

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202

214-651-6736

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JOE C. CRAWFORD  
GENERAL SOLICITOR

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GENERAL ATTORNEY  
MICHAEL E. ROPER  
COMMERCE COUNSEL

8-231175

No. *8*  
Date *AUG 2 1978*  
Fee \$ *50*

RECEIVED

AUG 22 1 20 PM '78

I. C. C.  
FEE OPERATION BR.  
9652

IN REPLY REFER TO: 410.043-24A

Mr. H. G. Homme, Washington, D. C. RECORDATION NO. \_\_\_\_\_ Filed & Recorded  
Acting Secretary  
Interstate Commerce Commission  
Washington, DC 20423

August 18, 1978

AUG 22 1978 - 1:25 PM

INTERSTATE COMMERCE COMMISSION

Re: Conditional Sale Agreement dated as of August 18, 1978, between General Motors Corporation (Electro-Motive Division) and Missouri-Kansas-Texas Railroad Company, assigned to First Pennsylvania Bank N.A., covering the purchase of 4 Diesel Electric Locomotives

Dear Mr. Homme:

In accordance with the provisions of Section 20c of the Interstate Commerce Act and rules and regulations approved and prescribed by the Interstate Commerce Commission pursuant thereto, there are submitted for filing and recording five executed counterparts of the Conditional Sale Agreement dated as of August 18, 1978, between General Motors Corporation (Electro-Motive Division) as Manufacturer and Seller, LaGrange, Illinois 60525, and Missouri-Kansas-Texas Railroad Company, Purchaser, designated as "Railroad" therein, 701 Commerce Dallas, Texas 75202, which Conditional Sale Agreement was assigned by Agreement and Assignment of even date by Manufacturer to First Pennsylvania Bank N.A., said Conditional Sale Agreement covering the purchase by the Railroad of four Diesel electric locomotives which have been assigned MKT recording numbers 600, 601, 602, and 603.

Please return to the bearer hereof, an associate, member or employee of the law firm of Schnader, Harrison, Segal & Lewis, three file-marked copies of the Conditional Sale Agreement and Assignment for distribution to the parties.

I am enclosing a Cashier's Check in the amount of \$50 to cover the prescribed fee for recording this agreement.

I certify that I have knowledge of the matters set forth herein.

AMA:jar  
Enclosures

Very truly yours,  
*Arthur M. Albin*  
Arthur M. Albin

*Barbara Hayden*

*0*

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/22/78

OFFICE OF THE SECRETARY

**Arthur M. Albin**  
**Missouri-Kansas-Texas RR Company**  
**701 Commerce Street**  
**Dallas Texas 75202**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **8/22/78** at **1:25pm**

and assigned recordation number(s) **9652**

Sincerely yours,

H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

7/13/78  
8/15/78

RECORDATION NO. 9652 Filed & Recorded

AUG 22 1978 - 1 21 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

THIS CONDITIONAL SALE AGREEMENT, dated as of August 18, 1978, by and between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation organized under the laws of the State of Delaware, with an office in LaGrange, Illinois (hereinafter called the "Manufacturer"), and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware, with an office in the City of Dallas, Texas (hereinafter called the "Railroad"),

W I T N E S S E T H:

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

1. THE RAILROAD'S WARRANTIES AND REPRESENTATIONS

(a) The Railroad is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could impair its ability to perform the business and activities of the Railroad.

(b) The Railroad has corporate power and authority and legal right to carry on its business as now conducted,

and is duly authorized and empowered to execute and deliver this Agreement, the Acceptance Certificates and the Consent to Agreement and Assignment, and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Agreement, the Acceptance Certificates and the Consent to Agreement and Assignment have been duly authorized, executed and delivered (or, in the case of the Acceptance Certificates, will be duly executed and delivered) and, assuming due authorization, execution and delivery thereof by the other parties thereto (if any), constitute valid, legal and binding agreements, enforceable in accordance with their terms.

(c) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Railroad) pending or (to the knowledge of the Railroad) threatened against or affecting the Railroad, or any property rights of the Railroad at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or other, of the Railroad or its ability to perform its obligations under this Agreement, and the Railroad is not, to its knowledge, in default with respect to any order or decree of any court or governmental commission, agency or instrumentality, which default could materially and adversely affect the condition, financial or other, of the Railroad or its ability to perform its obligations under this Agreement.

(d) Neither the execution and delivery of this Agreement, the Consent to Agreement and Assignment or the Acceptance Certificates nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter or the by-laws of the Railroad, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Railroad is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Railroad or upon the Locomotives pursuant to the terms of any such agreement or instrument.

(e) Neither the execution and delivery by the Railroad of this Agreement, the Consent to Agreement and Assignment or the Acceptance Certificates, nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or

governmental instrumentality in each case applicable to the Railroad.

(f) The Railroad has all patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights which the Railroad considers necessary to the conduct of its business as presently operated, or proposed to be operated.

(g) No authorization or approval is required from any governmental or public body or authority in connection with the execution and delivery by the Railroad of this Agreement, the Consent to Agreement and Assignment or the Acceptance Certificates, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof.

2. CONSTRUCTION AND SALE. The Manufacturer will construct, sell and deliver to the Railroad, and the Railroad will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth, railroad equipment (any one of which is hereinafter referred to as a "Locomotive" and more than one or all of which are hereinafter referred to as "Locomotives") as follows:

Four (4) Model SD40-2 Diesel Electric Locomotives with 3000 HP each, bearing Railroad's road numbers 600, 601, 602, and 603, to be constructed pursuant to Manufacturer's Specification 8087 dated January, 1972, as revised July, 1977, in accordance with Proposal 776064 as revised in Proposal A-776064 and Revisions

"A" through "D", and Final Specification  
Supplement dated February 7, 1978.

3. DELIVERY. The Manufacturer will deliver the Locomotives to the Railroad free on tracks at Parsons, Kansas, not later than September 8, 1978. On delivery of the Locomotives by the Manufacturer, the Railroad will assume the responsibility and risk of loss with respect to the Locomotives so delivered.

The Manufacturer's obligation as to time of delivery is subject 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 or other labor conditions, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays or defaults of subcontractors, failure to receive necessary materials or supplies or absence of usual means of transportation. In no event, however, shall any Locomotive not delivered and accepted on or before September 30, 1978, be included under this Agreement.

The Railroad shall accept the Locomotives upon delivery to it at Parsons, Kansas. Prior to shipment, each of the Locomotives may be inspected by an authorized representative of the Railroad at the Manufacturer's plant. If such Locomotives conform

to specifications, such representative of the Railroad shall execute a certificate of inspection (hereinafter individually called a "Certificate of Inspection", and collectively the "Certificates of Inspection") stating that such Locomotives have been inspected by him on behalf of the Railroad and conform in all respects to the requirements and provisions of this agreement, and that such Locomotives are marked in accordance with Article 6 hereof. Upon delivery at Parsons, Kansas, the Railroad shall accept such Locomotives and shall execute a certificate of acceptance (herein individually called an "Acceptance Certificate" and collectively the "Acceptance Certificates"). Such Acceptance Certificates shall constitute conclusive evidence that the Locomotives conform to specifications and are acceptable to the Railroad in all details. The Acceptance Certificates shall be delivered to the Manufacturer at the time of the delivery of the Locomotives to the Railroad. In the event the Railroad has not inspected the Locomotives at the Manufacturer's plant and furnished a Certificate of Inspection at that time, the Railroad shall also deliver a Certificate of Inspection at the time of delivery of the Locomotives to the Railroad at Parsons, Kansas. Any number of the Locomotives may be included in any such Certificate of Inspection or Acceptance Certificate.

4. PURCHASE PRICE AND PAYMENT. The purchase price for all four Locomotives shall be \$2,551,720, plus estimated freight charges to the Railroad's line at McBaine, Missouri, of \$7,250, for a total purchase price of \$2,558,970, f.o.b. McBaine, Missouri. If the total freight charges on all Locomotives shall be more or less than \$7,250, the total purchase price shall be increased or decreased accordingly.

Conditional only upon the receipt and acceptance of the Locomotives, which shall be conclusively presumed from the execution of the Acceptance Certificates, the Railroad hereby promises to pay to the Manufacturer at its office in La Grange, Illinois, or at such bank or trust company in the United States of America as the Manufacturer may designate, the purchase price of the Locomotives as follows:

(a) Ten percent (10%) of the actual full purchase price (including freight charges) of all Locomotives (or such greater amount as shall be necessary to ensure that no more than \$2,400,000 of such full purchase price is deferred pursuant to the provisions of the immediately following paragraph (b)) shall be paid by the Railroad to the Manufacturer upon receipt of an invoice therefor.

(b) Ninety percent (90%) of the actual full purchase price (including freight charges) of all Locomotives, or \$2,400,000, whichever amount shall be the lesser (being the deferred purchase price), shall be paid by the Railroad in forty-eight (48) consecutive, equal quarterly installments. The first

installment shall be due and payable on November 30, 1978, and each subsequent installment on the last day of April, May, August, and November of each year thereafter, with the last installment being due and payable on August 31, 1990, together with interest from closing date on the amount of the balance remaining unpaid from time to time at a rate of nine and one-quarter percent (9-1/4%) per annum. Interest shall be payable as it accrues on the same dates as principal. Interest shall be calculated on the basis of a 360-day year, counting the actual number of days elapsed.

The Railroad will pay (to the extent legally enforceable) interest at the rate of ten per cent (10%) per annum upon all amounts of principal and interest remaining unpaid after the same become due and payable pursuant to the terms hereof.

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

The purchase price of the Locomotives is subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad.

The Railroad shall have the right to prepay all or any part of the unpaid balance due on all of the Locomotives delivered hereunder at any time after three years from the date hereof with interest at the rate specified in (b) above to the date of such payment, upon thirty (30) days written notice to the Manufacturer or its assignee.

5. TAXES. All payments to be made by the Railroad hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than federal and state income and excess profits taxes) or licenses hereafter levied or imposed directly upon, or measured by, this Agreement or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay in addition to the purchase price of the Locomotives. The Railroad will also promptly pay all taxes and assessments which may be imposed upon the Locomotives, or for the use thereof, or upon the earnings arising therefrom, or the operation thereof, or upon the Manufacturer by reason of its ownership thereof by any jurisdiction in which the Locomotives are operated by the Railroad, and will keep at all times all and every part of the Locomotives free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer. If any such expenses or

taxes shall have been paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of invoice, and any sums of money so paid by Manufacturer shall be secured by and under this Agreement.

6. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal title to and property in the Locomotives until the Railroad shall have made all of the payments and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Railroad, notwithstanding the delivery of the Locomotives to and the possession and use thereof by the Railroad as herein provided. All replacements of the Locomotives and of parts thereof or of any replacements thereof and additions thereto shall constitute accessions to the Locomotives and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Locomotives" as used in this Agreement.

The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession and use of the Locomotives as herein provided, subject to the terms and conditions herein contained.

The Railroad will cause each Locomotive to be kept numbered with its identifying number and will keep and maintain plainly, distinctly, permanently and conspicuously

stenciled on each side of each Locomotive the following legend:

"OWNERSHIP OF THIS LOCOMOTIVE SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c".

The Railroad will not place any Locomotive in operation or exercise any control or dominion over any part thereof until such Locomotive has been so marked on both sides. The Railroad will not change the numbers of the Locomotives without first notifying the Manufacturer in writing.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Locomotives or any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Locomotives to be lettered with appropriate words or marks for convenience of identification of the Railroad's interest therein.

When and only when the Manufacturer has been paid the full purchase price of the Locomotives, together with interest and all other payments as herein provided, and all of the Railroad's covenants and conditions herein contained have been performed by the Railroad, absolute right to the

possession of, title to and property in the Locomotives shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer will, if requested by the Railroad so to do, execute and deliver to the Railroad a bill of sale of the Locomotives transferring the title to and property in them to the Railroad free and clear of all liens and encumbrances created or retained hereby and will execute for record or for filing in the appropriate public offices such instruments in writing as may be necessary or appropriate to then make clear upon the public records the title of the Railroad to the Locomotives.

No invoice issued prior to the complete performance of this contract shall operate to pass title to said Locomotives.

7. CASUALTY. In the event of the loss or destruction of, or irreparable damage to, any of the Locomotives, from any cause whatsoever, until the total purchase price herein provided shall have been fully paid by the Railroad, the Railroad shall promptly and fully inform the Manufacturer in regard to such loss or destruction and shall promptly pay to the Manufacturer a sum equal to the then unpaid balance of the purchase price hereunder applicable to such Locomotive or Locomotives.

8. INSURANCE. The Railroad will at all times and at its own expense keep the Locomotives insured (with loss payable to the Manufacturer and the Railroad as their interest may appear) in a company or companies approved by the Manufacturer against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion in sums and by policies adequate at all times to protect the interest of the Manufacturer and the Railroad. Such policies may provide for a loss deductible of not more than \$250,000 for each occurrence. Any moneys paid under any such insurance policy shall be applied to the then unpaid balance of the purchase price hereunder applicable to the Locomotive with respect to which the moneys are so paid, or shall be applied toward the repair of such Locomotive if practical. In the event that the moneys are to be applied to such repair they shall be retained by the Manufacturer until repair of the Locomotive or Locomotives damaged, but, upon proof satisfactory to the Manufacturer of such repair and if the Railroad is not then in default in any of its obligations hereunder, the Manufacturer shall pay over such money to the Railroad. Any moneys receivable by or payable to the Railroad from any railroad or other person or corporation because of loss or destruction or damage to any such Locomotive or Locomotives shall be paid over to the Manufacturer to be held and applied by it as aforesaid.

9. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the Locomotives in good order and repair at its own expense.

10. MANUFACTURER'S WARRANTY OF MATERIAL AND WORKMANSHIP. The Manufacturer warrants to the Railroad that the Locomotives are of the kind and quality described in the specification referred to herein and are suitable for the ordinary purposes for which such equipment is used.

The Manufacturer further warrants each Locomotive 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 such Locomotive 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 reasonable satisfaction to be defective, by repair or replacement, f.o.b. factory, 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 that the suppliers of such specialties warrant such items to the Manufacturer.

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, MADE BY MANUFACTURER EXCEPT THE WARRANTIES SET OUT ABOVE.

11. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

Until the total purchase price herein provided for and all other sums of money payable by the Railroad hereunder shall have been fully paid by the Railroad, the Railroad will comply in all respects with all laws of the United States and of the states and territories in which its operations involving the Locomotives may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives. In the event that such laws or rules require the alternation of the Locomotives, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules until the total purchase price herein provided shall have been fully paid by the Railroad; provided, however, that the Railroad may, in good faith, contest in any reasonable manner the application of any such law or rule which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Locomotives.

12. REPORTS AND INSPECTIONS. The Railroad will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price herein provided shall have been fully paid by the Railroad, an accurate inventory of the Locomotives in actual service, the then condition and state of repair of the Locomotives and such other

information regarding the Locomotives as may reasonably be requested. In addition thereto, the Railroad will furnish to the Manufacturer, if requested, once in each year, until the total purchase price herein provided shall have been fully paid by the Railroad, a report of inspection by an authorized representative of the Railroad, or, if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that the Locomotives have been properly maintained and are in good order and repair.

The Railroad will promptly and fully inform the Manufacturer of any loss or destruction of any of the Locomotives and of any substantial repairs made or being made upon them or any of them. If requested by the Manufacturer the Railroad will furnish to the Manufacturer a report of an authorized representative of the Railroad, or if the Manufacturer so requests, of a competent disinterested party, satisfactory to the Manufacturer, covering the nature and extent of any damage to the Locomotives and the satisfactory repair thereof.

The Manufacturer may, but shall be under no obligation to, inspect the Locomotives at any reasonable time or times until the total purchase price herein provided has been fully paid by the Railroad.

13. POSSESSION AND USE. Upon and subject to all the terms and conditions of this Agreement, so long as the Railroad shall not be in default under this Agreement, it

shall be entitled, from and after delivery of the Locomotives by the Manufacturer to the Railroad, to the possession of the Locomotives and the use thereof upon the lines of railroad owned or operated by it, either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, and the Locomotives may be used also upon connecting and other railroads and car ferries in the customary manner.

14. 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 and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon any of the Locomotives superior to the title of the Manufacturer therein, 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 which will not affect the title of the Manufacturer in and to the Locomotives. The Railroad shall notify the Manufacturer of any contest it makes of any such charges, and, in the event the Manufacturer deems that its rights in the Locomotives may be jeopardized by such contest, the Railroad will, on the

Manufacturer's demand, pay such contested charges with such reservation as may be appropriate. Any sum of money paid by the Manufacturer in discharge of liens or encumbrances on any Locomotive shall be an obligation of the Railroad and shall be secured by and under this Agreement.

15. RAILROAD'S INDEMNITIES AND GUARANTEES. The Railroad will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, arising on account of the Locomotives or the use or operation thereof, except for any losses, damages, injuries, claims, and demands arising or resulting from defects in the manufacture or design thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Locomotives, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of any of the Locomotives, and the Manufacturer and any successor or successors to its manufacturing property and business shall not, as to such Locomotives, be relieved from its warranty covering workmanship and material hereinbefore in Article 10 set forth.

16. PATENT INDEMNITIES. Except in cases of designs, articles or materials specified by the Railroad (to the extent the same are not covered by patent rights existing in favor of the Manufacturer which the Manufacturer has the power to extend to third persons), the Manufacturer agrees to indemnify, protect and hold harmless the Railroad and its assigns 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 or its assigns because of the use, in or about the construction or operation of any of the Locomotives, of any design, article or material that infringes or is claimed to infringe on any patent or other right.

In case any unit of the Locomotives or any part thereof, is held to constitute such infringement and the use of such unit or part is enjoined, the Manufacturer shall, at its option and at its own expense, either procure for the Railroad or its assigns the right to continue using such unit or part or shall replace the same with noninfringing equipment subject to this Agreement, or shall modify it so it becomes noninfringing, or shall remove such unit and refund the purchase price and the transportation and installation costs thereof.

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, and the Manufacturer shall settle or defend any such claim as it shall see fit.

17. ASSIGNMENTS. Any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, and the rights of repossession, may be assigned by the Manufacturer and reassigned by any assignee at any time and from time to time; provided, however, that no such assignment shall subject any assignee to, or shall relieve the Manufacturer or the successor or successors to its manufacturing property and business from, any of the obligations of the Manufacturer to construct and deliver the Locomotives herein contracted to be delivered in accordance with the specifications or to respond to its guaranties, warranties or indemnities contained in Article 10 and 16 hereof, or shall relieve the Railroad of its obligation to the Manufacturer under Articles 15 and 16 hereof and this Article 17 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, to-

gether 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 Manufacturer's right, title and interest in and to the Locomotives and each and every part thereof, 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.

The Railroad recognizes that it is the custom of locomotive manufacturers to sell or discount agreements of this character and understands that the sale of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this Agreement or of any of the rights of the Manufacturer hereunder and for the purpose of inducing such purchase, that, in the event of such purchase and of the assignment of this Agreement by the Manufacturer as hereinbefore provided, the rights of such assignee to the entire unpaid 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 or the successor or successors to its manufacturing property and business in respect of the Locomotives, or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of 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 or the successor or successors to its manufacturing property and business. All such obligations, however arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing property and business. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Railroad to waive any remedies which it might otherwise possess for the enforcement of any such obligations of the Manufacturer as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Manufacturer of the consideration for the purchase and assignment of this Agreement.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the

Manufacturer on the payment date with respect to the Locomotives delivered to the Railroad, as provided in Article 6 of the Agreement and Assignment, 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 ninety (90) days after such payment date, pay or cause to be paid to the Manufacturer the aggregate purchase price of the Locomotives delivered to the Railroad together with interest at the rate of ten percent (10%) per annum.

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Manufacturer, of title to the Locomotives and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such vendee, transferee or assignee, change the stencil markings on each side of each of the Locomotives so as to indicate the title of such vendee, transferee or assignee to such Locomotives and its succession to the rights of the Manufacturer hereunder, such marking to bear such words or legend as shall be specified by said vendee, transferee or assignee, subject to requirements of the laws of the states in which the Locomotives shall be operated relating to such marking for use on equipment covered by conditional sale agreements relating to railroad

equipment. The cost of stenciling the first series of marking will be borne by the Manufacturer. The cost of additional stenciling in connection with any subsequent assignment will be borne by Railroad.

18. SUCCESSORS TO AND ASSIGNMENTS BY THE RAILROAD.

The Railroad hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the obligations, duties and liabilities hereunder have been expressly authorized and that all of the obligations of the Railroad then existing or to accrue under this Agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the railways and properties of the Railroad, and that, upon any sale, lease, transfer or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer possession of any Locomotive to any other firm, person or corporation without first obtaining written consent of the Manufacturer to such sale, assignment or transfer.

19. DEFAULTS. In the event that any one or more of the following events of default shall occur, to-wit:

(a) The Railroad shall fail to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 4 hereof; or

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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as such Section 77 may be hereafter amended, shall be filed by or against the Railroad and the trustee or trustees shall fail to adopt this Agreement within thirty (30) days of the date of his or their appointment unless such petition shall have been dismissed prior to the expiration of such thirty (30) days; or

(d) Any proceedings are 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 proceeding under Section 20b of the Interstate Commerce Act) and the trustee or trustees or receiver or receivers appointed for the

Railroad or for its property in connection with such proceedings shall fail to adopt and assume and agree to perform the terms and obligations of this Agreement within thirty (30) days of the date of his or their appointment, unless such proceedings shall have been dismissed prior to the expiration of such thirty (30) days;

(e) The Railroad shall transfer its interest in or under this Agreement without the consent of the Manufacturer;

then, at any time after the occurrence of such an event of default, the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire purchase price of the Locomotives, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter, to the extent legally enforceable, the entire sum shall bear interest at the rate of ten percent (10%) per annum, and the Manufacturer shall be entitled to judgment for the whole amount so due from the Railroad with interest at such rate, together with costs and expenses incurred by the Manufacturer or its assignee, including reasonable attorney's fees, and to collect such judgment out of any of the Railroad's property.

The Manufacturer may at its election waive any such event of default and its consequence and rescind and annul any such declaration or termination 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 or termination 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 limit or affect the Manufacturer's rights upon any other default, or impair any right or remedies consequent thereon.

20. REMEDIES. If the Railroad shall default as hereinabove provided, then at any time after such notice of declaration of default and during the continuance of such default the Manufacturer may, without further notice or demand except to the extent necessary in order to comply with any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Locomotives, or any of them, and any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 20 expressly provided, and may

remove the same from the use and possession of the Railroad and for such purpose may enter upon the Railroad's premises where the Locomotives 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; and the Railroad shall deliver the Locomotives with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Manufacturer may reasonably designate, and for such purpose move the Locomotives in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Manufacturer shall have the right to store the Locomotives upon the premises of the Railroad without charge until the Manufacturer shall desire to remove the same therefrom, but not in excess of six months. It is hereby expressly agreed by the Railroad that performance of this agreement to deliver the Locomotives as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. It is further expressly agreed by the Railroad that, until the Manufacturer shall have

given notice of its election to retain possession of the Locomotives or until the sale of the Locomotives as hereinafter provided in this Article 20 the Railroad shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Articles 5 and 8 hereof.

If the Railroad shall default, as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Locomotives as is hereinbefore in this Article 20 provided) may at its election retain the Locomotives as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Railroad's rights in the Locomotives will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Locomotives by the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Locomotives, or any of them, and any aforesaid replacements, improvements, equipment, attachments and accessories, free from any claims of the Railroad, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without

advertisement as the Manufacturer may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Locomotives, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement, including taxes and other charges imposed upon the Manufacturer in connection with the Locomotives. Written notice of the Manufacturer's election to retain the property for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad at 701 Commerce Street, Dallas, Texas 75202, at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as hereinbefore provided; and if no such notice is given, the Manufacturer shall be deemed to have elected to sell the Locomotives in accordance with the provisions of this Article 20.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may fix, 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 Manufacturer may determine in compliance with any such legal requirements, provided that the Railroad shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad at 701 Commerce Street, Dallas, Texas 75202. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of any of the Locomotives so offered for sale without accountability to the Railroad (except to the extent of surplus money recieved as hereinafter provided in the next to the last paragraph of this Article 20, and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Railroad hereunder.

Each and every power or remedy hereby specifically given to the Manufacturer shall be in addition to every other power or 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 Manufacturer. 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 Manufacturer 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 any acquiescence.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall and it hereby undertakes and promises to pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad fails to pay such deficiency, the Manufacturer 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 Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable attorneys' fees and other reasonable expenses incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement.

In the event that the Manufacturer brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable attorneys' fees, and other reasonable expenses and the amount thereof shall be included in such judgment.

21. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

The Railroad, to the fullest 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 the Locomotives and to sell them and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder (except such notices as are expressly required by the terms of this Agreement) and all rights of redemption.

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

23. RECORDING. The Railroad will cause this Agreement, any assignments hereof or of any interests herein and any supplements and consents hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record all further instruments required by law or reasonably requested by the Manufacturer for the proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Locomotives 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 Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

24. PAYMENT OF EXPENSES. The Railroad will pay all

costs, taxes, charges and expenses, except the counsel fees of the Manufacturer, but including counsel fees of the first assignee, incident to the preparation, printing, execution, acknowledgment, filing, registering and recording of this Agreement and of the first assignment by the Manufacturer of title to the Locomotives and of any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder, and of the replacement or replacements of the Locomotives.

25. NOTICE. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 701 Commerce Street, Dallas, Texas 75202, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Manufacturer shall be deemed to be properly served if delivered or mailed to the Manufacturer at La Grange, Illinois 60525, or at such other address as may have been furnished in writing to the Railroad by the Manufacturer. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Manufacturer or the Railroad, as the case may be, by such assignee.

26. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of

which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart.

27. ARTICLE HEADINGS. All article, paragraph or division headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

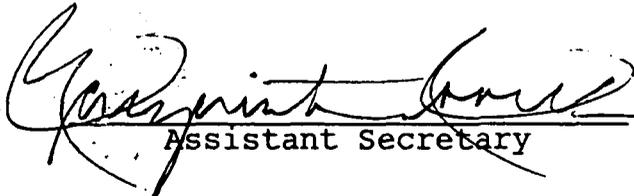
28. EFFECT AND MODIFICATION OF AGREEMENT. This Agreement, together with the specifications hereinabove referred to, constitute the entire agreement between the Railroad and the Manufacturer with respect to the sale of the Locomotives herein referred to. No variation or modification of this Agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of the Manufacturer and the Railroad.

29. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

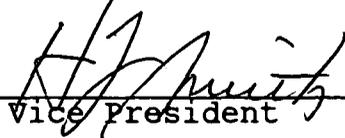
IN WITNESS WHEREOF, General Motors Corporation (Electro-Motive Division) has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and Missouri-Kansas-Texas Railroad Company has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

Attest:

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

  
Assistant Secretary

By

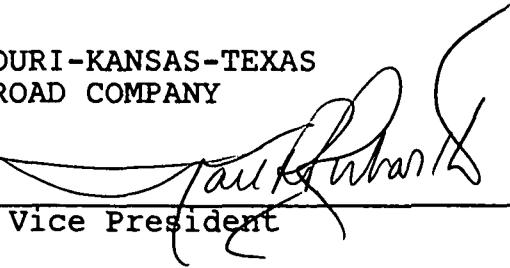
  
Vice President

Attest:

MISSOURI-KANSAS-TEXAS  
RAILROAD COMPANY

  
Assistant Secretary

By

  
Vice President

State of MICHIGAN  
County of WAYNE

ss.:

On this 17<sup>TH</sup> day of AUGUST 1978, before me personally appeared *H.L. SMITH* 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 in and for  
WAYNE COUNTY, MICHIGAN

My Commission Expires

ELEANORE E. SIENKIEWICZ  
Notary Public, Wayne County, Michigan  
My Commission Expires January 12, 1982

State of  
County of

TEXAS  
DALLAS

SS.:

On this 16 day of August 1978, before me personally appeared Karl R. Ziebarth to me personally known, who being by me duly sworn, says that he is a Vice President of MISSOURI-KANSAS-TEXAS RAILROAD 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.



Notary Public in and for  
Dallas County, TEXAS

My Commission Expires 12-31-78

7/13/78  
8/15/78

AGREEMENT AND ASSIGNMENT

THIS AGREEMENT AND ASSIGNMENT, dated as of August 18, 1978, by and between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation organized under the laws of the State of Delaware, with an office in LaGrange, Illinois (hereinafter called the "Manufacturer"), and FIRST PENNSYLVANIA BANK N.A., a national banking association (hereinafter called the "Bank"),

W I T N E S S E T H:

BACKGROUND. The Manufacturer and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (the "Railroad") have entered into a Conditional Sale Agreement dated as of August 18, 1978 (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of Four (4) Model SD40-2 Diesel Electric Locomotives with 3000 HP each, bearing Railroad's road numbers 600, 601, 602 and 603, to be constructed pursuant to Manufacturer's Specification 8087 dated January, 1972, as revised July, 1977, in accordance with Proposal 776064, as revised in Proposal A-776064 and Revisions "A" through "D," and Final Specification Supplement dated February 7, 1978, for an aggregate purchase price of \$2,558,970.

NOW, THEREFORE, this Agreement and Assignment witnesseth that, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration paid by the Bank to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Bank, its successors and assigns, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive the initial cash payment specified in Paragraph (a) of Article 4 thereof, reimbursement for taxes as provided in Article 5 thereof and adjustments for freight and insurance to the extent provided for therein) and all the right, title and interest of the Manufacturer in and to each Locomotive (as defined therein) in respect of which the Bank shall pay to the Manufacturer the purchase price thereof (provided, however, that the Bank shall not be required to pay the Manufacturer any amount on account of such purchase price in excess of ninety percent (90%) of the actual full purchase price (including freight charges) of all Locomotives, or \$2,400,000, whichever amount shall be the lesser, any such excess being represented by the Railroad's initial cash payment to the Manufacturer provided for in paragraph (a) of Article 4 of the Conditional Sale Agreement, or if less than four Locomotives are delivered by Manufacturer, then the

Bank shall not be required to pay any amount of such purchase price in excess of \$600,000 for each such Locomotive so delivered or ninety (90%) of such purchase price for each such Locomotive whichever shall be the lesser), pursuant to Article 4 thereof and in and to all amounts which may become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement on account of the purchase price of each Locomotive (together with interest thereon) and in and to any other sums becoming due under the Conditional Sale Agreement (excluding the initial cash payment), together with all the Manufacturer's rights, 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 Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Bank to, transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the Locomotives or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sales Agreement, or relieve the Railroad from its obligation to the Manufacturer or the Bank under Articles 4, 15 and 17 of the Conditional Sale Agreement. Notwithstanding this Agreement, or any subsequent assignment

pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad in respect of the Locomotives shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby irrevocably authorizes and empowers the Bank, in the Bank's own name or in the name of the Bank's nominee, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Bank 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 without expense and liability to the Manufacturer and for the sole benefit of the Bank.

2. The Manufacturer will construct the Locomotives in full and complete accordance with the Conditional Sale Agreement and will deliver them on completion to the Railroad free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants that it has good and lawful right to sell the Locomotives as aforesaid; and that it will warrant and defend

the same against the demands of all persons whomsoever based on claims originating prior to the delivery of the Locomotives by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Bank to the purchase price (less the amount of the initial cash payment, if any, made by the Railroad) for each Locomotive accepted by the Railroad, and interest thereon, as well as any other rights which have been assigned hereunder, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer, or by any successor or successors to its manufacturing properties or business, of any obligations in respect of the manufacture or delivery of the Locomotives or under Articles 10 and 16 of the Conditional Sale Agreement nor subject to any defense, offset, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing properties and business and shall not be enforceable against the Bank or any party or parties in whom title to any of the Locomotives or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or trans-

fer or of successive sales, assignments or transfers; and the Manufacturer will save harmless and indemnify the Bank from any expense, losses or damage suffered by reason of any defense, set-off, counterclaim or recoupment of the Railroad resulting from the breach by the Manufacturer of any terms or conditions of the Conditional Sale Agreement. The Manufacturer will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the use of any patented article on the Locomotives at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Railroad and not included in the Manufacturer's standard specifications.

4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously stenciled on each side of each Locomotive, at the time of delivery of such Locomotive to the Railroad, in letters not less than one inch in height the following legend:

"OWNERSHIP OF THIS LOCOMOTIVE SUBJECT  
TO A CONDITIONAL SALES AGREEMENT FILED  
UNDER THE INTERSTATE COMMERCE ACT,  
SECTION 20c."

5. Upon request of the Bank, its successors and assigns, the Manufacturer will execute all instruments which

may be necessary or proper to discharge of record the Conditional Sales Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Locomotives therein described.

6. The Bank will pay to the Manufacturer following delivery to and acceptance by the Railroad of the Locomotives, ninety percent (90%) of the full purchase price (including freight charges) of all Locomotives, or \$2,400,000 whichever amount shall be the lesser, as stated in the Conditional Sale Agreement, upon receipt by the Bank of the following documents in form and substance satisfactory to it, such payment to be made within five days following receipt of such documents (such payment date being the "Closing Date"):

(a) A duly executed copy of the Conditional Sale Agreement;

(b) A duly executed consent to this Assignment and Agreement, substantially in the form of Exhibit A, attached hereto and made a part hereof;

(c) Proof, satisfactory to the Bank, that the Conditional Sale Agreement, this Agreement and Assignment and the consent thereto have been filed with the Interstate Commerce Commission;

(d) An insurance certificate showing that the Railroad carries all risk property damage insurance with respect to the Locomotives and public liability insurance in such an amount and against such risks as are customarily insured against

by railroad companies on similar equipment owned by them, with a provision naming the Bank as an additional named insured and loss payee and a provision whereby such insurance cannot be cancelled or amended in any material respect except after thirty (30) days prior written notice to Bank;

(e) A certificate (dated the Closing Date) of the secretary of the Railroad, as to the incumbency and signatures of the officers of the Railroad authorized to execute and deliver the Conditional Sale Agreement and the documents required thereby to be executed and delivered by the Railroad;

(f) A certificate (dated the Closing Date) of the secretary of the Manufacturer, as to the incumbency and signatures of the officers of the Manufacturer authorized to execute and deliver the Conditional Sale Agreement and this Agreement and Assignment and the documents required thereby and hereby to be delivered by the Manufacturer;

(g) A certificate (dated the Closing Date) of an officer of the Railroad to the effect that:

(i) The Railroad is not in default under the Conditional Sale Agreement, nor is there any event which, with the passage of time, or the giving of notice, or both, would result in such a default; and

(ii) All representations and warranties of the Railroad set forth in the Conditional Sale Agreement are true and correct as of the Closing Date, as if made on such date.

(h) A duly executed acceptance certificate, substantially in the form of Exhibit B, attached hereto and made a part hereof, with appropriate insertions;

(i) A duly executed delivery certificate, substantially in the form of Exhibit C, attached hereto and made a part hereof, with appropriate insertions;

(j) A copy of the Manufacturer's invoice for the Locomotives, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices set forth therein;

(k) A bill of sale from the Manufacturer to the Bank, substantially in the form of Exhibit D, attached hereto and made a part hereof, with appropriate insertions;

(l) An opinion of counsel for the Railroad, substantially as set forth in Exhibit E, attached hereto and made a part hereof, or with such changes thereto as to which such counsel and the Bank may agree; and

(m) An opinion of counsel for the Manufacturer, substantially as set forth in Exhibit F, attached hereto and made a part hereof, or with such changes thereto as to which such counsel and the Bank may agree.

7. The Bank may assign its rights under the Conditional Sale Agreement, as a whole in respect of all or any designated number of the Locomotives, including the right to receive any payments due or to become due to it from the Railroad there-

under in respect of such Locomotives. 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 Bank hereunder.

8. The Manufacturer hereby:

(a) Represents and warrants to the Bank, its successors and assigns, that the Conditional Sale Agreement was lawfully executed by the Manufacturer for a valid consideration and that it is a valid existing agreement and, according to its terms, binding upon the parties thereto, and that such agreement is now in force without amendment thereto;

(b) Covenants and agrees that it will from time to time and at all times, at the request of the Bank 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 Bank or intended so to be; and

(c) Represents and warrants to the Bank, its successors and assigns, that no payments (except the initial cash payment required by the Conditional Sale Agreement) have been made by the Railroad to the Manufacturer under the Conditional Sale Agreement.

9. It is agreed that all sums, both principal and interest, due hereunder shall be paid by the Railroad to the Bank at its place of business at 16th and Market Streets, Philadelphia, Pennsylvania.

10. The Railroad will have this Assignment filed, registered and recorded in the same manner as provided in Article 23 of the Conditional Sale Agreement hereby assigned.

11. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of which counterparts, together, shall constitute but one and the same instrument. The Bank agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience as of August 18, 1978, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

12. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Manufacturer and the Bank have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized,

and their respective corporate seals to be hereunto affixed,  
duly attested, as of the day and year first above written.

Attest:

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

*Carlyle C. Conner*  
Assistant Secretary

By *H. H. Smith*  
Vice-President

Attest:

FIRST PENNSYLVANIA BANK N.A.

*John A. Davis*  
Assistant Secretary

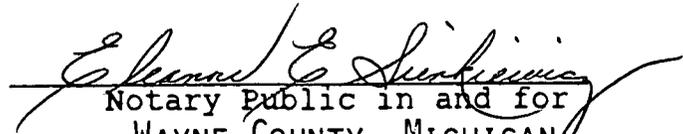
By *Thomas A. Renshaw*  
Vice-President

STATE OF MICHIGAN

:  
: SS  
:

COUNTY OF WAYNE

On this 17<sup>TH</sup> day of AUGUST, 1978,  
before me personally appeared *H. L. SMITH*  
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 fore-  
going 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 in and for  
WAYNE COUNTY, MICHIGAN

My Commission Expires:

ELEANORE E. SIENKIEWICZ  
Notary Public, Wayne County, Michigan  
My Commission Expires January 12, 1982

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF PHILADELPHIA :

On this *18<sup>th</sup>* day of *August*, 1978,  
before me personally appeared *Norman F. S. Russell, Jr.*  
to me personally known, who, being by me duly sworn, says  
that he is a Vice-President of FIRST PENNSYLVANIA BANK, a  
national banking association, that one of the seals affixed  
to the foregoing instrument is the seal of said association,  
that said instrument was signed and sealed on behalf of said  
association by authority of its board of directors, and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of said association.

*Audrey L. Thompson*  
Notary Public in and for  
County,

My Commission Expires:

AUDREY L. THOMPSON  
Notary Public, Phila., Phila. Co.  
My Commission Expires Aug. 10, 1981

7/13/78  
8/15/78

### CONSENT TO AGREEMENT AND ASSIGNMENT

The undersigned, a corporation duly incorporated under the laws of the State of Delaware, the railroad named in that certain Agreement and Assignment of even date herewith, by and between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (the "Manufacturer") and FIRST PENNSYLVANIA BANK N.A. (the "Bank") (hereinafter called the "Assignment"), hereby acknowledges receipt of a copy of the Assignment and consents to all the terms and conditions of the Assignment.

As an inducement to the Bank to purchase the interest of the Manufacturer under the Conditional Sale Agreement referred to in the Assignment (the "CSA"), pursuant to which the Manufacturer is selling to the undersigned, which is purchasing from the Manufacturer, four (4) Model SD40-2 diesel electric locomotives (hereinafter called the "Locomotives") and in consideration of other good and valuable consideration, the undersigned:

(A) Agrees, subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments and other moneys (other than such as are nevertheless required to be made to the Manufacturer pursuant to Article 17 of the CSA) provided for in the CSA (which moneys are hereinafter called the "Payments") due and to become due

under the CSA in respect of the Locomotives, directly to the Bank at First Pennsylvania Tower, Centre Square Building, Philadelphia, Pennsylvania 19101, attention Roger C. Baldwin, Vice President (or to such other address as may be furnished in writing to the undersigned by the Bank);

(B) Agrees, subject to the terms and conditions of the Assignment, that the Bank shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the CSA;

(C) Agrees that the Payments shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Manufacturer or otherwise, and the payment thereof to the Bank shall be final;

(D) Agrees that the Bank shall not, by virtue of the Assignment or this Consent, be or become subject to any liability or obligation, under the CSA; and

(E) Agrees that the CSA shall not be terminated or, without the prior written consent of the Bank, amended or modified, nor shall action be taken or omitted by the undersigned, if such amendment, modification, action or inaction would

adversely affect the rights of the Bank under the Assignment or this Consent.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Consent as of this 18th day of August, 1978.

Attest: [CORPORATE SEAL]

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY

\_\_\_\_\_

By \_\_\_\_\_  
Vice President

STATE OF :  
COUNTY OF : SS  
:

On this day of , 1978,

before me personally appeared

to me personally known, who, being by me duly sworn, says that he is Vice-President of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that the seal affixed to the foregoing 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.

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Notary Public in and for  
County,

My Commission Expires:

7/13/78  
8/15/78

ACCEPTANCE CERTIFICATE

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY ("Katy")  
hereby certifies that:

(A) The locomotives listed below (the "Locomotives") have been delivered to Katy in accordance with the Conditional Sale Agreement (the "CSA"), dated as of August 18, 1978, by and between Katy and GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (the "Manufacturer") and accepted by Katy pursuant to the CSA on the date hereof;

(B) The Locomotives are in good order and condition and conform to all applicable Interstate Commerce Commission requirements and specifications, all standards recommended by the Association of American Railroads and all requirements of the CSA;

(C) The Locomotives have been marked, permanently and conspicuously, with the legend:

"OWNERSHIP OF THIS LOCOMOTIVE SUBJECT  
TO A CONDITIONAL SALE AGREEMENT FILED  
UNDER THE INTERSTATE COMMERCE ACT, SEC-  
TION 20c"; and

(D) The Locomotives are subject to the terms and conditions of the CSA.

The Locomotives to which this certificate pertains are:

Serial No.    Manufacturer    Identifying No.    Place of Acceptance

Dated at                    ,                    , this                    day  
of                                    , 1978.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY

By \_\_\_\_\_

7/13/78  
8/15/78

MANUFACTURER'S DELIVERY CERTIFICATE

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)  
(the "Manufacturer") hereby certifies that:

(A) The locomotives listed below (the "Locomotives") have been delivered to MISSOURI-KANSAS-TEXAS RAILROAD COMPANY ("Katy") in accordance with the Conditional Sale Agreement dated as of August 18, 1978, by and between the Manufacturer and Katy (the "CSA");

(B) The Locomotives are in good order and condition and conform to all applicable Interstate Commerce Commission requirements and specifications, all standards recommended by the Association of American Railroads and all requirements of the CSA;

(C) Such Locomotives have been marked, permanently and conspicuously, with the legend:

"OWNERSHIP OF THIS LOCOMOTIVE SUBJECT TO  
A CONDITIONAL SALE AGREEMENT FILED UNDER  
THE INTERSTATE COMMERCE ACT, SECTION 20c";  
and

(D) Identifying numbers as specified in the CSA have been attached or affixed to the Locomotives.

The Manufacturer represents and warrants to First Pennsylvania Bank N.A. (the "Bank") that, at the time of delivery of the Locomotives, the Locomotives were newly manufactured and were not used, it had legal title to the Locomotives and good and lawful right to sell the Locomotives and

that the Bank received title to the Locomotives free of all claims, liens, security interests and other encumbrances of any nature, excepting only the rights of Katy under the CSA.

The Locomotives to which this certificate pertains are:

<u>Serial No.</u>	<u>Identifying No.</u>	<u>Place of Acceptance</u>
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Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By \_\_\_\_\_

8/15/78

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

BILL OF SALE

General Motors Corporation (Electro-Motive Division) a Delaware corporation (hereinafter called the Manufacturer), in consideration of the sum of \$1.00 and other good and valuable consideration to it paid, the receipt of which is hereby acknowledged, does hereby transfer to First Pennsylvania Bank N.A. (the "Bank"), pursuant to the Agreement and Assignment, dated as of August 18, 1978, by and between the Manufacturer and the Bank, all right, title and interest of the Manufacturer in and to the locomotives described below (the "Locomotives"):

<u>Type of Locomotive</u>	<u>Quantity</u>	<u>Serial Numbers</u>
Model SD40-2 Diesel Electric with 3000 HP	Four (4)	

The Manufacturer hereby represents and warrants to the Bank that at the time of delivery of each Locomotive, such Locomotive was newly manufactured and was not used, the Manufacturer had legal title to such Locomotive and good and lawful right to sell such Locomotive and that the Bank received title to such Locomotive free of all claims, liens, security



The opinion of counsel for the Railroad shall be to the effect that:

(A) The Conditional Sale Agreement, Consent to Agreement and Assignment and each Acceptance Certificate have been duly authorized, executed and delivered by the Railroad and, assuming due authorization, execution and delivery by each other party thereto (if any), each such instrument is a legal, valid and binding instrument and is enforceable in accordance with its terms;

(B) The Conditional Sale Agreement, the Agreement and Assignment and the Consent to the Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and no other filing or recordation in any State of the United States or in the District of Columbia is necessary for the protection of the Bank's title to and interest in the Locomotives;

(C) No authorization or approval from any governmental or public body or authority of the United States, or, to the knowledge of said counsel, from any of the states thereof or the District of Columbia, is necessary for the due execution, delivery and enforceability of the Conditional Sale Agreement, Agreement and Assignment or Consent to Agreement and Assignment;

(D) The Railroad is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in, and is in good standing in, all jurisdictions in which the failure to so qualify or be in good standing could impair its ability to perform its business and activities;

(E) Neither the execution and delivery of the Conditional Sale Agreement, Consent to Agreement and Assignment or any Acceptance Certificate, nor the consummation of the transactions contemplated by any such instrument, nor the fulfillment of, or compliance with, the terms and provisions of any such instrument, will conflict with, or result in a breach of, any laws, or any of the terms, conditions or provisions of the charter or the by-laws of the Railroad, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument known to such counsel to which the Railroad is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or encumbrance of any nature whatsoever on any of the Locomotives other than those created by the execution and delivery of said Conditional Sale Agreement, Consent to Agreement and Assignment;

(F) No mortgage, deed of trust, security interest or other lien of any nature whatsoever which now covers or

affects any property or interest therein of the Railroad now attaches or hereafter will attach to any of the Locomotives or in any manner affects or will affect adversely the right, title and interest of the Bank in and to the Locomotives except such liens as may attach to the rights and/or equity of the Railroad which accrue to it under the Conditional Sale Agreement, such liens, however, being inferior and secondary to the right, title and interest of the Bank in and to the Locomotives;

(G) The Bank will not, by virtue of the transactions contemplated by the Conditional Sale Agreement, Agreement and Assignment or Consent to Agreement and Assignment, be required to obtain any authorization or approval from any person, nor, as owner of the Locomotives, will it be subject to regulation by any state of the United States or the Interstate Commerce Commission or any other Federal governmental body or authority having jurisdiction over the Locomotives; and

(H) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Railroad) pending or (to the knowledge of such counsel) threatened against or affecting the Railroad, or any property rights of the Railroad at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition (financial or otherwise) of the Railroad or its ability to perform its obligations under the Conditional Sale Agreement and the Consent to Agreement and Assignment, and the Railroad is not (to the knowledge of such counsel) in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

The opinion of counsel for the Manufacturer shall be to the effect that:

(A) The Manufacturer is a corporation, duly organized and existing and in good standing under the laws of the State of Delaware, and the Manufacturer has the power and authority to own its property and to conduct its business as now owned and conducted;

(B) The Conditional Sale Agreement, Agreement and Assignment, Manufacturer's Delivery Certificate and Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery by each other party thereto (if any), each such instrument is a legal, valid and binding instrument and is enforceable against the Manufacturer in accordance with its terms;

(C) The Bank is vested with all rights, titles, interests, powers, privileges and remedies of the Manufacturer that are purported to be assigned to the Bank by virtue of the Agreement and Assignment; and

(D) Prior to the sale thereof to the Bank, the Manufacturer had good and marketable title to each Locomotive sold by the Manufacturer, and each such Locomotive has been sold to the Bank and delivered to the Railroad free and clear of all claims, liens, security interests or other encumbrances, excepting only the rights of the Railroad under the Conditional Sale Agreement.