RECORDATION NO. 5700-B Filed & Recorded

MAY 14 1970 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1970

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent

NOTICE OF ASSIGNMENT

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: Penn Central Transportation Company
Six Penn Center Plaza
Philadelphia, PA 19104

The Financing Agreement is a Lease Agreement , dated 4/15/70 , bearing the ICC recordation number 5700 .

The payee's name and address is:

Bankers Trust Company
Post Office Box 318, Church St. Station
New York, New York 10007

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

RECORDATION NO. 5700 Filed & Recorded

MAY 1 - 1970 - 3 45 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 15, 1970

among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

BANKERS TRUST COMPANY,
as Trustee,

and

PENN CENTRAL TRANSPORTATION COMPANY

(a) All the right, security title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the fourth paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Trustee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or relieve

the Trustee or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Trustee with respect to the Equipment shall be and remain enforceable by the Trustee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Trustee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Trustee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Trustee that at the time of delivery of each unit of the Equipment to the Trustee under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and

other encumbrances of any nature except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Trustee to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Trustee; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Trustee thereunder. The Manufacturer will not deliver any of the Equipment to the Trustee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Trustee or the Guarantor arising out of the breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 14 and 15 of the Conditional Sale Agreement, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Trustee or the Guarantor. The Assignee will

give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Trustee or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

To the extent set forth or referred to in Article 15 of the Conditional Sale Agreement, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the contruction or operation of the Equipment, or any unit thereof.

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

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each

side of each unit of the Equipment, at the time of delivery thereof to the Trustee, in letters not less than one inch in height, the following legend:

"MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
BALTIMORE, MD., AGENT-OWNER".

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

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

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

units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Trustee and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors referred to in the Finance Agreement, addressed to the Assignee, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii)

this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Trustee under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or the Investor may reasonably request;

(f) Opinion dated such Closing Date of counsel for the Trustee and/or the Trustor under the Trust Agreement addressed to the Assignee, stating that (i) the Trust Agreement has been duly authorized, executed and delivered by each of the parties thereto and constitutes a valid, binding and effective agreement and declaration of trust in accordance with the terms thereof, and the trust intended to be created by the Trust Agreement has been duly created and is validly existing and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the the Trustee and, assuming due authorization, execution and delivery by the other party or parties thereto, are valid and binding instruments enforceable in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Trustee, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and is a valid and binding instrument enforceable against the Guarantor in accordance with its terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Trustee, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corpo-

ration in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of the Conditional Sale Agreement by the Trustee and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Trustee, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Trustee upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Trustee may in fact rely, as to any matters governed by the law of any

jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors referred to in the Finance Agreement and upon payment by the Trustee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Trustee or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Trustee and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

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

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to

the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of April 15, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[CORPORATE SEAL]

by .....
Vice President.

Attest:

.....
Assistant Secretary.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

[CORPORATE SEAL]

by .....
Assistant Vice President.

Attest:

.....
Assistant Corporate Trust Officer.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 7 day of May, 1970, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ernest Hopke
Notary Public

[NOTARIAL SEAL]

My Commission Expires February 10, 1974

My commission expires .

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this 11th day of May, 1970, before me personally appeared C. M. Webb, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy E. Scharf
Notary Public

[NOTARIAL SEAL]

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1970

My commission expires 7-1-70.

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 15, 1970.

BANKERS TRUST COMPANY, as Trustee under a Trust Agreement dated as of April 15, 1970,

by .....
Vice President.

PENN CENTRAL TRANSPORTATION COMPANY,

by .....
~~*Treasurer.*~~
Assistant Vice President