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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of November 1, 1972

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of November 1, 1972

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

CHEMICAL BANK,
as Agent

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on . . . . . , 1972, at . . . . . a.m., Recordation No. . . . . .

CONDITIONAL SALE AGREEMENT dated as of November 1, 1972, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Railroad).

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

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Schedule A hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equip-

ment of the character of the Equipment as of the date of this Agreement, and each unit of the Equipment will be new standard-gauge railroad equipment.

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

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Railroad, freight charges, if any, prepaid, at such point or points within the United States of America as shall be specified by the Railroad, in accordance with the delivery schedule set forth in Schedule A hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before April 15, 1973 shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendor and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder. If the Manufacturer's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the

causes set forth in the next preceding paragraph, the Railroad shall nevertheless be obligated to accept all such Equipment and to pay the full purchase price therefor, determined as provided herein, if and when such Equipment shall be completed and delivered by the Manufacturer, such payment to be in cash on the delivery of such Equipment either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Manufacturer.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad, and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector or other authorized representative of the Railroad for inspection at the place designated for delivery of such unit or units and, if each such unit or units conform to the Specifications and to the requirements, specifications and standards referred to in Article 1 of this Agreement, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 6 hereof and meet the Specifications and the other specifications, requirements and standards referred to in Article 1 of this Agreement.

On delivery of each of the units of Equipment by the Manufacturer to a carrier at point of origin, the Railroad shall assume with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest, are set forth in Schedule A hereto. The base price or prices, which may include freight charges, if any, from the Manufacturer's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment shall be divided into not more than two groups of units of the Equipment delivered and accepted by the Railroad hereunder (each such group being hereinafter called a Group); *provided, however;* that if there shall at any time have been delivered to and accepted by the Railroad units of the Equipment and the Manufacturer shall be prevented by one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last day of delivery with respect to such delivered and accepted units, such delivered and accepted units may constitute an additional Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On each Closing Date (as hereinafter defined) with respect to each Group, the amount, if any, by which (i) the Purchase Price of all the units of Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices therefor (said invoiced prices being hereinafter called the Interim Invoiced Purchase Prices), exceeds (ii) the sum of $3,450,000 and any amount previously paid pursuant to this subparagraph (a); and

(b) Within three business days following receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed the amounts paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph; and

(c) In 15 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 15, result in an amount ending in an integral cent) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Interim Invoiced Purchase Prices less the amount paid pursuant to subparagraph (a) of this paragraph.

If this Agreement shall be assigned by the Manufacturer, the obligation of the Railroad under subparagraph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligation.

The first instalment of the portion of the indebtedness in respect of the Purchase Price of the Equipment payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on November 1, 1973, and subsequent instalments shall be payable annually on each November 1. The unpaid portion of such indebtedness shall bear interest from the respective Closing Dates at the rate of 7¼% per annum with respect to the $1,150,000 of such indebtedness which is payable in five annual instalments commencing November 1, 1973, and ending November 1, 1977, and at the rate of 7¾% per annum on the balance of $2,300,000 of such indebtedness which

is payable in ten annual instalments commencing November 1, 1978, and ending November 1, 1987. All instalments of interest shall be payable, to the extent accrued, on May 1 and November 1 in each year, commencing May 1, 1973.

The Final Certificate shall be delivered on or before April 15, 1973. The Manufacturer agrees that the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to April 15, 1973, and on or after November 15, 1972), not more than ten business days following presentation by the Manufacturer to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor

for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than income, gross receipts [except gross receipts in the nature of and in lieu of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the security title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; *provided, however,* that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto, or unless the Railroad shall have approved the payment thereof.

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

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any

and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with the identifying number as set out in Schedule A hereto and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil on each side of such unit, in letters not less than one inch in height, the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such name and word or words shall have been so marked on each side thereof and will replace or cause to be replaced promptly any such name and word or words which may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be

placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Equipment may be lettered "Kansas City Southern", "KCS", or with the name or initials of any affiliate of the Railroad which is permitted to use the Equipment, or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 7. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, become obsolete, be lost, destroyed, irreparably damaged or otherwise rendered permanently unfit or unsuitable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, shall fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as herein defined) of units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed $100,000, the Railroad shall forthwith pay to the Vendor, or if such Casualty Value is less than $100,000 but more than $10,000 the Railroad may pay to the Vendor, a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of a Vice President or Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Value of each of such units of the Equipment suffering a Casualty Occurrence. For all purposes of this Article 7 the Casualty Value of each unit (including a replacement unit) shall be deemed to be that proportion of the total cost thereof

which the unpaid Conditional Sale Indebtedness (without giving effect to any prepayment then or theretofore made) as of the date payment is made with respect to such Casualty Occurrence bears to the total unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition of such unit.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, so long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor in such number of counterparts or copies as may reasonably be requested, to prepay the indebtedness of the Railroad in respect to the Purchase Price of the Equipment hereunder on the next succeeding May 1 or November 1, as the case may be, or to or toward the cost of a unit or units of standard-gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than November 15, 1972, to replace such unit or units having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument, provided, however, that if the Railroad shall pay to the Vendor a sum less than $100,000 as provided above, such sum may only be applied to replace such unit or units having suffered a Casualty Occurrence. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments thereafter falling due in the inverse order of maturity thereof, but without premium, and whether or not such amount shall be sufficient to prepay one or more entire instalments of the indebtedness in respect of the Purchase Price. In case of replacement the amount to be paid by the Vendor with respect to any replacement unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor and the Railroad shall pay any additional cost of such unit. The amount which any such

replacement unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

The Railroad will cause any replacement unit to be marked as provided in Article 6. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements. All such replacements shall be warranted in like manner as is customary for equipment of the same type, and the manufacturer of such replacements shall, if other than the Manufacturer, duly consent to the subjection thereof to this Agreement and agree to be bound by all the terms and provisions contained herein with respect to such replacements in like manner as the Manufacturer is with respect to the original Equipment delivered hereunder.

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 7, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith, in such number of counterparts or copies as may reasonably be requested,

(1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard-gauge

railroad equipment (other than passenger or work equipment) first put into service no earlier than November 15, 1972, and has been marked as required by the provisions of this Article 7 and certifying the cost of such replacement unit and the amount which such replacement unit would have cost if acquired on the earliest date when any such money was paid to the Vendor; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor free and clear of all liens and encumbrances and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 16 shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7, shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated prime by a national credit agency or (iii) certificates of deposit of commercial banks in the United States of America having a combined capital and surplus and undivided profits of not less than $100,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called Investments), as may be specified in such written direction. Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any Investments shall be sold by the Vendor at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is

otherwise required by the provisions of this Article 7. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or payment at maturity of any Investments, the proceeds thereof, plus any interest or earned discount received by the Vendor thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Vendor for application pursuant to this Article 7. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency; and, unless an event of default specified in Article 16 shall have occurred and be continuing, if the amounts received thereon including interest received upon or prior to such disposition shall exceed such cost, the excess shall be paid to the Railroad upon its written request. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

In the event that any moneys paid to, or held by, the Vendor pursuant to this Article 7 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Vendor on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If any of the events of default specified in Article 16 shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 (including for this purpose Investments and interest thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17.

In order to facilitate the sale, remanufacture or other disposition of any units of the Equipment suffering a Casualty Occurrence, the Vendor shall, after deposit by the

Railroad of the amount required to be deposited hereunder with respect to such units, execute and deliver to the Railroad or to the Railroad's vendee, assignee or nominee, a bill of sale for such units and such other documents as may be required to release such units from the terms and scope of this Agreement in such form that said release may be filed and recorded with the Interstate Commerce Commission pursuant to the provisions of Section 20c of the Interstate Commerce Act.

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 9. *Compliance with Laws and Rules.* During the terms of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before May 1 in each year, commencing with the year 1973, the Railroad will furnish to the Vendor, in such number of

counterparts as the Vendor may request, an accurate statement (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Article 6 have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Railroad, to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by the Railroad or over which the Railroad has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic and as provided in the next succeeding paragraph, but only upon and subject to all the terms and conditions of this Agreement.

The Railroad, with the prior written consent of the Vendor, may lease one or more units of the Equipment to any other railroad company, *provided, however,* that the rights of such other railroad company under such lease shall be expressly subordinated to the rights and remedies of the Vendor under this Agreement. The Vendor, upon written request made by it to the Railroad, shall be furnished with a copy of any such lease.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the security title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. Any sums of money paid by the Vendor in discharge of liens and charges on the Equipment shall be secured by and under this Agreement.

ARTICLE 13. *Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Manufacturer warrants to the Railroad that the Equipment is of the kind and quality described in the Speci-

fications referred to herein and is suitable for the ordinary purposes for which such Equipment is used.

The Manufacturer further warrants the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each unit of such Equipment has been operated 250,000 miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement f.o.b. the Manufacturer's plant and such correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty. The Manufacturer warrants specialties not of its own specification or design to the same extent suppliers of such specialties warrant such items to the Manufacturer. **This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.** The Manufacturer further agrees with the Railroad that the acceptance of any units by the Railroad under Article 2 shall not be deemed a waiver by the Railroad of any of its rights under this paragraph.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs, processes and combinations specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harm-

less the Railroad 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 Railroad because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design, process or combination specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs, processes, combinations or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent

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

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to cause to be constructed and to deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 13 and 14,

or relieve the Railroad of its obligations to the Manufacturer under Articles 2, 4, 13 and 14 and subparagraphs (a) and (b) of the third paragraph of Article 3 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance of any persons, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the

Manufacturer with respect to the Equipment or the delivery, guaranty or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents

required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of Equipment of an amount equal to that portion of the aggregate Purchase Price of such Group to be paid pursuant to subparagraph (c) of the third paragraph of Article 3, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than 90 days after the Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the date of payment by the Railroad at the prime rate of interest of The Chase Manhattan Bank, N.A. in effect at such Closing Date.

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

(a) The Railroad shall fail to pay in full any sum payable by it hereunder within three days after the same shall have become due; or

(b) The Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by

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

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

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore pro-

vided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. The

agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22, and to any other persons to whom the law may require notice within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however,* that if the Railroad, before the

expiration of such 30-day period, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further,* that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

The Vendor, with or without retaking possession thereof at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming by, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for dispo-

sition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may

be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any

state shall as to such state be ineffective without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission, and otherwise, as may be required by law or reasonably requested by the

Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), or any instrument supplemental thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor thereto shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to it at its address below:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Manufacturer, at La Grange, Illinois 60525,

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement, and the schedule relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad represents and warrants that its chief place of business is in the State of Missouri.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties

and business, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and business.

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 their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

By B. B. Dunwell
Vice President

ATTEST:
W. A. Thomas
Assistant Secretary

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

By L. O. Fritz
Executive Vice President

Attest:
F. W. Doughertty
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 31. day of October, 1972, 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.

J. Sawyer
Notary Public

My Commission expires October 28, 1975

STATE OF MISSOURI
COUNTY OF JACKSON } ss.:

On this 30. day of October, 1972, before me personally appeared L. O. FRITH, to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of THE KANSAS CITY SOUTHERN RAILWAY 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 Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. R. Gibbins
Notary Public

My Commission expires
Nov. 30, 1973

SCHEDULE A

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Railroad Road Numbers	Unit Base Price	Total Base Price	Delivery
SD 40-2 3,000 H.P. locomotives	Specification No. 8087 dated January 1, 1972.	McCook, Illinois	6	KCS 647-KCS 652, inclusive	$329,388*	$1,976,328*	November, 1972 at Bloomburg, Texas
SD 40-2 3,000 H.P. locomotives	Specification No. 8087 dated January 1, 1972.	McCook, Illinois	2	KCS 653-KCS 654, inclusive	$365,078*	$730,156*	November, 1972 at Bloomburg, Texas
SD 40-2 3,000 H.P. locomotives	Specification No. 8087 dated January 1, 1972.	McCook, Illinois	2	KCS 655-KCS 656, inclusive	$368,238*	$736,476*	November, 1972 at Bloomburg, Texas

* Includes freight charges.

AGREEMENT AND ASSIGNMENT dated as of November 1, 1972, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the Manufacturer), and CHEMICAL BANK, a New York corporation with its chief place of business at 20 Pine Street, New York, New York 10005, acting as Agent under an Agreement dated as of November 1, 1972 (hereinafter called the Finance Agreement and said bank, so acting, being hereinafter called the Assignee).

WHEREAS the Manufacturer and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of November 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar 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:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered and accepted and upon payment by

the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof with respect thereto;

(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 subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof), and 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 Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) All the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement except as limited in subparagraph (b) above;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any 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 guaranties, warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2,

4, 13 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, 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 Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct for and deliver to the Railroad, all the Equipment 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 set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the 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 such delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reasons of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, set-off, counterclaim or recoupment asserted by the Railroad and (2), if the court or other body having jurisdiction denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue, the Assignee promptly noti-

fying the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

Except in cases of designs, processes and combinations specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, 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 in or about the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claims against the Assignee under which liability may be charged against the Manufacturer by reason of this Section 2 promptly after the Assignee shall itself have received notice of the same.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"CHEMICAL BANK, AGENT, OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns and after payment to the Manufacturer as provided in Section 5 hereof, the Manufacturer will exe-

cute 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 of Equipment (as defined in said Article 3), shall pay to the Manufacturer an amount equal to that portion of the Purchase Price of such Group to be paid pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee 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, transferring to the Assignee security title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad 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 and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 2 of the Conditional Sale Agreement;

(c) Invoice for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units as set forth in said invoice;

(d) Opinion of Messrs. Sullivan & Cromwell, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Railroad and, assuming due authorization, execution and delivery by the Assignee and the Investors named therein, is a valid instrument binding upon it, (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 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 such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were owned by the Manufacturer free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (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, (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 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;

(e) Opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (v) and (vi) of subparagraph (d) above, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of Missouri, its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms and (iii) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement;

(f) Opinion of counsel for the Manufacturer, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its state of 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 each been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms; and

(g) Unless payment of the amount, if any, 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 Railroad, the receipt from the Manufacturer for such payment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of 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 opinion specified in subparagraph (d) of the first paragraph of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or counsel for the Railroad as to such matter.

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 various parties to the Finance Agreement with respect thereto.

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 would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, 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 the Equipment with respect to which 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 Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The 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 valid consideration, that (assuming due authorization, execution and delivery by the Railroad) it is a valid and existing agreement binding upon the Manufacturer and the Railroad, and that it is now in force without amendment thereto; and

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

SECTION 8. 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 rights conferred by Section 20c of the Interstate Commerce Act and 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due 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),

By .....
Vice President

Attest:

.....
Assistant Secretary

CHEMICAL BANK, as Agent,

By .....
Vice President

Attest:

.....
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 31 day of October, 1972, 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.

Notary Public

My Commission expires October 28, 1975

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 1st day of November, 1972, before me personally appeared M. F. Brown, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, 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.

Notary Public

My Commission expires

JOHN L. BERVAR
Notary Public, State of New York
No. 41-5303890
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1974

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 October 30, 1972.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By L. O. Fitch
Executive Vice President