

FILE IN DOCKET

ATLANTA AND WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA
GEORGIA RAILROAD

4958

RECORDATION NO. Filed & Recorded

JUL 18 1968 - 12 10 21

INTERSTATE COMMERCE COMMISSION

July 8, 1968 jpm-rbd

File B-2610-1-G23

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JUL 18 12 23 PM '68
FREE OPERATION BR.

No. 5239

ACCOUNTING DEPARTMENT

4 Hunter Street, S E
Atlanta, Georgia 30303

Date JUL 1 8 1968

Fee \$ 50.00

ICC Washington, D. C.

J. E. MACCARTHY
Comptroller

Hon. H. Neil Garson, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Dear Sir:

(1) Enclosed for filing and recordation under Section 20c of the Interstate Commerce Act and the regulations prescribed by the Commission's order of July 28, 1952, as amended, are original counterparts numbered 1, 2 and 3, fully executed and acknowledged by all parties thereto, of that document described as follows:

Georgia Railroad Conditional Sale Agreement dated as of July 1, 1968, between General Motors Corporation (Electro-Motive Division), LaGrange, Illinois, 60525, as Seller, and Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, Virginia, 23213, and Louisville and Nashville Railroad Company, 908 W. Broadway, Louisville, Kentucky, 40201, (which two companies jointly lease and operate the "Georgia Railroad"), as Buyers; and

Agreement and Assignment dated as of July 2, 1968, between General Motors Corporation (Electro-Motive Division), LaGrange, Illinois, as Manufacturer, and the Trust Company of Georgia, 36 Edgewood Avenue, N. E., Atlanta, Georgia, 30303, as Assignee.

(2) A general description of the equipment covered by said Conditional Sale Agreement, and the Agreement and Assignment is:

<u>Number of Units</u>	<u>Class</u>	<u>Road Number</u>
One (1)	New 3000 H. P. Model GP-40 diesel-electric locomotive, bearing Manufacturer's Serial Number 33884.	754

The locomotive will bear the name or initials of the Georgia Railroad, with locomotive number as set out above.

(3) Also enclosed is Georgia Railroad's voucher C-1604, in amount of \$50.00, to cover recordation fee for said document, as prescribed in Section 57.3(d) of said order of July 28, 1952, as amended by order of August 25, 1952.

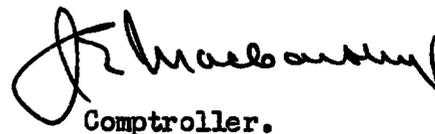
(4) After recordation, please air mail counterpart No. 1 to:

Mr. E. E. Randles,
Assistant General Attorney,
Louisville and Nashville Railroad Co.,
908 W. Broadway,
Louisville, Kentucky 40201

and retain counterparts Nos. 2 and 3 for your files.

Your cooperation toward having the document recorded and returned as expeditiously as possible will be greatly appreciated.

Yours very truly,


Comptroller.

ed

Interstate Commerce Commission

OFFICE OF THE SECRETARY
Washington, D.C. 20423

July 18, 1968

Mr. E. E. Randles,
Assistant General Attorney
Louisville and Nashville Railroad Co.
908 W. Broadway
Louisville, Kentucky 40201

Dear Sir:

The enclosed document was recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, 49 U.S.C. 20c, on July 18, 1968, at 12:30 P.M. , and assigned recordation number 4958 .

Sincerely yours,



H. Neil Garson
Secretary

Encl.

SED Form 30
(1966)

COUNTERPART
No. 2 OF 10

GEORGIA RAILROAD

CONDITIONAL SALE AGREEMENT

DATED AS OF JULY 1, 1968, RECORDATION NO. 4958 Filed & Recorded

BETWEEN

JUL 18 1968 - 12 32 PM

INTERSTATE COMMERCE COMMISSION

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

AND

SEABOARD COAST LINE RAILROAD COMPANY

AND

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

FOR ONE MODEL GP-40 DIESEL-ELECTRIC LOCOMOTIVE

AGREEMENT AND ASSIGNMENT

DATED AS OF JULY 2, 1968

BETWEEN

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

AND

TRUST COMPANY OF GEORGIA
ATLANTA, GEORGIA

RECEIVED
JUL 18 12 24 PM '68
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FEE OPERATION BR.

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of July 1, 1968, by and between GENERAL MOTORS CORPORATION, a corporation of the State of Delaware (Electro-Motive Division), with a principal office and place of business in the Village of McCook, post office address, La Grange, Illinois (hereinafter called the "Seller"), as party of the first part; and SEABOARD COAST LINE RAILROAD COMPANY, a corporation of the State of Virginia, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation of the State of Kentucky, (which two companies lease and operate, through the separate organization known as "Georgia Railroad", and as a separately operated property, the lines of railroad leased from Georgia Railroad and Banking Company, and which two railroad companies, acting jointly and severally herein, are hereinafter collectively called the "Buyers"), as parties of the second part:

WITNESSETH, THAT:

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

1. CONSTRUCTION, SALE AND DELIVERY. The Seller hereby agrees to construct, sell, and deliver to the Buyers, and the Buyers hereby agree to buy from the Seller, accept delivery of, and pay therefor, as hereinafter set forth, the following described railroad equipment (hereinafter sometimes referred to as the "locomotive" or "equipment"):

One (1) new 3000 H.P. Model GP-40 diesel-electric locomotive, to be constructed in accordance with Seller's Specification No. 8056, revised May 15, 1967, as amended by Specification No. 8056-3, revised October 30, 1966, to bear Seller's Serial No. 33884, and Georgia Railroad's Road No. 754.

The locomotive to be constructed at Seller's plant at McCook, Illinois.

Copies of said Specifications have been furnished to the Buyers and are, by reference, made a part of this Agreement as fully as though expressly set forth herein. Said Specifications may, from time to time before or during construction of the locomotive, be modified by written agreement between Seller and Buyers' representatives. The design and quality of material and equipment in said locomotive shall conform to all Interstate Commerce Commission specifications (unless otherwise specified in said Specifications) reasonably interpreted by Seller as being applicable as of the date of this Agreement to locomotives of this character.

(A) PURCHASE PRICE. The full purchase price of said locomotive shall be One Hundred Eighty Five Thousand, Six Hundred Seventy Eight Dollars (\$185,678.00) f. o. b. EMD Plant, McCook, Illinois. The said full purchase price is composed of the base purchase price of \$199,000.00, plus modifications of \$15,678.00, less trade-in allowance for Georgia Railroad's used EMD 1500 H. P. Model FP7A locomotive No. 1003 of \$29,000.00.

The aforesaid base purchase price and modification price for new locomotive No. 754 is as established and agreed upon in Seller's Proposal No. 67-L-16, dated October 27, 1967, and Buyers' acceptance of said Purchase Proposal, dated April 24, 1968. The aforesaid trade-in allowance for used locomotive No. 1003 is as established and agreed upon in Seller's Locomotive Purchase Proposal No. 67-L-17, dated October 27, 1967, and Buyers' acceptance of said Locomotive Purchase Proposal, dated April 24, 1968. The aforesaid base purchase price and modification price is for equipment built in accordance with the Specification above set forth and subject to terms and conditions of said Purchase Proposal No. 67-L-16 and Buyers' acceptance thereof. Said Proposal No. 67-L-16 and Buyers' acceptance are by reference made a part of this Agreement as fully as though expressly set forth herein.

The base purchase price for the locomotive includes increases in the base price for additions or decreases in the applicable Specification, as heretofore agreed in writing by Seller and Buyers. Said base purchase price may be increased or decreased upon any modification of the Specification applicable to the locomotive, or to changes in the cost of additions, or any general change in the cost of manufacture, as shall be agreed to by Seller and Buyers.

The net amount of any increase or decrease shall be added to, or deducted from, the purchase price of the locomotive above specified, and such adjustment shall be made, and the full purchase price shall be determined, by the date of acceptance of the locomotive, and the invoice for the locomotive shall state the full purchase price and the deferred purchase price.

(B) DELIVERY. The Seller agrees to construct and to deliver, free of all liens, encumbrances and claims of any nature by or in favor of any other person and subject only to the reservation of title by the Seller in accordance with the provisions hereof, the locomotive to the Buyers on the tracks of the Atlanta and West Point RR Company at East Point, Georgia, or at such other point or points as Buyers may hereafter specify in writing, freight charges to be paid by the Buyers. Delivery of the locomotive shall be made during the month of July 1968, except for delays due to causes beyond Seller's control, including, but not limited to, acts of God, acts of government, riots and civil commotions, strikes, differences with workmen, accidents, or delays in receiving necessary materials, and, when delivered and accepted, said locomotive will become subject to the same terms and conditions as if delivered simultaneously with the execution and delivery hereof.

Upon the delivery and inspection of said locomotive, and if the locomotive meets the Specification, the Buyers agree to cause to be furnished and delivered to the Seller, in Buyers' names, a certificate of inspection and acceptance executed in six copies by any agent or agents that they, acting through the General Manager of the Georgia Railroad, may designate therefor, stating that said locomotive, has been

delivered to and accepted on their behalf by such agent or agents. The execution of such certificate of inspection and acceptance shall be conclusive evidence that said locomotive conforms to the Specification, and is acceptable to Buyers in all details, provided, however, that such acceptance shall not constitute a waiver of the several warranties in said Specification.

(C) ASSUMPTION OF RISK. Upon shipment of said locomotive the Buyers will assume with respect thereto the responsibility and risks of loss, and the Buyers agree to indemnify the Seller against any loss in the transportation of said locomotive from the Seller's plant to the point of delivery to the Buyers.

2. PAYMENT OF PURCHASE PRICE. Conditional only upon receipt and acceptance of said locomotive, which may be conclusively presumed from the execution of the certificate of inspection and acceptance above referred to, the Buyers hereby promise to pay to the Seller at such place as may be designated by the Seller, or its assignee, the full purchase price of the locomotive so accepted, determined as hereinabove provided, in the following manner:

(A) That part of the full purchase price of said locomotive, as stated in the invoice therefor, which is in excess of the deferred purchase price thereof, shall be paid in cash to the Seller by the Buyers, upon receipt by Buyers of such invoice.

(B) The deferred purchase price of said locomotive being One Hundred Eighty Five Thousand, Four Hundred Dollars (\$185,400.00), and representing that part of the full purchase price of said locomotive in excess of cash payment hereinabove provided, shall be paid in forty-five (45) consecutive quarterly payments of Four Thousand, One Hundred Twenty Dollars (\$4,120.00) each.

(C) The first of such quarterly installment payments in respect of the locomotive shall be due and payable on the first day of the third month after the date of the certificate of inspection and acceptance covering the locomotive purchased under this Agreement, and subsequent installment payments shall be due and payable on the first day of each third month thereafter until said total deferred purchase price shall have been paid in full, and with each such quarterly payment there shall be interest due and payable, as follows:

(i) Interest at the rate of six and three-quarter per cent (6.75%) per annum on the unpaid principal balance of the deferred purchase price represented by quarterly installments 1 through 45.

(ii) It is understood and agreed that the interest rate of 6.75 per cent per annum hereinabove stated in sub-paragraph (i) is composed of 6.50 per cent per annum (the prime interest rate in effect as of April 19, 1968), plus an agreed additive of one-quarter ($\frac{1}{4}$) of one (1) percentage point; provided, that in event there is a change in the prime interest rate as defined hereinafter in sub-paragraph (iii),

the rate of 6.50 per cent per annum hereinbefore stated, shall be equal to the changed prime rate, plus the agreed additive of one-quarter ($\frac{1}{4}$) of one (1) percentage point, and the new interest rate shall become effective and applicable to installment payments on the first day of the next succeeding quarter.

(iii) The "prime rate" is defined as the lowest rate in effect by the majority of the seven (7) largest New York City banks to substantial and responsible borrowers for short-term loans. In the event that, after date of this Agreement, the prime rate shall have been changed by some but not a majority of leading New York City banks, then, for purposes herein, the prime rate shall be deemed to be the changed rate if, and only if, a majority of such other New York City banks put into effect the changed prime rate within four (4) business days of the date on which the first bank made such change; but if the remaining banks do not make such change, the prime rate shall be deemed to be the prime rate in effect by a majority of such New York City banks which have not made such change.

The first payment of interest shall become due and be payable at the time the first installment payment is made, and shall cover interest from the date of the certificate of inspection and acceptance of said locomotive, except that, in the event Seller assigns this Agreement prior to the delivery of the said locomotive, the first payment of interest for said locomotive shall accrue from the date on which payment of the deferred purchase price of said locomotive shall have been made to General Motors Corporation (Electro-Motive Division) by the assignee to the date of payment of the first quarterly installment of the deferred purchase price of said locomotive and shall be paid at the time of payment of said first quarterly installment.

Subsequent payments of interest, at the rate aforesaid, shall be due and payable at the time of payment of each subsequent quarterly installment of the deferred purchase price of said locomotive, and shall cover interest accrued to the date upon which each such quarterly installment shall be due and payable. All interest provided for in this Agreement shall be calculated on the basis of a 30-day month, 360-day year.

Buyers may, on any quarterly payment date, make anticipatory payments of installments of the deferred purchase price, such payments to apply to such installments in inverse order of maturity. In the event any such anticipatory payments are made, interest will abate proportionately.

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

3. TITLE TO THE EQUIPMENT. The Seller shall, and hereby does, retain the full legal title to, and property in, any and all of said equipment until the Buyers shall have made all of the payments for all of the said equipment, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Buyers, notwithstanding the delivery of the equipment to, and the right to the use thereof by the Buyers as herein provided.

The Buyers covenant and agree that they will cause the equipment to be kept numbered with the assigned road number and to be kept plainly marked by stencilling or metal plates furnished and applied by the Seller, upon both sides of said equipment covered by this Agreement, the name of the Seller or of the Seller's assignee, as the case may be, in letters not less than one inch in height, followed by the word "Owner" or other appropriate words designated by the Seller, and the Buyers agree that they will not place said equipment in operation or exercise any control or dominion over any part thereof until said stencilling or metal plates so marked has been affixed on both sides of said equipment.

Buyers agree not to place or permit to be placed upon the equipment or any replacement thereof any marks, signs or words which might be interpreted as a claim of ownership of the equipment by any person, firm or corporation other than the Seller; except, however, Buyers may cause the equipment to be lettered "Georgia Railroad", "Georgia", "Ga. R. R. ", or in some other appropriate manner for convenience of identification of Buyers' right to use said equipment.

When and only when the Seller has been paid in full the purchase price for all equipment, together with interest and any and all other payments as herein provided, and all of the Buyers' covenants and conditions herein contained have been performed by the Buyers, absolute right of possession of, title to and property in all of the equipment shall pass to and vest in the Buyers without further transfer or action on the part of the Seller, except that the Seller shall (or, if this Agreement shall have been assigned, such assignee) if requested by the Buyers so to do, execute and deliver to the Buyers a bill or bills of sale of all of said equipment, transferring the title to and property in said equipment to the Buyers free and clear of all liens and encumbrances created or retained hereby, and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyers to all of said equipment.

4. EXPENSES AND TAXES. All payments to be made by the Buyers hereunder shall be free of expenses to the Seller for collection or other charges, and of the amount of any local, State or Federal Taxes (other than net income, excess profits and similar taxes) or licenses hereafter levied or imposed upon or measured by this Agreement and/or upon any assignment of or participation in any assignment of this Agreement and/or upon or measured by sale, use, payment, shipment, delivery, or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Buyers assume and agree to pay in addition to the above-mentioned purchase price of said locomotive.

The Buyers shall also pay promptly all taxes and assessments which may be imposed upon the locomotive or for the use thereof, or upon the earnings arising therefrom or the operation thereof, or upon the Seller by reason of its ownership thereof, by any government of any country, State or political subdivision thereof in which the locomotive may be located or which shall have jurisdiction over the locomotive, and agree to keep at all times all and every part of the locomotive free and clear of all taxes, assessments, liens and encumbrances, except the liens of taxes not due and payable, provided, however,

that the Buyers shall not be required to pay any such taxes or assessments so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not, in the judgement of Seller, affect the Seller's title in and to the locomotive.

5. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. The Buyers covenant that the equipment will at all times be maintained, used and operated under and in compliance with all laws and regulations in any jurisdiction to which the equipment may be subject. The Buyers further covenant that they will comply in all respects with all acts of Congress and with the laws of the United States and of the States and Territories into which their operations involving the equipment may extend during the term of this Agreement, and with all lawful rules of the Interstate Commerce Commission, and any other legislative, executive, administrative, or judicial body exercising any power or jurisdiction over any of the equipment, insofar as such acts, laws, and rules apply to or affect the equipment or the operation thereof, and in the event that said laws or rules require the alteration of any of the equipment, the Buyers agree to conform therewith, at their expense, and to maintain the same in proper condition for operation under such laws and rules during the life of this Agreement; provided, however, that the Buyers may, in good faith, contest in any reasonable manner the application of any such law or rule which does not, in the judgement of the Seller, affect the Seller's title in and to the equipment.

6. SERVICING, REPLACEMENTS, AND MAINTENANCE. Seller will send a competent person to the point of delivery of the locomotive to assist Buyers in the placing of the same in working condition. Buyers shall provide each such person as well as any person that may be provided by the Seller to investigate complaints regarding said locomotive, without expense to Seller, with all the necessary labor, materials, locomotive supplies and transportation on lines of the Georgia Railroad.

The Buyers shall replace the equipment or any of it, or any parts thereof, at their own cost, except as otherwise herein provided, if it or any of it shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other equipment of similar type and of substantially as good material or construction as that lost or destroyed, or the Buyers shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such equipment. The Buyers will cause any such replacement equipment to be marked as above provided and to be numbered with the same road number as the equipment so replaced. Any and all such replacements of equipment or any of it and any parts shall constitute accessions to the equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original equipment delivered hereunder, and included in the words "equipment" or "locomotive" as used in this Agreement. Title to all such replacement equipment shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

The Buyers covenant and agree that at all times after the delivery of such equipment, they will maintain and keep said equipment in good order and repair, at their expense, and shall bear the risk of, and shall not be released from their obligations hereunder in case of any and all damage, loss, or destruction of said equipment from whatever cause arising.

7. REPORTS AND INSPECTION. The Buyers hereby agree to furnish to the Seller, 7

or its assignee, if requested, once in every year as long as this Agreement shall be in force, an accurate inventory of the equipment in actual service, the number and description of such equipment as may have been destroyed and replaced by another locomotive, and the then location of said equipment.

The Buyers shall promptly and fully inform the Seller, or its assignee, of any loss or destruction of the equipment.

The Seller, or its assignee, shall have the right, but shall be under no obligation, to inspect the equipment at any reasonable time or times during the continuance of this Agreement. The Buyers agree, insofar as they may legally do so, to supply free rail transportation over lines of the Georgia Railroad to designated agents of the Seller for the purpose of enabling such agents to reach the point where the equipment is in operation for the purpose of inspection and/or assisting and instructing the employees of the Buyers, in the proper operation and maintenance of the equipment.

8. USE AND LOCATION. The Buyers agree that after delivery of the equipment and at all times during the continuance of this Agreement, said equipment will be kept, maintained and used solely by Buyers upon the lines of the Georgia Railroad and certain affiliated lines, namely, Atlanta and West Point Rail Road Company and The Western Railway of Alabama, operating solely within the States of Georgia and Alabama, and upon tracks of others over which Buyers have or may acquire trackage rights, and upon connecting and other railroads in the usual interchange or delivery of traffic.

9. PROHIBITION AGAINST LIENS. The Buyers hereby agree to pay or satisfy and discharge when due any and all debts and any and all sums claimed by any party by, through, or under the Buyers and their successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the equipment or any of it, but shall not be required to pay or discharge any such debt or claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the equipment.

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

10. INDEMNITIES AND GUARANTIES. The Buyers hereby covenant and agree to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims, and demands whatsoever, regardless of the cause thereof, arising on account of the equipment or the use or operation thereof during the life of this Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the equipment, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever.

The Buyers will bear the risk and shall not be released from their obligations hereunder in the event of any damage to, or the destruction or loss of any or all of the equipment; provided, however, that General Motors Corporation (Electro-Motive Division) and any successor or successors to its manufacturing

property and business, also agrees to save, indemnify and keep harmless the Buyers from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the equipment at the time of delivery, except with regard to any appliances, devices, or materials specified or required by the Buyers, and not manufactured by the Seller, and Buyers agree to similarly indemnify and hold harmless General Motors Corporation (Electro-Motive Division) with respect to said appliances, devices, or materials specified or required by the Buyers, and not manufactured by the Seller.

The Seller warrants the locomotive specified herein to be free from defects in material and workmanship under normal use and service; its obligation under this warranty being limited to making good at its factory any part or parts thereof, which shall be returned to it with transportation charges prepaid, within two (2) years after delivery of such equipment to the Buyers, or before the locomotive has been 250,000 miles in scheduled service, whichever event shall occur first, and which the Seller'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 Seller or its authorized service representatives, if, in its judgement, such repair or alterations affect the stability of the equipment or if the equipment has been subject to misuse, negligence or accident, nor shall it apply to specialties not of the Seller's own specification or design.

The Seller reserves the right to make changes in design or add any improvements on equipment at any time without incurring any obligation to install same on equipment previously purchased.

THIS WARRANTY BEING 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 SELLER'S PART, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS EQUIPMENT.

Notwithstanding anything to the contrary contained in this Conditional Sale Agreement, it is understood and agreed between Seller and Buyers that there will be incorporated in the locomotive specified in Section 1 of this Agreement, a limited number of used components which will be remanufactured by Seller and will be equivalent to new components.

11. ASSIGNMENT OF INTEREST OF SELLER. The Buyers agree that the Seller may at any time and from time to time transfer, assign, pledge, or sell participations in, this Agreement and its rights hereunder, or any part thereof, and its title and ownership in and to the locomotive and its rights, powers, privileges and remedies hereunder, or any part thereof, on such terms and conditions as it may deem proper, and in any such event all rights, powers, privileges and remedies given to or vested in the Seller hereunder shall inure to the benefit of, vest in and may be exercised by and for the benefit of the transferee, assignee, pledgee or participant, or for the use and benefit of the proper parties in interest, to the extent specified in such transfer, assignment, pledge, or participation; provided, however, that no such transfer, assignment, pledge, or participation shall subject any such transferee, assignee, pledgee, or partici-

pant to, or relieve the Seller from, any obligation as to the construction, delivery or warranty of the locomotive or any indemnity or any other duty, obligation or liability of the Seller hereunder. Any such transfer, assignment, pledge or participation may be to one or more transferees, assignees, pledgees or participants, or jointly to more than one transferee, assignee, pledgee or participant.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the Buyers, and the Buyers shall be protected by the Seller in any payments made hereunder to the Seller prior to notice of such assignment. A copy of such notice shall be sent by the Assignor to the Assignee. Upon receipt of notice from the Seller of any such assignment, the Buyers will thereafter pay to the assignee, specified in such notice, to the extent specified in such assignment, all amounts payable by the Buyers hereunder after receipt of such notice.

The Buyers expressly represent, for the purpose of assurance to any person, firm or corporation considering the purchase of this Agreement or of all or any rights of the Seller hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment by the Seller of this Agreement or of all or any of the rights of the Seller hereunder, the rights of the assignee or assignees to the entire unpaid balance 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 suit or action or to any defense, set-off, counterclaim or recoupment whatsoever, arising out of any breach of any obligation of Seller in respect of the locomotive or the manufacture, construction, delivery, or warranty thereof, or in respect of any indemnity herein contained, nor subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyers by Seller. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyers against and only against Seller. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Buyers to waive any remedies which they might otherwise have to enforce any and all such obligations of Seller, as against such assignee or assignees, which offer may be accepted by such assignee or assignees by payment to the assignor of the consideration for the purchase and assignment of this Agreement or of some or all of the rights hereunder and by giving notice of such assignment to the Buyers.

If this Agreement shall have been assigned by the Seller, and the assignee or assignees shall have agreed to pay to the Seller an amount equal to the deferred purchase price of the locomotive upon delivery to the Buyers in accordance with this Agreement, and the assignee or assignees shall fail to pay said amount when due, the Seller will promptly notify the Buyers of such event and if such amount shall not have been previously paid by assignee or assignees for the locomotive, Buyers will not later than 90 days after such due date, pay or cause to be paid to Seller the deferred purchase price of the locomotive together with interest from such due date to the date of payment by Buyers at the prime rate of interest of leading New York City banks (as defined in Section 2(C)(iii) in effect on such due date.

The term "Seller" whenever used in this Agreement means General Motors

Corporation (Electro-Motive Division); provided, however, that, to the extent that the rights, titles and interest of the Seller hereunder shall have been assigned from time to time, the term "Seller" with respect to such rights, titles and interests, shall mean the assignee or assignees for the time being thereof, but this proviso shall not limit or affect the obligations or liability of the General Motors Corporation (Electro-Motive Division) under the terms of this Agreement.

12. SUCCESSORS TO, AND ASSIGNMENT BY, THE BUYERS. The Buyers hereby represent and warrant that their execution of this Agreement and their assumption and undertaking of the obligations, duties, and liabilities hereof, have been expressly authorized and that all the obligations then existing or to accrue of the Buyers under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of the Buyers, and that upon any sale, lease, transfer, or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Buyers covenant and agree that they will not sell, assign, transfer, or otherwise dispose of their rights under this Agreement, nor transfer possession of said equipment to any other firm, person, or corporation (except the Buyers' Lessor, Georgia Railroad and Banking Company) without first obtaining the written consent of the Seller to such sale, assignment or transfer.

The Buyers hereby covenant and agree that they will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said equipment.

The term "Buyers" whenever used in this Agreement means, before any assignment of the rights of the Buyers hereunder as herein provided, the Buyers, their successors and assigns, and after any such assignment shall include any assignee thereof, except only insofar as the Seller may specifically, in writing, relieve Buyers or any such assignee from the obligations hereof.

13. DEFAULTS. An event of default shall occur in case Buyers

(a) shall make default in the payment of any installment of the unpaid purchase price of the locomotive herein provided for, or in the payment of any installment of interest thereon, and shall remain in default for more than ten (10) days after such payment shall have become due and payable; or

(b) shall make or suffer to be made any unauthorized assignment or transfer of this Agreement or of any interest therein or of their rights or interest in the locomotive or any unauthorized lease thereof, or any thereof, or shall cause or permit the locomotive to be pledged or held for any debt or obligation owing by Buyers or to be in any manner encumbered, or except as herein authorized shall part with the possession of the locomotive, and in any such event shall fail or refuse either to cause such assignment or transfer or lease to be cancelled effectually as to them and all others having any interest therein or to cause the locomotive

to be released from such pledge or encumbrance or to recover possession of the locomotive within thirty (30) days after Seller shall have demanded in writing such cancellation or release or the recovery of possession of the locomotive; or

(c) shall fail or refuse, for more than thirty (30) days after Seller shall have demanded in writing the performance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Buyers or to make provision satisfactory to Seller for such compliance.

14. REMEDIES. If an event of default shall occur Seller, at its option, may by notice in writing delivered to Buyers, declare to be due and payable forthwith the entire unpaid balance of the purchase price of the locomotive; and thereupon the entire amount of such unpaid purchase price shall become and shall be due and payable immediately without further demand, together with interest thereon to such date of default at the rate set out in Section 2 of this Agreement, and thereafter interest shall be payable by Buyers upon any portion thereof overdue, during such time as it shall remain overdue, at the rate of six and three-quarter per cent (6.75%) per annum; and Seller shall thereupon be entitled to recover judgement for the entire amount so payable by Buyers with interest thereon at said rate and to collect such judgement out of any property of Buyers wherever situated. Any and all money so collected by Seller shall be applied by it as hereinafter in Section 14 of this Agreement provided.

Buyers covenant that, in case of the happening of any such event of default, Seller by its agents may also take possession of the locomotive wherever it may be found, and for that purpose enter upon the railroad and premises operated by Buyers as the Georgia Railroad, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the locomotive and otherwise, and may lease the locomotive, or, with or without retaking possession thereof (but only after making the declaration provided for in Section 13 hereof), may sell the same as far as may be necessary to realize the balance remaining to be paid by Buyers under this Agreement, free from any and all claims of Buyers at law or in equity, at public or private sale, after at least fifteen (15) days' prior written notice to the Buyers, and with or without any other notice or advertisement, for cash or upon credit, in its discretion, and may otherwise proceed to enforce its rights in the manner provided by this Agreement.

In case Seller shall rightfully demand possession of the locomotive in pursuance of this Agreement and shall reasonably designate a point upon the railroad operated by Buyers as the Georgia Railroad, for delivery of the locomotive to it, Buyers shall, at their own expense, forthwith and in the usual manner, cause the locomotive to be moved to such point on said railroad as shall be designated by Seller and shall there deliver the same or cause it to be delivered to Seller; or at the option of Seller, Seller may keep the locomotive on any of the lines of railroad or premises of the Georgia Railroad until Seller shall have leased, sold or otherwise disposed of the same, and for such purpose Buyers agree to furnish without charge for rent or storage the necessary facilities at any point selected by Seller reasonably convenient to Buyers. It is hereby expressly covenanted and agreed that the covenants in this Section 14 contained are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises Seller shall be entitled to a decree against Buyers requiring the specific performance thereof.

In the event of a sale or other disposition of the locomotive as herein provided it shall not be necessary to have the locomotive present at such place where such sale or other disposition may be made. At any such sale or other disposition, Seller may become the purchaser of the locomotive, and in settlement for such purchase price shall be entitled to have credited on account thereof the sums then due to the Seller by the Buyers under this Agreement.

Any such sale may be held or conducted at such place and at such time as Seller may specify, or as may be required by law, and without bringing to the place of sale the locomotive to be sold, and in general in such manner as Seller may determine, but so that Buyers may and shall have reasonable opportunity to bid at such sale.

Upon such taking possession or lease or sale of the locomotive Buyers shall cease to have any rights or remedies in respect of the locomotive under this Agreement, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Buyers, and no payments theretofore made by Buyers for the locomotive shall, in case of the happening of any such event of default and such taking possession, lease or sale by Seller, give to Buyers any legal or equitable interest or title in or to the locomotive or any cause or right of action at law or in equity with respect to the locomotive against Seller. No such taking possession or lease or sale of the locomotive by Seller shall be a bar to the recovery by Seller from Buyers of any unpaid balance of the purchase price of the locomotive and Buyers shall be and remain liable for the same, until such sums shall have been realized as with the proceeds of the lease or sale of the locomotive shall be sufficient for the discharge and payment in full of all sums payable by Buyers under any of the provisions of this Agreement.

If in case of the happening of any such event of default Seller shall exercise any of the powers conferred upon it by this Agreement, all payments made by Buyers to Seller under this Agreement after such event of default, and the proceeds of any judgment collected by Seller from Buyers hereunder, and the proceeds of every lease or sale by Seller hereunder of the locomotive together with any other sums which may then be held by Seller under any of the provisions of this Agreement, shall be applied by Seller in the order of priority following viz.: (a) to the payment of all proper expenses incurred or advances made by Seller in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the locomotive and all expenses of the custody and of any lease or sale thereof, and (b) to the payment of all sums of money due and payable to Seller under the provisions of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Seller in respect of the locomotive. After all such payments shall have been made in full the title to the locomotive, if remaining unsold shall be conveyed by Seller to Buyers, or otherwise as it may direct, free from any further liabilities or obligations to Seller hereunder. If, after applying as aforesaid all such sums of money realized by Seller there shall remain any amount due to Seller under the provisions of this Agreement, Buyers agree to pay the amount of such deficit to Seller. If, after applying as aforesaid all such sums of money realized by Seller, there shall remain a surplus in the possession of Seller, such surplus shall be paid to Buyers, or otherwise as they may direct in writing.

The remedies in this Agreement provided in favor of Seller shall not be

deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

The foregoing provisions, however, are subject to the condition that if, at any time after the unpaid balance of the purchase price shall have been declared due and payable as provided in this Agreement, all arrears of installment payments with interest as hereinabove provided and the expenses of Seller and all other sums which shall have become due and payable by Buyers under this Agreement (other than the unpaid installments which shall not at the time have matured according to their terms) shall have been paid by Buyers before any lease or sale by Seller of the locomotive, and every other default in the observance or performance of any covenant or condition of this Agreement shall have been made good or cured to the satisfaction of Seller or provisions deemed by Seller to be adequate shall have been made therefor, then and in every such case Seller shall waive the default by reason of which the unpaid balance of the purchase price of the locomotive shall have been declared and become due and payable and shall waive the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither such retaking possession nor any lease or sale of the locomotive by Seller nor any action or failure or omission to act on the part of Seller against Buyers or with respect to the locomotive nor any delay or indulgence granted to Buyers by Seller shall affect the obligations of Buyers under this Agreement.

The filing by Buyers, or by creditors of either of the Buyers, of any petition for reorganization or debt adjustment affecting the obligations of Buyers, or either of them, hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or any voluntary assignment or transfer of either Buyer's interest in and under this Agreement, or any involuntary transfer of such interest by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him) shall be deemed a breach of this Agreement and a default hereunder; whereupon Seller may elect to declare the entire unpaid balance of the purchase price immediately due and payable as hereinbefore provided and may thereupon forthwith retake possession of the locomotive and exercise and enforce any and all other remedies as provided in Sections 13 and 14, hereof.

15. 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 Buyers to the full extent permitted by law, to the end that this Agreement

shall be deemed to be an agreement of conditional sale and enforced as such.

16. EXTENSION NOT A WAIVER. Any extension of time granted by the Seller to the Buyers for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

17. RECORDING. The Buyers shall cause this Agreement to be filed, registered, and/or recorded wherever necessary for the proper protection of the Seller's, or of any assignee's, title and rights to the locomotive, and the Buyers shall, from time to time, do and perform any other act, including the execution, acknowledgement, delivery, filing, registering and/or recording of any and all further instruments required by law, or reasonably requested by Seller, or its assignees, for the purpose of protecting its or their title and rights, or for the purpose of carrying out the intention of this Agreement, and will furnish the Seller, or its assignees, with an opinion or opinions of counsel with respect thereto, satisfactory to the Seller, or its assignees.

The Buyers will also with all convenient speed and at their own expense cause any supplemental agreement to this Agreement and the first assignment of the interest of the Seller in this Agreement to be duly filed or recorded in that office, or with that agency in which this Agreement shall have been recorded.

18. PAYMENT OF EXPENSES. The Buyers shall pay all costs, charges and expenses, except the counsel fees of the Seller, or of any assignee, incident to the preparation, execution, acknowledgment and recording of this Agreement and of the first assignment or assignments by the Seller of title to the equipment, and all such costs, charges and expenses in connection with any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder.

19. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in two or more 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 Conditional Sale Agreement is dated for convenience July 1, 1968, 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.

20. SECTION HEADINGS. All section, paragraph, or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21. MODIFICATION OF AGREEMENT. This Agreement of conditional sale constitutes the entire agreement between Buyers and the Seller with respect to the sale of the equipment herein referred to. 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 the duly authorized officers of the Seller and Buyers.

22. POSSESSION AND USE OF THE EQUIPMENT BY BUYERS. So long as the Buyers shall not be in default under this Agreement, the Buyers shall be entitled to

such possession of the equipment as is incident to the use thereof upon the lines of railroad aforesaid from and after delivery of the equipment by the Seller to the Buyers, but only upon and subject to all terms and conditions of this Agreement.

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

IN WITNESS WHEREOF, General Motors Corporation (Electro-Motive Division) has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers; and Seaboard Coast Line Railroad Company and Louisville and Nashville Railroad Company, respectively, have caused these

presents to be executed and their seals to be affixed by their duly elected and authorized officers, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

(Corporate Seal)

By *D. D. Drummell* 
Vice-President.

ATTEST:

[Signature]
~~Assistant Secretary.~~
ASSISTANT COMPTROLLER

SEABOARD COAST LINE RAILROAD COMPANY,

(Corporate Seal)

By *C. R. Yates*
Vice-President.

ATTEST:

J. L. Williams
Assistant Secretary.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

(Corporate Seal)

By *C. R. Yates*
Vice-President.

ATTEST:

[Signature]
Assistant Secretary.

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

On this 16 day of July, 1968, before me personally appeared B. B. BROWNELL, to me personally known, who being by me duly sworn, says that he is VICE-PRESIDENT of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public,
Cook County, Illinois,
My commission expires OCTOBER 28, 1971

(Notarial Seal)

STATE OF GEORGIA,)
COUNTY OF FULTON,) ss.:

On this 9th day of July, 1968, before me personally appeared C. R. YATES, to me personally known, who being by me duly sworn, says that he is VICE-PRESIDENT of SEABOARD COAST LINE RAILROAD COMPANY, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him 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.

Edna S. Weed

Notary Public,

My commission expires _____

Notary Public, Georgia, State at Large
My Commission Expires Jan. 18, 1972

(Notarial Seal)



STATE OF GEORGIA,)
COUNTY OF FULTON,) ss.:

On this 9th day of July, 1968, before me personally appeared C. R. YATES, to me personally known, who being by me duly sworn, says that he is VICE-PRESIDENT of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him 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.

Edna Stued

Notary Public,
My commission expires _____

Notary Public, Georgia, State at Large
My Commission Expires Jan. 18, 1972

(Notarial Seal)

AGREEMENT AND ASSIGNMENT

BETWEEN

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

AND

TRUST COMPANY OF GEORGIA
ATLANTA, GEORGIA

DATED AS OF JULY 2, 1968

Relating to Conditional Sale Agreement between General Motors Corporation (Electro-Motive Division), and Seaboard Coast Line Railroad Company and Louisville and Nashville Railroad Company, dated as of July 1, 1968, covering one Model GP-40 Diesel-electric Locomotive.

THIS AGREEMENT AND ASSIGNMENT, made as of the 2nd day of July 1968, between GENERAL MOTORS CORPORATION, a corporation of the State of Delaware (Electro-Motive Division), with an office and place of business in the Village of McCook, post office address, La Grange, Illinois (hereinafter referred to as the "Manufacturer"); and the TRUST COMPANY OF GEORGIA, a Georgia banking corporation with its principal office at Atlanta, Georgia (hereinafter referred to as the "Assignee"),

WITNESSETH, THAT:

WHEREAS, the Manufacturer and Seaboard Coast Line Railroad Company and Louisville and Nashville Railroad Company, as joint lessees of the railroad properties of Georgia Railroad and Banking Company, operating under the name and style of "Georgia Railroad" (hereinafter collectively called the "Buyers") have entered into a Conditional Sale Agreement dated as of the 1st day of July 1968, covering the construction, sale, delivery and furnishing on the terms and conditions therein set forth, by the Manufacturer, and the purchase by the Buyers of one (1) new 3000 H.P. Model GP-40 Diesel-Electric Locomotive (hereinafter sometimes referred to as "locomotive" or "equipment") bearing Manufacturer's Serial Number 33884, and Georgia Railroad's Road Number 754, all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto; and

WHEREAS, Assignee has offered to purchase from the Manufacturer, and the Manufacturer has agreed to sell, assign and transfer to Assignee, to the extent as hereinafter set forth, its right, title and interest in, to and under said Conditional Sale Agreement and the equipment therein described;

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 Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

(1) The Manufacturer hereby sells, assigns, transfers and sets over to the Assignee, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive all payments in respect of the locomotive in excess of the deferred purchase price specified in Section 2 thereof, and in the penultimate paragraph of Section 11 thereof, and reimbursement for taxes paid or incurred by the Manufacturer as provided in Section 4 thereof), together with all the Manufacturer's powers, privileges, immunities and remedies thereunder, and all the right, title and interest of the Manufacturer in and to the locomotive when and as the same is manufactured and delivered and accepted by the Buyers and upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section (7) hereof, and in and to any and all amounts which may be or become due and owing by the Buyers to the Manufacturer under the Conditional Sale Agreement on account of the deferred purchase price of the locomotive and interest thereon, and in and to

any other sums becoming due under the Conditional Sale Agreement, without any recourse, however, to the Manufacturer for or on account of any failure of payment or compliance with any of the terms or provisions of said Conditional Sale Agreement on the part of the Buyers. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee, in such manner and at such times as the Assignee may deem advisable, in the name of the Manufacturer or in the name of the Assignee, or in the name of the nominee of the Assignee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which the Assignee may become entitled under this Agreement and Assignment and compliance by the Buyers with the terms and agreements on the part of the Buyers to be performed under the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Assignee.

(2) The Manufacturer covenants and agrees that it will warrant that as set forth in and subject to the provisions of the Conditional Sale Agreement as of the date of delivery of the locomotive to the Buyers it had legal title to the locomotive, free and clear of all liens and encumbrances and subject to no rights or claims of any persons whatsoever except those of the Buyers under the Conditional Sale Agreement, and good right to sell the same and that as of the date of such delivery the Assignee shall have title to and a claim upon the locomotive prior and superior to the rights and claims of all other persons whatsoever as security for the payment by the Buyers of the deferred purchase price of said locomotive; and that the obligation of the Buyers to pay the total amount of the deferred purchase price of the locomotive accepted by them, with interest upon the balance thereof from time to time remaining unpaid, as provided in said Conditional Sale Agreement, is legal and binding and unconditional and subject to no defense, set-off or counterclaim whatever, to Seller's knowledge.

(3) The Manufacturer agrees that this Agreement and Assignment will not transfer or impose upon the Assignee, or in any way affect or modify (1) its obligation to construct the locomotive in accordance with the Specification and as warranted therein, or (2) its obligations to indemnify the Buyers against and save and keep the Buyers harmless from loss and expense resulting from patent claims, all as set forth in Section 10 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Manufacturer as provided in the Conditional Sale Agreement.

(4) The Manufacturer will indemnify the Assignee against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Assignee, by reason of any defense, set-off or counterclaim of the Buyers, based on any indebtedness or liability at any time owing to the Buyers by the Manufacturer, in any suit or action brought by the Assignee under the Conditional Sale Agreement. The Manufacturer agrees to indemnify and save harmless the Assignee against any and all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of any alleged infringement of patents covering the locomotive or any part or appliance thereof, excepting those patents covering devices and specialties designated by the Buyers to be used by Manufacturer in the building of such locomotive and which are not of

the own design and specification of the Manufacturer.

(5) The Manufacturer covenants and agrees that it will construct the locomotive in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyers free of all claims, liens and encumbrances and 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 the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer.

Manufacturer covenants and agrees that, at the time of delivery of the locomotive to the Buyers, each side of the locomotive shall be plainly, distinctly and conspicuously marked by stencilling or metal plates in letters not less than one inch in height with the following words:

"Trust Company of Georgia,
Atlanta, Georgia, Owner"

(6) The Manufacturer covenants and agrees with the Assignee that, upon request of Assignee, Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the locomotive therein described.

(7) The Assignee covenants and agrees that upon the delivery to and acceptance by the Buyers pursuant to the Conditional Sale Agreement of the locomotive, it will make payment to the Manufacturer of an amount equal to the deferred purchase price of the locomotive, determined as provided in Section 2 of the Conditional Sale Agreement, upon receipt by the Assignee of the following documents or conformed duplicates thereof:

(a) A bill of sale from the Manufacturer to the Assignee, transferring to the Assignee title to the locomotive so delivered, and warranting to the Assignee and to the Buyers that at the time of delivery to the Buyers the Manufacturer had legal title to the locomotive and good and lawful right to sell the locomotive and that title to the locomotive was then free of all claims, liens and encumbrances of any nature except only the rights of the Buyers under the Conditional Sale Agreement;

(b) A certificate of inspection and acceptance signed by an authorized representative of the Buyers stating the locomotive covered by the certificate has been delivered to and accepted by him on behalf of the Buyers as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement and further stating that each side of the locomotive is plainly, distinctly and conspicuously marked by stencilling or metal plates with the following words: "Trust Company of Georgia, Atlanta, Georgia, Owner" in letters not less than one inch in height; and

(c) A duplicate of Manufacturer's invoice covering the locomotive so accepted, stating the full purchase price and the deferred purchase price of the locomotive.

(8) The Manufacturer hereby

(a) represents and warrants to the Assignee that the Conditional Sale Agreement was lawfully executed by it for a valid consideration, and that said Conditional Sale Agreement has not been cancelled, rescinded or repudiated, and that there has been no amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, 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.

(9) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Assignee under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Manufacturer be deemed a waiver of any obligation of the Manufacturer to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Assignee, to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Assignee be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(10) It is mutually agreed that the Assignee may assign, and/or sell participations in, its rights hereunder and under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyers under the Conditional Sale Agreement.

Each reference herein to the Assignee shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Manufacturer and its successors and assigns.

(11) This Agreement and Assignment shall be construed in accordance with the laws of the State of Georgia; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

(12) 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. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Buyers. Although this Agreement and Assignment is dated for convenience as of July 2, 1968, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

(Corporate Seal)

By *D. D. Drayton* 
Vice-President.

ATTEST:

J. H. Bragg
~~Assistant Secretary~~
ASSISTANT COMPTROLLER

TRUST COMPANY OF GEORGIA,

(Corporate Seal)

By *J. H. Bragg*
Vice-President.

ATTEST:

James H. Crews
Commercial Officer ~~Assistant Treasurer~~

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

On this 16 day of July, 1968, before me personally appeared B B BROWN, to me personally known, who being by me duly sworn, says that he is VICE-PRESIDENT of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation, 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.



Notary Public,
Cook County, Illinois
My commission expires OCTOBER 28, 1971

(Notarial Seal)

STATE OF GEORGIA,)
COUNTY OF FULTON,) ss.:

On this 9th day of July, 1968, before me personally appeared R. S. De Bore, to me personally known, who being by me duly sworn, says that he is a VICE-PRESIDENT of TRUST COMPANY OF GEORGIA, a Georgia banking corporation, 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.

Dorothy M Scott
Notary Public,
My commission expires
Notary Public, Georgia, State at Large
My Commission Expires Oct. 12, 1971

(Notarial Seal)