of a change in law or otherwise, additional markings or identification plates shall be required to protect the interest of the Owner in the Locomotives, the Railroad shall, at its own expense, provide and install or mark and thereafter maintain the same on each Locomotive during the continuance of this Agreement.

The Railroad will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Owner; but the Railroad may letter such Locomotive with the name, initials and/or other insignia customarily used by the Railroad on

its locomotives of the same or a similar character, or with the name, initials and/or other insignia customarily used by a company controlling, controlled by, or under common control with, the Railroad (hereinafter called an "Affiliate"), or may letter it in some other appropriate manner for convenience of identification of the right of the Railroad or Affiliate to use such Locomotive.

Prior to the time of delivery of each Locomotive hereunder the Railroad will cause the Railroad's road number set forth below opposite the Manufacturer's serial number for such Locomotive to be placed on each side thereof:

Manufacturer's Serial Number	Railroad's Road Number	Manufacturer's Serial Number	Railroad's Road Number
7381-1	EL 3669	7381-8	EL 3676
7381-2	EL 3670	7381-9	EL 3677
7381-3	EL 3671	7381-10	EL 3678
7381-4	EL 3672	7381-11	EL 3679
7381-5	EL 3673	7381-12	EL 3680
7381-6	EL 3674	7381-13	EL 3681
7381-7	EL 3675		

At all times thereafter during the continuance of this Agreement the Railroad will cause each Locomotive to bear the Railroad's road number borne by such Locomotive

at the time of its delivery hereunder, except that the Railroad may change said road number assigned to such Locomotive if prior thereto the Railroad shall have filed with the Owner a statement of the road number to be substituted therefor and the Railroad shall have filed such statement wherever this Agreement shall have been filed.

Section 6. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Owner for collection or other charges and no deduction shall be made in any payment by the Railroad hereunder for any taxes, assessments or governmental charges levied or imposed upon the Locomotives or the Manufacturer for the construction thereof, or upon the sale, shipment, delivery or use thereof, and the Railroad agrees to pay or reimburse the Owner for all local, state or federal taxes (other than income or gross receipts [except gross income or gross receipts taxes in the nature of and in lieu of sales or use taxes] or excess profits and similar taxes), and all assessments, charges and license fees, which may be assessed, levied or imposed upon, or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, or with

respect to the assignment by the Manufacturer of any of its rights hereunder, or with respect to the construction, sale or delivery to, or use by, the Railroad of the Locomotives, or any of them, and which the Owner may be required to pay to any governmental body, all of which expenses, taxes and license fees the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the deferred purchase price.

The Railroad shall also promptly pay all taxes, assessments and governmental charges which from time to time may be imposed upon any Locomotive, or the earnings arising therefrom, or the operation thereof, or upon the Owner solely by reason of its ownership thereof, by any governmental body having jurisdiction over such Locomotive, and the Railroad agrees that it will, at all times during the continuance of this Agreement, keep each Locomotive free and clear of all liens for taxes, assessments and governmental charges, other than the lien for any thereof not yet due or payable; provided, however, that the Railroad shall not be required to pay any taxes, assessments, license fees, fines, penalties, or other governmental charges the validity of which the Railroad shall at the time be contesting in good faith by appropriate legal proceedings (notice of which contest must be promptly given by the Railroad to the Owner), unless in the judgment of the Owner its title or interest in

such Locomotive may be adversely affected by such nonpayment. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Owner directly and paid by the Owner, the Railroad shall reimburse the Owner on presentation of an invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Owner for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Owner shall have been legally liable in respect thereof, or unless the Railroad shall have approved the payment thereof.

Section 7. Patents. Except in the case of designs specified by the Railroad and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer assumes all responsibility for and will indemnify, protect and hold harmless the Railroad from any and all liability, damages, costs, claims, suits, actions, judgments, expenses, charges and demands, including royalty payments and counsel fees, arising in any way out of the use in or about the construction or operation of any Locomotive of any design, article or material which infringes or is claimed to infringe on any patent or other right; and the Railroad likewise will indemnify, protect and hold harmless

the Owner from and against any and all liability, claims, demands, costs, suits, actions, judgments, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner because of the use in or about the construction or operation of any Locomotive of any design specified by the Railroad or article or material specified by the Railroad and not manufactured by the Manufacturer which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and not manufactured by the Manufacturer and purchased or otherwise acquired by the Manufacturer for the use in or about the construction or operation of any Locomotive on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Railroad, or

its assigns, all and every such further assurance as may be reasonably requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give prompt notice to the Railroad of any claim known to the Manufacturer from which liability may be charged against the Railroad hereunder, and the Railroad will give prompt notice to the Manufacturer and the Owner of any claim known to the Railroad from which liability may be charged against the Manufacturer or the Owner hereunder.

The provisions of this Section shall continue in full force and effect notwithstanding the full payment of all amounts due hereunder, and the satisfaction and discharge of, or the termination in any manner of, this Agreement.

Section 8. Indemnity. Subject to Section 7 and Section 17 hereof, the Railroad shall indemnify and save harmless the Manufacturer and each person who at any time has been or is an Assignee hereunder from any and all losses, liabilities, damages, injuries, claims, demands, suits, judgments, and expenses in connection therewith, including counsel fees, regardless of the cause thereof, arising from the retention by the Owner of title to the Locomotives or out of the use, maintenance or operation of the Locomotives after their delivery and

acceptance hereunder and during the continuance of this Agreement.

From and after the delivery of any Locomotive or Locomotives 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 loss, destruction or wearing out of any such Locomotive or Locomotives; provided, however, that the Manufacturer shall not be relieved from its warranties covering material and workmanship set forth in Section 17 hereof.

The provisions of this Section shall continue in full force and effect notwithstanding the full payment of all amounts due hereunder, and the satisfaction and discharge of, or the termination in any manner of, this Agreement.

Section 9. Title to the Locomotives. The Owner shall and does hereby retain the full legal title to and property in all the Locomotives (subject, however, to Section 11 hereof) delivered to the Railroad hereunder until the Railroad shall have paid all amounts due hereunder and shall have kept and performed all of the agreements in this Agreement provided to be kept or performed by the Railroad (except the payment of any amount due under Section 3B hereof with respect to any Locomotive the title to which shall have been assigned by the

Manufacturer), notwithstanding the delivery of the Locomotives to, and the possession and use thereof by, the Railroad as herein provided. Any and all additions to the Locomotives and any and all replacements of parts of the Locomotives and additions thereto shall constitute accessions to the Locomotives and shall be subject to all the terms and conditions of this Agreement and title to the same shall be immediately vested in the Owner, and the term "Locomotives" as used herein shall include such replacements and additions. When and only when the Railroad shall have paid in full all amounts due hereunder (except as aforesaid), together with interest, and all the Railroad's obligations herein shall have been performed by the Railroad, absolute right to the possession of, title to and property in all the Locomotives shall pass to and vest in the Railroad without further transfer or act on the part of the Owner, and the Owner shall, if so requested in writing by the Railroad, execute and deliver to the Railroad at its address specified in Section 20 hereof, at the Railroad's expense, a bill or bills of sale of the Locomotives transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created by the Owner together with such instruments of satisfaction or

release as may be necessary or appropriate for recording or for filing wherever this Agreement shall have been filed in order then to make clear upon the public records the title of the Railroad to the Locomotives. The Railroad agrees to file at its own expense, or at the option of the Owner to reimburse the Owner for its expenses in filing, each such instrument wherever required by law.

The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeiture or damages for failure of the Owner to execute and deliver any such bill of sale or to file any such instrument as may be required by law, unless the Railroad shall request the Owner in writing to comply with such requirements and the Owner shall fail to comply therewith within a reasonable time thereafter.

Section 10. Compliance with Laws, Rules and Regulations. During the term of this Agreement the Railroad shall comply in all respects with all the applicable laws of each jurisdiction in or through which the Locomotives may be operated, covering the use, operation or maintenance thereof, and in all jurisdictions in which its operations involving the Locomotives may extend, with all the applicable rules and regulations of each governmental body exercising any power or jurisdiction over the

Locomotives; in the event that any of such laws, rules or regulations require any alteration of, or any additional equipment or appliance on, any Locomotive, the Railroad shall immediately comply therewith at its own expense; and the Railroad shall maintain each Locomotive in proper condition for operation under such laws, rules and regulations during the continuance of this Agreement; provided, however, that the Railroad shall not be required to comply with any such law, rule or regulation the validity or application of which the Railroad shall at the time be contesting in good faith by appropriate legal proceedings (notice of which contest must be promptly given by the Railroad to the Owner), unless in the judgment of the Owner its title or interest in the Locomotives may be adversely affected by such non-compliance.

Section 11. Maintenance; Lost, Worn Out, Damaged or Destroyed Locomotives. The Railroad, at its own cost and expense, shall keep each Locomotive in good order and proper running repair and shall promptly repair any Locomotive which has been damaged by any cause whatsoever, except any Locomotive which is lost, worn out, destroyed or damaged beyond repair.

In case any Locomotive shall be lost, worn out,

destroyed or damaged beyond repair the Railroad shall promptly make the payment required by Section 3D hereof and upon such payment being made, and provided that an authorized officer of the Railroad shall execute and deliver to the Owner or any Assignee a certificate to the effect that the Railroad has kept or performed all agreements provided in this Agreement to be kept or performed by the Railroad, (i) the Railroad shall not be required to make any further payments with respect to such Locomotive under Subsections A or C of Section 3 hereof, and (ii) title to such Locomotive shall be deemed to have vested in the Railroad.

The Railroad shall promptly notify the Owner in writing of the loss, wearing out or destruction of or the damage to any Locomotive, together with full particulars of the extent of the loss, wearing out, destruction or damage incurred.

During the continuance of this Agreement the Owner shall have the right, but shall be under no obligation, to inspect at any reasonable time or times the Locomotives at their then existing locations and the Railroad's records with respect to the Locomotives. The Railroad, in so far as it may legally do so, shall supply free railroad transportation on its available passenger service over its lines for designated agents of the Owner for the purposes of enabling such agents to reach the point or points where any of the Locomotives are in operation and the Railroad's records

with respect thereto are kept, for the purpose of inspection. The Railroad will furnish to the Owner on April 1 of each year (beginning with 1973), and more often if requested, a statement

A. showing the location (as nearly as may be) and condition of each Locomotive and what, if any, substantial repairs have been made thereon during the period which has elapsed since the date of the last preceding report (or, in the case of the first such report, since the date hereof),

B. stating that, in the case of each Locomotive, the markings, serial number and road number have been preserved or replaced on such Locomotive in accordance with Section 5 hereof,

C. listing the insurance in effect with respect to the Locomotives, and stating that such insurance conforms to the requirements of Section 12 hereof, and

D. including such other information as may reasonably be requested.

Section 12. Insurance. The Railroad will at its own expense, from the time of the delivery and acceptance hereunder of each Locomotive and at all times thereafter until the

Railroad's obligations under this Agreement with respect to such Locomotive have been discharged, keep such Locomotive insured against the loss, destruction or damage thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, civil commotion, sabotage, riot, theft and any other risks customarily insured against by similarly situated railroads in an amount at least equal to the amount which the Railroad would be required to pay to the Owner pursuant to Section 3D hereof if such Locomotive were lost, worn out, destroyed or damaged beyond repair; provided however, that such insurance may permit a deduction of not more than ~~\$25,000~~ ^{\$50,000} with respect to each Locomotive involved in each casualty. Notwithstanding the foregoing, the risks required to be insured against and the amount of insurance required to be carried by the Railroad may be changed from time to time by written agreement between the Owner and the Railroad, but neither the Owner nor the Railroad shall be under any obligation to enter into any such agreement. All insurance herein provided shall be effected under a valid and enforceable policy or policies issued by an insurance company or companies satisfactory to the Owner and shall provide that the insurance company must give the Owner at least 20 days' notice of any cancellation and that in the event of cancellation for nonpayment of premiums, the Owner shall have the right to pay the premiums. Copies of such policy or policies shall be delivered by the Railroad to the Owner. Such policy or policies shall insure the respective interests of the owner and the Railroad in the Locomotives and shall provide that the proceeds of such insurance shall be payable to the

Owner. All insurance proceeds received by the Owner with respect to any Locomotive shall

A. be paid over to the Railroad, in the case of repairable damage to such Locomotive, upon receipt by the Owner from the Railroad of proof satisfactory to the Owner of the proper repair of such damage, or

B. be applied by the Owner, in the case of the loss, destruction or damage beyond repair of such Locomotive, towards the satisfaction of the Railroad's obligation with respect to such Locomotive pursuant to Section 3D hereof; provided, however, that if the aggregate of the insurance proceeds received by the Owner with respect to such Locomotive plus any payment made pursuant to Section 3D hereof to the Owner by the Railroad with respect thereto, other than out of insurance proceeds, shall exceed the amount of said obligation of the Railroad with respect thereto, the Owner shall repay to the Railroad the amount of such excess;

provided, however, that if there shall be an existing default in the payment of the deferred purchase price of any Locomotive or interest accrued thereon or an existing event of default (as defined in Section 14 hereof), the Owner shall withhold from the Railroad all amounts which would otherwise be payable to the Railroad under this Section; and in such event either (1) such withheld amounts shall be retained by the Owner until all such defaults and all such events of default have been remedied and thereupon shall be paid to the Railroad, or (2) if, prior to such payment to the Railroad, the aggregate unpaid deferred purchase price of the Locomotives shall

have become due and payable pursuant to a declaration under Section 14 hereof, such withheld amounts shall be deemed to be amounts realized by the Owner from the enforcement of its rights hereunder and shall be applied by the Owner in accordance with Section 14 hereof.

Section 13. Assignment by the Owner. The Owner's rights, benefits and advantages (including its title to each Locomotive and its right to receive the deferred purchase price of each Locomotive) in and under this Agreement (except, in the case of the Manufacturer, its right to construct the Locomotives and its right to receive the payments specified in Section 3B hereof with respect to such Locomotive) may be assigned at any time as a whole or from time to time in part and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject the Assignee to, or relieve the Manufacturer from, any of the Manufacturer's obligations to construct and deliver the Locomotives in accordance herewith or to respond to its warranties and indemnities contained in Section 7 and Section 17 hereof, or relieve the Railroad from any of its obligations to the Manufacturer under Section 1, Section 2, Section 3B, Section 6, Section 7 and Section 8 hereof or any other obligation which, according to its terms and

context, is intended to survive an assignment. In the event of any such assignment, the prior Owner shall give written notice thereof to the Railroad, together with an executed counterpart of such assignment, which assignment shall state the identity and post-office address of the successor Owner, and such successor Owner shall, by virtue of such assignment, acquire all of the prior Owner's rights, title and interest hereunder and in and to the Locomotive or Locomotives, or in and to a portion thereof, as the case may be, to the extent specified in such assignment.

From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the Assignee at the address of the Assignee specified in the aforesaid notice or as specified in said assignment.

It is contemplated that coincident with the execution and delivery of this Agreement, the Manufacturer will assign all its right, title and interest (with certain exceptions) in and to the Locomotives and this Agreement, together with certain amounts which may become due under this Agreement and certain other rights, powers, privileges and remedies, in consideration of, among other

things, an agreement by the Assignee to pay to the Manufacturer the deferred purchase price of the Locomotives on certain terms and conditions, all as more fully set forth in the instrument making such assignment.

For the purpose of assurance to such Assignee and to any other person, firm or corporation considering the acquisition at any time of this Agreement and of any of the rights of the Owner hereunder, and for the purpose of inducing such Assignee to agree to pay the deferred purchase price as described above, the Railroad represents and agrees that the rights of the Assignee (as hereinafter defined) to the entire unpaid indebtedness in respect of the deferred 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 by the Manufacturer of any of its obligations hereunder or in respect of the manufacture, construction and delivery of any Locomotive, or warranty thereof, or in respect of any indemnity herein contained, or arising out of any other indebtedness or liability at any time owing by the Manufacturer to the Railroad. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer.

In the event of any transfer or assignment, or successive transfers or assignments by the Owner, of title to the Locomotives and of the Owner's rights hereunder in respect thereof, the Railroad will at its expense, whenever requested by such transferee or Assignee, change the markings on each side of each Locomotive, in accordance with the provisions of Section 5 hereof, so as to indicate the title of such transferee or Assignee to the Locomotives, such markings to bear such words or legend as shall be specified by such transferee or Assignee, subject to requirements of the laws of the jurisdictions in which the Locomotives shall be operated by the Railroad relating to such markings for use on equipment covered by conditional sale agreements with respect to railroad equipment.

In the event of any such transfer or assignment prior to the delivery hereunder of the first Locomotive, the Railroad will deliver to the Assignee or transferee counterparts of the Railroad's notice to the Manufacturer fixing each Closing Date in accordance with Section 3 hereof and will deliver, in accordance with the terms of such transfer or assignment, all documents to be delivered to such Assignee or transferee; at each Closing Date the Railroad will also deliver an opinion of counsel for the Railroad, in scope and substance satisfactory to the Assignee or transferee and its counsel:

A. as to the appointment of THOMAS F. PATTON and RALPH S. TYLER, JR. as Trustees for the property of Erie Lackawanna Railway Company by an order of the United States District Court for the Northern District of Ohio, Eastern Division, the due ratification of such order by the Interstate Commerce Commission and the due vesting of such Trustees with title to the properties of said Erie Lackawanna Railway Company and such Trustees having the power and authority to carry on its business as now conducted;

B. as to the due authorization, execution and delivery hereof by the Railroad, pursuant to an order of said Court which is in full force and effect and has not been reversed, modified or amended and is not subject to appeal, and the legality, validity and enforceability hereof, as against the Railroad, in accordance with the terms hereof;

C. as to the compliance by the Railroad with Subsections A and D of Section 18 hereof;

D. as to the jurisdiction of any Federal or State public regulatory body or bodies over the entering into or performance of this Agreement, and, if any such regulatory body or bodies has such jurisdiction, the sufficiency of any authorization or exemption thereof or consent thereto by each such public regulatory body;

E. as to the vesting of title to the Locomotives being paid for at such Closing in the Assignee, free of all claims, liens, encumbrances and security interests except only the rights of the Railroad under this Agreement;

F. to the effect that the consummation of the transactions herein contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Railroad under, any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-laws or other agreement or instrument (other than this Agreement) or any order of any court or governmental or administrative body to which the Railroad is a party or by which it may be bound; and

G. to the effect that the obligations to make payments under this Agreement will constitute expenses of administration of the Railroad and will rank equally and ratably in priority of payment with all other expenses of administration of the Railroad.

In case said opinion shall specify, pursuant to Subsection D above, that any public regulatory body has jurisdiction over the entering into or performance of this Agreement, the Railroad will deliver to the Assignee copies, certified by an appropriate officer of the Railroad, of the application of the Railroad to such public regulatory body, and of each amendment thereto, and copies, certified by an appropriate

official of such public regulatory body, of each order issued by such public regulatory body upon the basis of such application.

The term "Owner", whenever used herein, shall mean, before any assignment of any of the rights hereunder, the Manufacturer, and after any such assignment, both the Assignee or Assignees for the time being of such particular assigned rights and also any assignor as regards any rights hereunder that are retained by it and excluded from such assignment; the term "Assignee", whenever used herein, shall mean the Assignee or Assignees for the time being of any of the rights hereunder which have been assigned; and the term "Manufacturer", whenever used herein, shall mean, 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 14. Events of Default and Remedies.

If any one or more of the following events (herein sometimes called "events of default") shall occur:

A. the Railroad shall fail to pay in full when due and payable hereunder any amount payable by it as herein provided, and such failure shall continue for more than 5 days after such payment shall have become due and payable; or

B. a default shall occur under the first paragraph of Section 15 hereof; or

C. the Railroad shall fail or refuse, for more than 30 days after the Owner shall have demanded in writing the performance thereof, to comply with any other covenant, agreement, provision or term of this Agreement to be kept or performed by the Railroad or to make provision satisfactory to the Owner for such compliance; or

D. any material misrepresentation shall have been made by the Railroad in this Agreement or in any document delivered pursuant hereto;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended or substituted, shall be filed by or against any corporation (herein called a "Reorganized Company"), which may be Erie Lackawanna Railway Company, which acquires the greater portion of the lines of railroad comprised in the Debtor's estate upon termination of the trusteeship of the property of Erie Lackawanna Railway Company, Debtor, pursuant to a plan of reorganization confirmed by the Court or other final proceeding for the disposition of the Railroad's railroad business and, unless such petition shall within 30 days from the filing thereof be 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

F. any proceedings shall be commenced by or against any Reorganized Company for any relief which includes, or might result in, any modification of the obligations of such Reorganized Company 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 within 30 days from the filing or effective date thereof be 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 such Reorganized Company or for its property in connection with any such proceedings 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

G. a plan of reorganization of the Railroad is approved by the Court in the pending reorganization proceedings and said plan does not provide for the assumption by the Reorganized Company of each and every obligation of the Railroad under this Agreement in form and substance satisfactory to the Owner; or

H. an order shall be entered dismissing the pending proceedings for the reorganization of the Railroad under Section 77 of the Bankruptcy Act;

then and at any time after the occurrence of such an event of default and thereafter during the continuance of such event of default, the Owner may, without further demand, by written notice to the Railroad, and upon compliance

with any mandatory legal requirements then in force and applicable to such action by the Owner, declare the entire indebtedness in respect of the aggregate unpaid deferred purchase price of all the Locomotives delivered and accepted hereunder immediately due and payable, together with interest thereon at the applicable rates specified in Section 3C hereof to the date of such declaration, and thereafter interest shall accrue on said aggregate unpaid deferred purchase price and (to the extent that payment of such interest on overdue interest is enforceable under applicable law) on overdue instalments of interest at the rate of 8.7705% per annum, and the Owner shall thereupon be entitled to recover judgment for the aggregate unpaid deferred purchase price of all the Locomotives delivered and accepted hereunder, with interest thereon as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Owner may at its election waive such event of default and its consequences and rescind and annul any such declaration by written notice to the Railroad, and shall be obligated to do so if, before sale, lease or completion of any other enforcement of this Agreement, all expenses of the Owner incident to such event of default and to the enforcement by the Owner of the provisions hereof, and all amounts which shall then be due and payable by the Railroad hereunder, other than such part of said aggregate unpaid deferred purchase

price as shall have become due and payable only because of a declaration under this Section as aforesaid, shall have been paid by the Railroad, with interest at the rate of 8.7705% to the extent legally enforceable, and all other existing events of default in the observance or performance of any covenant or condition hereof shall have been remedied or provision therefor satisfactory to the Owner shall have been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

If an event of default shall occur and be continuing, the Owner (after making the declaration provided for in the preceding paragraph), during the continuance of such default, may, subject to any mandatory requirements of law then in force applicable thereto, at its election, sell the Locomotives or any of them, free from any and all claims of the Railroad (except as hereinafter in this Section provided), or of any other person claiming by, through or under the Railroad at law or in equity, (including any claim in the proceeding currently pending under Section 77 of the Bankruptcy Act in the United States District Court for the Northern District

of Ohio, Eastern Division, entitled "In the Matter of Erie Lackawanna Railway Company, Debtor", No. B72-2838) at public or private sale, for cash or on credit, and with or without advertisement, all as the Owner may determine. Any sale or sales hereunder may be held or conducted at such place or places and at such time or times as the Owner may fix, in one lot and as an entirety or in separate lots, and without the necessity of retaking possession of, or gathering at the place of sale, the Locomotives to be sold, and in general in such manner as the Owner may determine in compliance with any such requirements of law; provided, however, that telegraphic notice of each such sale shall be given to the Railroad as provided in any such requirements, but in any event at least 3 days prior thereto, and, if such sale shall be a private sale permitted by such requirements, such notice shall also specify the proposed sale price. The Railroad will permit any prospective purchaser designated by the Owner to inspect the Locomotives at such times and places as the Owner may reasonably select. Each private sale hereunder shall be subject to the right of the Railroad to purchase or provide a purchaser, within such 3 days, at the same or a better price and on not less favorable terms than those offered by the intending purchaser. To the extent not prohibited by any such requirements of law, the Owner may itself bid for and

become the purchaser of the Locomotives, or any of them, without accountability to the Railroad (except as hereinafter in this Section provided) and in payment of such purchase price the Owner shall be entitled to the extent not prohibited as aforesaid to be credited on account thereof with all amounts due hereunder to the Owner from the Railroad. Pending any such sale the Owner, with or without retaking possession of the Locomotives, may, but shall have no obligation to, lease from time to time any or all of such Locomotives to such person or corporations on such terms and for such periods as it shall deem advisable, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale or lease. The proceeds of such sale or lease, less the attorneys' fees and any other expenses incurred by the Owner in taking possession of, removing, storing, selling and leasing the Locomotives, shall be subtracted from the amount due to the Owner under the provisions of this Agreement.

If an event of default shall occur and be continuing, the Owner (after making the declaration provided for in the first paragraph of this Section), during the continuance of such default, may, to the extent not prohibited by any mandatory requirement of law, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law applicable to the action to be taken by the Owner, take or cause to be

taken by its agent or agents immediate possession of the Locomotives, or any of them, and may remove the same from the use and possession of the Railroad or any company then in possession thereof. For such purpose the Owner may enter upon all premises owned or leased by the Railroad and its subsidiaries or such other company where any of the Locomotives may be located, and may use and employ in connection with such retaking and removal any supplies, services and aids and all lines of railroad and other facilities of the Railroad and its subsidiaries, or of such other company, with or without process of law. In order to facilitate the Owner's retaking of possession and removal of the Locomotives, the Railroad shall, upon demand of the Owner, at the Railroad's expense, forthwith and in the usual manner and at the usual speed cause the Locomotives to be moved to such place or places on the line of railroad of the Railroad and its subsidiaries or an affiliate or such other company as the Owner shall designate and will there deliver or cause the same to be delivered to the Owner, or, at the option of the Owner, will store the Locomotives at such place or places without charge for a period not to exceed six months, and for such purpose the Railroad agrees to furnish or cause to be furnished, without charge for

rent or storage, the necessary facilities at any point or points selected by the Owner reasonably convenient to the Railroad. The assembling, delivering and storing of the Locomotives as hereinbefore provided are of the essence of this Agreement and, upon application to any court having jurisdiction in the premises, the Owner shall be entitled to a decree requiring the specific performance thereof. The Owner may so retake possession of and remove the Locomotives without any liability to return to the Railroad any amount theretofore paid and free from any and all claims of the Railroad (except as hereinafter in this Section provided), or of any other person claiming by, through or under it at law or in equity. All of the rights of the Owner under this paragraph may be exercised by it through an agent or agents. The Railroad expressly waives any and all claims against the Owner and its agents for damages of whatsoever nature in connection with any such retaking or removal of the Locomotives. After the sale of any Locomotive pursuant to the preceding paragraph of this Section, the purchaser of such Locomotive shall have the same rights and immunities granted to the Owner by this paragraph in so far as they relate to such Locomotive. No such sale, retaking

or removal of the Locomotives shall affect any right or cause of action which the Owner may have, or release the Railroad from any obligation or liability, upon or under this Agreement.

After taking possession of the Locomotives, or any of them, pursuant to the preceding paragraph of this Section, the Owner may propose to retain such Locomotives in satisfaction of the obligations of the Railroad under this Agreement. Written notice of such proposal shall be sent to the Railroad, and if the Railroad does not object in writing within 30 days from the receipt of such notice, the Owner may retain such Locomotives in satisfaction of the obligations of the Railroad under this Agreement.

All amounts realized by the Owner from the enforcement of its rights under this Agreement shall be applied by the Owner in the following order of priority: (i) to the payment of all expenses (including counsel fees) incurred or advances made by the Owner in enforcing this Agreement, including the expenses of any sale, leasing, retaking or removal of the Locomotives, or any thereof, (ii) to the payment of the aggregate unpaid amount of the deferred purchase price of all the Locomotives delivered and accepted hereunder and all interest

accrued on such deferred purchase price, and (iii) to the payment of all other amounts payable by the Railroad to the Owner hereunder. After all such payments shall have been made in full, title to any of the Locomotives then remaining unsold shall pass from the Owner to the Railroad, free from any further liabilities or obligations to the Owner. If, after applying as aforesaid all such amounts so realized by the Owner, there shall remain a surplus in the possession of the Owner, the Owner will pay such surplus to the Railroad, or if, after applying as aforesaid all such amounts so realized by the Owner, there shall remain any amount due hereunder to the Owner, the Railroad will pay such amount to the Owner upon demand and if the Railroad fails to do so, the Owner may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad.

The Railroad shall pay all expenses (including counsel fees) incurred by the Owner in enforcing its rights and remedies under this Agreement and, if the Owner brings any suit to enforce any of said rights and remedies and shall be entitled to judgment, then in such suit the Owner may to the extent permitted by law recover such expenses and the amount thereof shall be included in such judgment.

If the Railroad shall refuse or fail to perform any agreement hereunder on its part to be performed, the Owner may perform the same (and may enter upon the premises owned or leased by the Railroad or any of its subsidiaries for such purpose) and give to the Railroad notice in writing of the expenses incurred in connection therewith and the Railroad agrees to repay promptly after such notice all expenses so incurred with interest thereon at the rate of 8.7705% per annum.

The remedies and powers in this Agreement specifically provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity, and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Owner. No delay or omission of the Owner in the exercise of any such remedy, no granting of an extension of time for the making of any payment due hereunder or other indulgence, and no exercise of any remedy or power, shall impair any such remedy or the title of the Owner reserved hereunder or shall constitute a waiver of any event of default or an acquiescence therein.

The acceptance by the Owner of any security or of any payment on account of any part of the aggregate unpaid final 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 shall not be deemed a waiver of any right to take advantage of any other past or any future default.

In the event of assignments of interest hereunder to more than one Assignee, each such Assignee shall be entitled to exercise all rights of the Owner hereunder in respect of the Locomotives assigned to such Assignee, irrespective of any action or failure to act on the part of any other Assignee.

All rights, remedies and powers provided for in this Section may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law in the premises and all the provisions of this Section are intended to be subject to all applicable mandatory provisions of law that may be controlling in the premises and to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable. Except as otherwise provided herein, the Railroad to the fullest extent permitted by law hereby waives all statutory or other legal requirements for any notice

or demand of any kind whatsoever in connection with any sale, retaking of possession or removal of the Locomotives and all other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Owner's rights hereunder, and any and all rights of redemption.

Section 15. Encumbrance or Assignment by the Railroad. The Railroad will keep the Locomotives free from all claims, liens and encumbrances that might in any way affect the Owner's title or be a cloud upon such title; provided, however, that the Railroad shall not be required to keep the Locomotives free from any such claim, lien or encumbrance the validity of which the Railroad shall at the time be contesting in good faith by appropriate legal proceedings (notice of which contest must be promptly given by the Railroad to the Owner), unless in the judgment of the Owner its title or interest in any Locomotive may be adversely affected thereby.

To the extent that it may effectively do so under applicable provisions of law, the Railroad agrees that it will not sell, assign, transfer or otherwise dispose of its rights under this Agreement except to an Affiliate (and then only subject to this Agreement and without releasing the Railroad from its obligations hereunder) or, except as provided in Section 16 hereof,

transfer the right to possession of any Locomotive without first obtaining the written consent of the Owner. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to the Owner, shall expressly assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this Section. An assignment or transfer, pursuant to a court order, to a receiver or trustee or other court officer appointed in any judicial proceedings under circumstances which do not constitute an event of default under Section 14D hereof shall also not be deemed a breach of this Section.

To the extent that it may effectively do so under applicable provisions of law, the Railroad agrees that it will not, without the written consent of the Owner, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Locomotives, except to the extent that normal operating practice in connection with the use of any Locomotive on any of the lines of railroad specified in Section 16 hereof may require the relinquishment of possession or control of such Locomotive to any corporation owning or operating such lines of railroad.

Section 16. Possession and Use of Locomotives.

So long as no event of default under this Agreement shall have occurred and be continuing, the Railroad shall be entitled to the possession of the Locomotives and shall have the full right to use the Locomotives upon the lines of railroad owned, leased or operated by the Railroad (either alone or jointly with another) or by any corporation a majority of whose voting stock (i.e., stock having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Railroad or over which the Railroad or any such corporation has trackage rights or upon lines of other railroads in normal interchange of equipment for a period in any one case not to exceed one week but subject at all times to all the terms and conditions of this Agreement.

Nothing herein shall be deemed to limit the right of the Railroad to assign and transfer the Railroad's interest hereunder in the Locomotives and the possession thereof to a Reorganized Company, provided that all the obligations then existing or to accrue of the Railroad under this Agreement shall be expressly assumed in writing as a general obligation by such Reorganized Company.

After any assignment and transfer of the Railroad's interest hereunder in the Locomotives and the possession thereof as above permitted nothing herein shall be

deemed to limit the right of the Reorganized Company, as successor to the Railroad at any time further to assign and transfer its interest hereunder in the Locomotives and the possession thereof to any successor corporation which shall have expressly assumed in writing all of the obligations hereunder of the Railroad and into or with which the Reorganized Company shall have merged or consolidated or which shall have acquired all or substantially all of the property of the Reorganized Company; nor shall anything herein be deemed to limit successive such assignments and transfers.

The term "Railroad" whenever used in this Agreement means THOMAS F. PATTON and RALPH S. TYLER, JR., Trustees of the property of Erie Lackawanna Railway Company, Debtor, as well as any successor or additional trustees of such property, before any assignment and transfer of the Railroad's interest hereunder in the Locomotives and the possession thereof to a Reorganized Company as hereinbefore provided, and thereafter shall mean any Reorganized Company.

The liabilities and obligations of said Trustees, THOMAS F. PATTON and RALPH S. TYLER, JR.,

as well as of any such successor or additional trustees, under and in respect of this Agreement, are the liabilities of such trustees, or any or all of them, solely as trustees of the property of Erie Lackawanna Railway Company, and not individually. Said Trustees and any successor or additional trustees shall not be relieved of their liabilities or obligations under or in respect of this Agreement, except upon any assignment and transfer of the Railroad's interest hereunder in the Locomotives and the possession thereof to a Reorganized Company as hereinbefore provided in this Section.

Section 17. Warranties. The Manufacturer warrants that the Locomotives to be constructed and sold by it will be built in accordance with the Specifications and, when delivered to the Railroad, will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Manufacturer) and workmanship under normal use and service; the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any Locomotive constructed and sold by it which shall, within two years after the delivery of such

Locomotive to the Railroad or before such Locomotive has been 250,000 miles in scheduled service, whichever shall first occur, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. This warranty shall not apply to any Locomotive components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repair or alterations affected the stability of the Locomotives or if the Locomotives have been subject to misuse, negligence or accident. Subject to Section 1, the Manufacturer reserves the right to make changes in design or add any improvements on any Locomotive at any time without incurring any obligation to instal the same on Locomotives previously purchased.

The foregoing warranties are expressly in lieu of all other warranties expressed 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 Manufacturer, except for its obligations under Section 1 and Section 7 hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection

with the construction and delivery of Locomotives except as aforesaid.

The Manufacturer's obligations under this Section shall not be affected by any inspection, the execution or delivery of any Certificates of Acceptance in respect of the Locomotives, or the execution or delivery of any other certificate contemplated by this Agreement.

Section 18. Filing. The Railroad shall, at its own cost and expense,

A. prior to delivery of the first Locomotive, cause this Agreement, all agreements supplemental hereto or amendatory hereof and the first assignment and the first reassignment of any of the Manufacturer's rights hereunder to be duly filed (1) with the Interstate Commerce Commission and (2) wherever else required in the United States or Canada for the proper protection of the Owner's title to the Locomotives and of its rights hereunder;

B. from time to time do and perform all other acts and execute, acknowledge and deliver and file and record wherever required any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the satisfaction of counsel for the Owner, of its title and rights or for the purpose of carrying out the intention of this Agreement.

C. duly refile in each such jurisdiction each of the instruments referred to in the preceding Subsections A and B whenever required for such protection of the Owner's title and rights;

D. to the extent legally permissible, pay all taxes in connection with each such filing and re-filing; and

E. promptly furnish to the Owner a certificate or other evidence (accompanied by photostats of each) of each such filing, refiling and payment of filing fees and taxes, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Owner.

As used in this Agreement the term "filing" shall also include registering, recording and docketing, and the term "refiling" shall also include re-registering, re-recording and re-docketing.

Section 19. Financial Statements. The Railroad will maintain a standard system of accounting established and administered in accordance with the uniform system of accounts for railroad companies prescribed by the Interstate Commerce Commission and will deliver to the Owner, and to such other parties as the Owner may reasonably request in writing, in duplicate, until all of its obligations hereunder in respect of the Locomotives shall have been fulfilled, within 90 days after the end of each fiscal year ending after the date hereof, an audited balance sheet of the Railroad (or of any Reorganized Company) as at the end of such year and an audited statement of income of the Railroad (or of any Reorganized Company) for the year then ended.

Section 20. Notices. Any notice to or demand upon the Railroad by the Owner pursuant hereto shall be deemed to have been given or made when deposited in the United States mails, first-class postage prepaid, addressed to Midland Building, Cleveland, Ohio 44115

or at such other address as the Railroad shall hereafter specify in writing to the Owner.

Any notice to or demand upon the Manufacturer by the Railroad pursuant hereto shall be deemed to have been given or made when deposited in the United States mails, first-class postage prepaid, addressed to the Manufacturer at La Grange, Illinois 60525, or at such other address as the Manufacturer shall hereafter specify in writing to the Railroad.

Any notice to or demand upon any Assignee by the Railroad pursuant hereto shall be deemed to have been given or made when deposited in the United States mails, first-class postage prepaid, addressed to such Assignee at the address of such Assignee specified in the assignment relating to it or at such other address as such Assignee shall thereafter specify in writing to the Railroad.

An affidavit with respect to such mailing of any such notice or demand by the person mailing the same shall be deemed to be and shall be conclusive evidence of the giving and receipt of such notice or the making of such demand.

Section 21. Payment of Expenses. The Railroad agrees to pay all costs, charges and expenses incident to the preparation and execution of this Agreement and any

amendments, consents or waivers hereto, any contract for the sale by the Manufacturer of any of its rights hereunder, the first assignment and first reassignment of any of the Manufacturer's rights hereunder, and all other instruments executed for the purpose of supplementing or amending this Agreement or any such assignment or to comply with any of the terms hereof, including the counsel fees and expenses of the Assignee under any such assignment, in connection with the execution of this Agreement, any such contract, and such assignments and the making of the payments required by this Agreement, but excluding counsel fees of the Manufacturer.

Section 22. Severability of Clauses. Any provisions of this Agreement prohibited by any applicable law of any jurisdiction, or which by any applicable law of any jurisdiction would convert this Agreement into an instrument other than an agreement of conditional sale, shall as to such jurisdiction be ineffective, without modifying as to such jurisdiction 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 Railroad to the full extent permitted by law.

Section 23. Modification of Agreement. This Agreement, together with the Specifications, constitutes the entire agreement between the Railroad and the Manufacturer with respect to the construction, delivery and sale of the Locomotives. There are no understandings, agreements, representations or warranties, expressed or implied, not specified or referred to herein. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Railroad and the Manufacturer and, in the event of an assignment, the Assignee, except as otherwise provided in Section 1 hereof with respect to changes in the Specifications.

Section 24. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; but the Owner shall be entitled to such additional rights arising out of the filing, registering, recording and/or docketing hereof or of any assignment hereof as shall be conferred by the laws of any jurisdiction in which this Agreement or any assignment hereof shall be filed, registered, recorded or docketed, including all rights conferred by Section 20c of the Interstate Commerce Act.

Section 25. Successors. This Agreement shall inure to the benefit of, and remain binding upon, the successors and assigns of the parties hereto, respectively.

Section 26. Section Headings. The section headings herein are for convenience only and shall not affect the interpretation hereof.

Section 27. Execution in Counterparts. This Agreement, and any agreement supplemental hereto or amendatory hereof, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience as of November 21, 1972, the actual date or dates of the execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments annexed hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day

and year above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

By *B. B. Samuel*
Vice President

Attest :

J. G. Sawyer
Assistant Secretary

THOMAS F. PATTON and

RALPH S. TYLER, JR.,
Trustees of the Property of
Erie Lackawanna Railway Company,
Debtor

By *Ralph S. Tyler, Jr.*
Trustee

STATE OF ILLINOIS)
 : ss.:
COUNTY OF COOK)

On this *24TH* day of *November*, 1972 before me personally appeared B. B. BROWNE, to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation named in the foregoing instrument, that the seal affixed to the foregoing instrument, is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and date in my certificate above written.

Zula C. Clair Notary Public
My Commission Expires JULY 11, 1976

[Notarial Seal]

STATE OF OHIO)
 : ss.:
COUNTY OF CUYAHOGA)

On this *27th* day of *November*, 1972
before me personally appeared RALPH S. TYLER JR. ,
to me personally known, who being by me duly sworn,
says that he is a Trustee of the property of Debtor, that
the foregoing instrument was signed by him on behalf
of and by authority of the Trustees of Erie Lackawanna
Railway Company, Debtor, and he acknowledged that the
execution of the foregoing instrument was the free act
and deed of said Trustees.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my official seal on the day and date
in my certificate above written.

[Notarial Seal]

Harry P. Gizler

Notary Public
My Commission Expires

HARRY P. GIZLER
NOTARY PUBLIC
My Commission Expires July 24, 1974

ANNEX 1

CERTIFICATE OF ACCEPTANCE

The undersigned, being the duly authorized representative of the Trustees of the property of Erie Lackawanna Railway Company, Debtor (hereinafter called the "Railroad"), hereby certifies that the Locomotives (as defined in the Conditional Sale Agreement dated as of November 21, 1972, between General Motors Corporation (Electro-Motive Division) and the Railroad), bearing serial numbers of General Motors Corporation (Electro-Motive Division) and road numbers of the Railroad, respectively, as follows:

Serial Numbers

Road Numbers

have been delivered in good order by said General Motors Corporation (Electro-Motive Division) to the Railroad at _____, and inspected and accepted by the undersigned on _____, 1972, on behalf of the Railroad, in accordance with the requirements and provisions of said Agreement.

The undersigned further certifies that a legend, bearing the following words, in letters not less than one inch in height: "Morgan Guaranty Trust Company of New York, Assignee, Owner", was plainly, permanently and conspicuously placed upon each side of each of said Locomotives at the time of its delivery and acceptance under said Agreement.

Dated: _____, 1972.

Duly Authorized Representative of the
Trustees of the property of Erie Lackawanna
Railway Company, Debtor

ANNEX 2

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The Trustees of the property of Erie Lackawanna Railway Company, Debtor (hereinafter called the "Railroad"), HEREBY CERTIFY, pursuant to Section 4 of the Conditional Sale Agreement dated as of November 21, 1972 (hereinafter called the "Agreement"), between the Railroad and General Motors Corporation (Electro-Motive Division), a Delaware corporation (hereinafter called the "Manufacturer"), that the following named persons are the representatives of the Railroad duly authorized to execute, on its behalf, the Certificates of Acceptance referred to in Section 4 of the Agreement; that the Manufacturer and the Assignee (using said term herein as it is defined in the Agreement) are entitled, until further notice, to rely upon each such Certificate of Acceptance signed by any such representative with respect to the correctness of the statements contained therein; and that the signatures set forth below opposite the names of such representatives are their genuine signatures:

Name

Signature

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

THOMAS F. PATTON and

RALPH F. TYLER, JR.,

Trustees of the property of
Erie Lackawanna Railway Company,
Debtor

By _____

Dated: _____, 1972.