

Soo Line Railroad Company



Soo Line Building
Box 530
Minneapolis, Minnesota 55440
(612) 332-1261

THOMAS M. BECKLEY
Vice President Staff

October 13, 1978

9771

H. Gordon Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 9771 FILED 1978

OCT 16 1978 - 12 03 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
OCT 16 12 00 PM '78
I.C.C.
FEE OPERATIONS

Dear Mr. Homme:

There are transmitted to you herewith for recording under Section 20c of the Interstate Commerce Act three executed counterparts of Conditional Sale Agreement dated as of October 15, 1978 between General Motors Corporation (Electro-Motive Division) and Soo Line Railroad Company, and Agreement and Assignment dated as of October 15, 1978 between General Motors Corporation (Electro-Motive Division) and First National Bank of Minneapolis.

Pursuant to Section 1116.1 et seq. of the Rules and Regulations adopted by the Commission, as amended, the following information is shown:

Vendor is General Motors Corporation (Electro-Motive Division) whose address is LaGrange, Illinois 60525.

Vendor-Assignee is First National Bank of Minneapolis, 120 South Sixth Street, Minneapolis, Minnesota 55440.

Purchaser is Soo Line Railroad Company, 800 Soo Line Building, Minneapolis, Minnesota 55440.

Guarantor is Soo Line Railroad Company, 800 Soo Line Building, Minneapolis, Minnesota 55440.

A general description of the equipment covered by the Conditional Sale Agreement and Assignment, dated as of October 15, 1978, is as follows:

<u>No. of Units</u>	<u>Description of Equipment</u>	<u>Name of Builder</u>
6	2000 H.P. Model GP-38-2 Diesel-Electric Locomotives. Soo Line road numbers 4410 to 4415, both inclusive. Estimated cost \$489,135 each, freight included.	General Motors Corporation (Electro-Motive Division)

Charles J. ...

8-289A150

Date OCT 16 1978

Fee \$ 50

70 Washington, D.C.

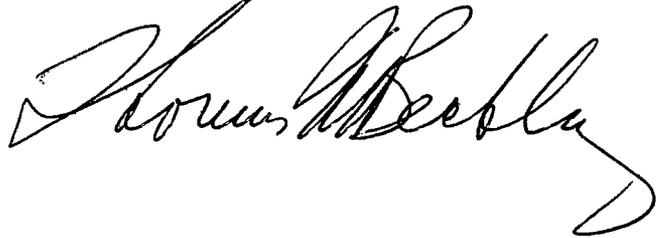
The identifying marks of the equipment listed above are the trade name "Soo Line" or "Soo," together with the numbers shown above.

There is also transmitted this Company's voucher in the amount of \$50.00 which is the recording fee required by Section 1116.3(d):

Conditional Sale Agreement and Assignment, dated
as of October 15, 1978 \$50.00

This letter of transmittal is signed by an executive officer of this Company having knowledge of the matters set forth therein and the original documents bearing recording data should be returned to him.

Yours truly,

A handwritten signature in cursive script, appearing to read "H. Gordon Homme, Jr.", written in dark ink.

TMB/sjp
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

10/16/78

OFFICE OF THE SECRETARY

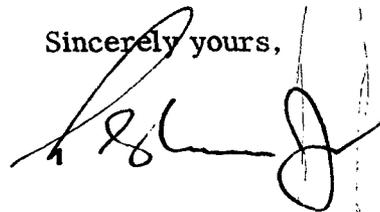
Thomas M. Beckley
Vice President-Staff
SOO Line RR Co.
Soo Line Building Box 530
Minneapolis, Messota 55440

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 10/16/78 at 12:05pm
and assigned recordation number(s) 9771

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1978

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

SOO LINE RAILROAD COMPANY

For Purchase Of

Six (6) 2250 H. P. Model GP 30
Diesel-Electric Road-Switching Locomotives

9771

RECORDATION NO. FILE 2028

OCT 16 1978 -12 05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1978

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

FIRST NATIONAL BANK OF MINNEAPOLIS

CONDITIONAL SALE AGREEMENT, dated as of October 15, 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 the Village of McCook (Post Office La Grange), State of Illinois (hereinafter called the Manufacturer or Builder as more particularly set forth in Article 28 hereof), and SOO LINE RAILROAD COMPANY, a corporation organized under the laws of the State of Minnesota, with its principal office at Minneapolis, Minnesota (hereinafter called the Railroad).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, on the conditions herein set forth, the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment); and

WHEREAS, the Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

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

1. CONSTRUCTION AND SALE. The Builder will construct, sell and deliver to the Railroad, and the Railroad will purchase

from the Builder and accept delivery of and pay for as herein-
after provided, the Equipment, the various units of which shall
be constructed in accordance with the specifications referred to
in Schedule A hereto and in accordance with such modifications
thereof as may be agreed upon in writing between the Railroad and
the Builder (which specifications and modifications, if any, are
hereinafter called the Specifications). The design and quality
of equipment and material in such units shall conform to all
Interstate Commerce Commission requirements and specifications
interpreted as being applicable to railroad equipment of the
character of such units as of the date of this Agreement.

2. DELIVERY. The Builder will deliver the various units
of the Equipment manufactured at the Builder's plant at McCook,
Illinois, to the Railroad at Schiller Park, Illinois, or such
other point or points as may be agreed upon by the Builder and
the Railroad, in accordance with the delivery schedule set forth
in Schedule A hereto.

The Builder's obligation as to time of delivery is sub-
ject, however, to delays resulting from causes beyond the
Builder'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 in plant, equipment or facilities or
delays in receiving necessary materials.

Upon completion of each unit of the Equipment by the
Builder, it shall be inspected at the place designated herein
for delivery of such unit, and, if such unit conforms to the

Specifications applicable thereto, such inspectors or representatives shall execute and deliver to the Builder, in not less than four counterparts, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Article 7 hereof. Any Certificate of Acceptance may cover any number of units.

On delivery of each of such units hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

3. PURCHASE PRICE AND PAYMENT. The base price per unit of the Equipment, exclusive of interest, and all other charges, is as set forth in Schedule A hereto (which price is hereinafter called the base price). The purchase price per unit of Equipment shall be the amount ultimately required by the Builder to be paid with respect to such unit, as set forth in the invoice of the Builder.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay to the Manufacturer at such place as the Manufacturer may designate, the purchase price of the Equipment, as follows:

(a) On the Closing Date (as hereinafter defined), in cash, the amount by which the aggregate purchase price of all the units of the Equipment exceeds the amount to be paid on account of such purchase price pursuant to paragraph (b) of this Article 3; and

(b) In 15 equal annual installments, an amount equal to eighty per cent (80%) of the aggregate

purchase price (being the invoice price) of all the units of the equipment.

The first instalment of the indebtedness referred to in the foregoing paragraph (b) shall be payable on the fifteenth day of October next following the Closing Date, and subsequent instalments shall be payable annually thereafter on October 15, provided, however, that the indebtedness remaining unpaid on October 15, 1993 shall be payable on that date and shall constitute the fifteenth instalment; and such indebtedness shall bear interest at the rate of 9.25% per annum, from and after the Closing Date, payable semi-annually on April 15 and October 15, beginning with April 15, 1979 and continuing to and including October 15, 1993.

The term "Closing Date" shall mean such date, not more than ten business days following presentation by the Builder to the Railroad of the invoice for such Equipment and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer in four counterparts 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.

Semi-annual interest payments due under this Agreement shall be in an amount equal to 9.25% multiplied times the unpaid balance at the time of such payment, divided by two (2). When necessary to compute daily interest due hereunder, the same 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 by the Railroad 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.

4. CHANGES IN PRICES AND EQUIPMENT. In the event that the Specifications shall reflect any change or modification hereafter made, the amount by which such change or modification shall increase or decrease the cost of the unit or units of the Equipment involved shall be added to or subtracted from, as the case may be, the base price or prices of such unit or units in determining the purchase price thereof.

5. TAXES. All payments to be made by the Railroad hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, State or Federal taxes (other than net income, excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement 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 by the Railroad or upon the earnings arising therefrom or upon the Manufacturer 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 title of the Manufacturer 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 non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof, or unless the Railroad shall have approved the

payment thereof.

6. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal 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 Manufacturer 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 Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, and at the expense of the Railroad, will execute a bill or bills of sale of the Equipment transferring its 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 24 hereof, and will execute in the same manner and

deliver at the same place, for record or for filing 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 Manufacturer pursuant to Article 8 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.

7. MARKING OF EQUIPMENT. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously placed and fastened on each side of each such unit, a metal plate bearing the following words, or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the interest of the Manufacturer, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case, in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c

The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such unit shall have been plated or marked as aforesaid, and will replace promptly any such plate or marking which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except with the consent of the Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed in ten counterparts with the Manufacturer by the Railroad.

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 Railroad may cause the Equipment to be lettered or marked "Soo Line Railroad," "Soo Line" or "Soo," or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

8. LOST, DESTROYED OR DAMAGED EQUIPMENT. In the event that any unit of the Equipment shall be worn out, lost, destroyed or irreparably damaged from any cause whatsoever prior to the payment of the full indebtedness in respect of the purchase price, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such unit has been worn out, lost, destroyed or irreparably damaged, fully inform the Manufacturer in regard thereto and, within thirty days after such determination, shall pay to the Manufacturer a sum equal to the then value of such unit determined as hereinafter provided. For

all purposes of this Article 8 the value of any unit worn out, lost, destroyed or irreparably damaged shall be the balance remaining unpaid attributable to such unit at the time of such wearing out, loss, destruction or irreparable damage.

Any money paid to the Manufacturer pursuant to the preceding paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer in ten counterparts, to prepay indebtedness in respect of the purchase price of the Equipment hereunder or to or toward the cost of a unit or units of new standard gauge railroad equipment (other than work or passenger equipment) to replace such unit worn out, lost, destroyed, or irreparably damaged, as the Railroad may direct in such written instrument. 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 their maturities, but without premium, and whether or not such amount shall be sufficient to prepay one or more entire instalments of the purchase price. In case of replacement the amount to be paid by the Manufacturer in respect of any replacing 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 Manufacturer and the Railroad shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer shall be conclusively deter-

mined 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 replacing unit to be plated or marked as provided in Article 7 hereof and, if of the same character as the unit being replaced, to be numbered with the same number as such replaced unit. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and 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 Manufacturer 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.

Whenever the Railroad shall file with the Manufacturer, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of new standard gauge railroad equipment, the Railroad shall file therewith in four counterparts

(1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing unit is new standard gauge railroad equipment (other than work or passenger equipment) and has been plated or marked and

numbered as required by the provisions of this Article 8 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on the earliest date when any such money was paid to the Manufacturer; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Manufacturer 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 18 hereof shall have happened and be continuing, any money paid to the Manufacturer pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such obligations of the United States of America, maturing in not more than five years from the date of such investment (hereinafter called Authorized Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Authorized Investments as the Railroad may in writing direct, or any such Authorized Investments may be sold at any time in the discretion of the Manufacturer. Any interest received by the Manufacturer on any such Authorized Investments shall be held by the Manufacturer and applied as hereinafter provided. Upon any sale of any such Authorized Investments, the proceeds thereof, plus any interest received by the Manufacturer thereon, up to the cost (including accrued interest) thereof, shall be held by the Manufacturer

for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency. If at any time the market value of any Authorized Investments held by the Manufacturer, plus any interest theretofore received thereon, shall be less than the cost thereof (including accrued interest), the Railroad will on written demand pay to the Manufacturer an amount equal to such deficiency.

In the event that the amount held by the Manufacturer pursuant to this Article 8 (including the market value of Authorized Investments) shall be \$100,000 or more for a period of two years, the Manufacturer shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, apply all moneys so held (including the proceeds of sale of Authorized Investments) to prepay indebtedness in respect of the purchase price of the Equipment on the payment date next following such period, in accordance with the foregoing provisions of this Article 8.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money paid to the Manufacturer pursuant to this Article 8 and not theretofore disposed of as hereinabove provided shall be applied to the payment of indebtedness in respect of the purchase price of the Equipment and any unpaid interest thereon.

Upon full payment of all indebtedness in respect of the purchase price of the Equipment, and all interest thereon, and

all other amounts payable by the Railroad hereunder, any money held by the Manufacturer pursuant to this Article 8 or any other provision hereof shall be paid to the Railroad.

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

10. BUILDER'S WARRANTY OF WORKMANSHIP AND MATERIAL. Builder warrants to the original user that the Equipment is of the kind and quality described in the Specifications and is suitable for the ordinary purposes for which such Equipment is used.

Builder 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 the Equipment has been operated 250,000 miles whichever event shall first occur. Builder agrees to correct such defects, which examination shall disclose to Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Builder's obligation with respect to such defect under this warranty.

Builder warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Builder.

There are no warranties, expressed or implied, made by Builder except the warranties set out above.

11. COMPLIANCE WITH LAWS AND RULES. During the term of this Agreement the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations

involving the Equipment 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 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 Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

12. REPORTS AND INSPECTIONS. On or before October 15 in each year, commencing with the year 1979, the Railroad will furnish to the Manufacturer, in four counterparts, an accurate statement, signed by an authorized officer, showing, as at the preceding December 31, 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 been worn out, lost, destroyed or irreparably damaged, whether by accident or otherwise, during the preceding calendar year, the numbers of the units then undergoing repairs and awaiting repairs, and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request. Together with such statement the Railroad will also furnish to the Manufacturer, in four counterparts, a statement signed by an authorized officer, stating that, in the case of all Equip-

ment repainted during the preceding calendar year, the plates or markings required by Article 7 hereof have been preserved or replaced. The Manufacturer shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year during the term of this Agreement. The Railroad, insofar as it may legally do so, will supply rail transportation over its lines to designated agents of the Manufacturer for the purpose of enabling such agents to reach the point where the Equipment is in operation and the Railroad's records with respect thereto are kept, for the purpose of inspection.

13. POSSESSION AND USE. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment 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 controlling the Railroad, or over which it has trackage rights, and the Equipment may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement and only within the United States of America and the provinces of Canada.

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 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 title of the Manufacturer 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 Manufacturer, adversely affect the property or rights of the Manufacturer in or to the Equipment or otherwise hereunder.

15. RAILROAD'S INDEMNITIES. The Railroad agrees to indemnify and save harmless the Manufacturer 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 Manufacturer of title to the Equipment, or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer. 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 6 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; provided, however, that the Builder shall not be relieved from its guaranty covering material and workmanship hereinbefore in Article 10 set forth.

16. PATENT INDEMNITIES. The Builder shall defend any

suit or proceeding brought against the Railroad so far as based on a claim that equipment of Builder's specification, or any part thereof, furnished under this contract constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Railroad.

In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Builder shall at his option and at his own expense, either procure for the Railroad the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing, or remove the entire equipment and refund the purchase price and the transportation and installation costs thereof.

The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Builder for patent infringement by said equipment or any part thereof.

17. ASSIGNMENTS. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Manufacturer, 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 Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Railroad of its obligations to the Builder under Articles 15 and 16 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment 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 Manufacturer'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.

The Railroad recognizes that it is the custom of the railroad equipment manufacturers to transfer or assign agreements

of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Builder hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of 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 Builder in respect of the Equipment or the manufacture, construction, delivery, 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 Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such transfer or assignment, or successive transfers or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, if necessary, as soon as reasonably feasible after being requested so to do by such transferee or assignee, change the plates or markings to

be placed on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad. The cost of such plates or markings with respect to the first assignee of this Agreement shall be borne by the Railroad. The cost of such plates or markings in connection with any subsequent assignment will be borne by the subsequent transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with settlement for the Equipment subsequent to such transfer or assignment, deliver to the assignee or transferee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Equipment, in four counterparts (except for the Bill of Sale for such Equipment, an original and six copies of which shall be delivered, and any opinion of counsel for the assignee or transferee), all documents required by the terms of such transfer or assignment to be delivered to the assignee or transferee in connection with such settlement.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder on the Closing Date or postponed Closing Date with respect to the Equipment of an amount equal to that portion of the purchase price of such Equipment to be paid pursuant to paragraph.(b) of Article 3 hereof, such Equipment shall be excluded herefrom, and the Builder will promptly notify the Railroad of such event and

and the Railroad shall not later than ninety days after said Closing Date pay or cause to be paid to the Builder such amount, with interest at the rate of 8% from said Closing Date to the date of payment.

18. 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 the Railroad as herein provided within thirty days after payment thereof shall be due hereunder; or

(b) The Railroad shall, for more than thirty days after the Manufacturer 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 or performed or to make provision satisfactory to the Manufacturer 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 within thirty days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed by a trustee or trustees appointed in such proceedings

or otherwise given the same status as obligations assumed by such a trustee or trustees within thirty days after such appointment, if any, or sixty 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 other 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 all the obligations of the Railroad under this Agreement shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers within thirty days after such appointment, if any, or sixty 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 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 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 Manufacturer 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 Manufacturer may at its election 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.

19. REMEDIES. If the Railroad shall make default as hereinbefore provided, then at any time after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided and during

the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law applicable to the action to be taken by the Manufacturer, 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 19 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises 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 Manufacturer 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 Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer 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 Manufacturer reasonably convenient to the Railroad. This agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, 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. The Railroad hereby expressly waives any and all claims against the Manufacturer 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 the Railroad shall make default as hereinbefore provided then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election retain the Equipment 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 Equipment will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; provided, however, that, if the Railroad, within twenty days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the purchase price of all 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; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of 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 Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorney's fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof, at any time during a period of thirty days after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at Minneapolis, Minnesota, at such time or times as the Manufacturer may fix (unless the Manufacturer shall specify a different place or places, in which case the

sale shall be held at such place or places and at such time or times as the Manufacturer 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 Manufacturer may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad, within ten days after notice of the proposed sale price, to purchase or provide a purchaser, for cash, at such proposed sale price or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself 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 19), and in payment of the purchase price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer 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 Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the rights 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 an acquiescence therein.

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

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

Except as otherwise provided in this Agreement, 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 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 Manufacturer's rights hereunder and any and all rights of redemption.

21. EXTENSION NOT A WAIVER. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer'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 Manufacturer's rights or the Railroad's obligations hereunder. The Manufacturer'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 Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

22. RECORDING. The Railroad will cause this Agreement, any assignments hereof and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and with the Registrar General of Canada and notice thereof published in accordance with the requirements of the Railway Act of Canada; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its 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 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.

23. PAYMENT OF EXPENSES. The Railroad will pay all reasonable costs, charges and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of such first assignment, of

any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of the indebtedness in respect of purchase price due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses, including fees and expenses of counsel, and including stamp and other taxes, if any, of the first assignee of this Agreement, incurred in connection with such first assignment, payments to the Builder by such first assignee and other parties, and the performance of the functions of such first assignee under such assignment and any related agreements.

24. NOTICE. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at Soo Line Building, Minneapolis, Minnesota 55440, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at La Grange, Illinois 60525, or at such other address as may have been furnished in writing to the Railroad by the Builder. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed in five counterparts to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

25. ARTICLE HEADINGS. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26. EFFECT AND MODIFICATION OF AGREEMENT. This Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

27. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and, to the extent applicable, by the Railway Act of Canada.

28. DEFINITIONS. The term "Manufacturer," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Motors Corporation (Electro-Motive Division), the party hereto of the first part, 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 as regards any rights hereunder that are retained and excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, General Motors Corporation (Electro-Motive Division), the party hereto of the first part, and any successor or successors for the time being to its manufacturing properties and business.

29. EXECUTION. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of October 15, 1978, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

By *P.K. Highland*
Vice-President

ATTEST:

W.A. Thomas
Assistant Secretary

Signed, sealed and delivered by
General Motors Corporation
(Electro-Motive Division) in
the presence of:

H.H. Kerner

J.K. Lucicki
Attesting Witnesses

SOO LINE RAILROAD COMPANY

By *Thomas M. Beekley*
Vice-President, Staff

ATTEST:

Robert G. Meitz
Assistant Secretary

Signed, sealed and delivered by
Soo Line Railroad Company
in the presence of:

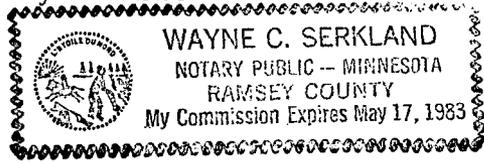
David S. ...
Shirley Perry
Attesting Witnesses

acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

(NOTARIAL SEAL)



My Commission Expires _____

SCHEDULE A

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

Diesel-electric Locomotive Units

<u>Type</u>	<u>Builder's Spec.</u>	<u>Quantity</u>	<u>Railroad's Road No.</u>	<u>Base Price Per Unit</u>	<u>Total Base Price</u>	<u>Delivery</u>
2000 H.P. Model GP38-2 Diesel Electric Locomotive	General Motors Specification 8090, Loco. Modif. in accordance with Locomotive Proposal No. 786161, Dated May 5, 1978.	6	4410-4415 (Both incl.)	\$489,135	\$2,934,810	October, 1978

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1978

BETWEEN

GENERAL MOTORS CORPORATION

(ELECTRO-MOTIVE DIVISION)

AND

FIRST NATIONAL BANK OF MINNEAPOLIS

AGREEMENT AND ASSIGNMENT, dated as of October 15, 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 the Village of McCook (Post Office LaGrange), State of Illinois (hereinafter called the Builder), and FIRST NATIONAL BANK OF MINNEAPOLIS, a national banking association duly incorporated and existing under the laws of the United States of America, with its office in the City of Minneapolis, State of Minnesota, acting under a Participation Agreement dated as of October 15, 1978, a copy of which has been delivered to the Builder (said Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and SOO LINE RAILROAD COMPANY, a corporation organized under the laws of the State of Minnesota, with its principal office at Soo Line Building, Minneapolis, Minnesota 55440 (hereinafter called the Railroad), have entered into a Conditional Sale Agreement, dated as of October 15, 1978 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder 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 Witnesseth that, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well

as of the mutual covenants herein contained:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted and upon payment by the Assignee to the Builder of the amounts required to be paid under Section 6 hereof; (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to manufacture and the right to receive the payments specified in paragraph (a) of Article 3 thereof and in the last paragraph of Article 17 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the purchase price 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 Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder 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 Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment

in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 15 and 16 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder 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 Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and 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.

2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants

and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and that 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 Builder 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 the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The Builder 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 purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep 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 Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery, or warranty thereof, or under Articles 10 and 16 of the Conditional Sale Agreement, or by reason of 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 Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Builder will 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 construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, except for any designs, articles or materials specified by the Railroad and not manufactured by the Builder.

4. The Builder will cause to be plainly, distinctly, permanently and conspicuously placed and fastened on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, a metal plate bearing the following legend, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c."

5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which

may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

6. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement, shall pay to the Builder, an amount equal to that portion of the purchase price to be paid pursuant to paragraph (b) of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A Bill of Sale from the Builder to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that at the time of delivery thereof 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) A certificate or certificates signed by an inspector or other authorized representative of the Railroad stating that the units of the Equipment have been inspected and accepted by him on behalf of the Railroad and further stating that all such units have been plated or marked as required by Article 4 hereof;

(c) A duplicate 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;

(d) An opinion of Robert G. Gehrz, Esq., who is acting as special counsel for the Assignee, stating (i) that the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) that this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid and binding instrument enforceable in accordance with its terms, (iii) that the Conditional Sale Agreement and this 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 with the Registrar General of Canada and notice thereof published in accordance with the requirements of the Railway Act of Canada, and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the provinces of Canada; (iv) that the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to manufacture and the right to receive the payments specified in paragraph (a) of Article 3 thereof and in the last paragraph of Article 17 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), (v) that, when the Equipment shall have been delivered to the Railroad and title

thereto duly transferred to the Assignee as hereinabove provided, such title and the rights of the Assignee in the Equipment as herein provided will be prior and superior to any right of the Railroad or any creditor of the Railroad, and (vi) that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating (i) that the Builder 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, (ii) that the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) that the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to manufacture and the right to receive the payments specified in paragraph (a) of Article 3 thereof and in the last paragraph of Article 17 thereof and reimbursement for taxes

paid or incurred by the Builder as provided in Article 5 thereof), and (v) that title to the units of the Equipment is validly vested in the Assignee, and at the time of delivery thereof was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(f) A favorable opinion of counsel for the Railroad covering the matters referred to in paragraph (d) of this Section 6 and stating that the Railroad 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 that title to the units of Equipment in such Group is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

The obligation of the Assignee hereunder to make payment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Participation Agreement dated as of October 15, 1978, hereinabove referred to, of all the funds to be furnished to the Assignee by the Participant.

7. 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.

8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed for a valid consideration, that it is a valid existing agreement, binding upon the parties thereto in accordance with its terms, 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.

9. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and to the extent applicable, by the Railway Act of Canada. This Agreement and Assignment may not be amended or terminated, except by a written instrument signed by the Builder and the Assignee.

In case of any consolidation or merger to which the Builder or the Assignee shall be a party, or in case of any sale of all or substantially all of the assets of the Builder or the Assignee, the corporation resulting from such consolidation or merger (if other than the Builder or the Assignee) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder, not then performed, of the Builder or the Assignee, as the case may be, and shall become entitled to all rights hereunder of the Builder or the Assignee, as the case may be.

10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The assignee 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 October 15, 1978, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION,
(ELECTRO-MOTIVE DIVISION)

By *P.K. Highland*
Vice-President

ATTEST:

W.K. Thomas
Assistant Secretary

Signed, sealed and delivered by
General Motors Corporation
(Electro-Motive Division) in
the presence of:

W.H. Turner

J.K. Swiecki
Attesting Witnesses

FIRST NATIONAL BANK OF MINNEAPOLIS

By *J. Prunlan*
Vice-President

ATTEST:

G. Kessler
Trust Officer

Signed, sealed and delivered by
First National Bank of
Minneapolis in the presence of:

Donna M. Reid

Pamela H. Smith
Attesting Witnesses

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 11TH day of October, 1978, before me personally appeared _____, 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.

Agnes J. Hayke
Notary Public

(NOTARIAL SEAL)

My Commission Expires Feb. 10, 1982

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

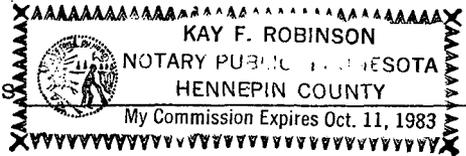
On this 12th day of October, 1978, before me personally appeared **SCANLAN**, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL BANK OF MINNEAPOLIS, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

Kay F. Robinson
Notary Public

(NOTARIAL SEAL)

My Commission Expires



Acknowledgment of Notice of Assignment

Soo Line Railroad Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment and consents to and accepts the terms thereof applicable to it this 13 day of October, 1978.

SOO LINE RAILROAD COMPANY

By

Donald W. Babler
Vice President, Staff