MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

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0-220A018

Date AUG 7 1980
Fee $ 50.00
ICC Washington, D. C.

July 29, 1980

IN REPLY REFER TO: 410.043-55

RECORDATION NO. 12076 Filed & Recorded

AUG 7 1980 -1 00 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED AUG 7 12 52 PM '80 I.C.C. FEE OPERATION BR.

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Conditional Sale Agreement and Agreement and Assignment dated as of June 18, 1980, between General Motors Corporation (Electro-Motive Division) and Missouri-Kansas-Texas Railroad Company, assigned to Texas Commerce Bank National Association, covering Purchase of ten Diesel Electric Locomotives

Dear Mrs. Mergenovich:

In accordance with the provisions of Section 11303 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 seven executed counterparts of the Conditional Sale Agreement dated as of June 18, 1980, 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 Street, Dallas, Texas 75202, which Conditional Sale Agreement was assigned by Agreement and Assignment of even date by Manufacturer to Texas Commerce Bank National Association, P.O. Box 2558, Houston, Texas 77001, counterparts of same enclosed herewith, said Conditional Sale Agreement covering the purchase by the Railroad of ten diesel electric locomotives, which locomotives have been assigned MKT Recording Numbers 619 through 628, both inclusive.

Please return to me the file-marked copies of the Conditional Sale Agreement and 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 these instruments.

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

Yours very truly,

Arthur M. Albin

AMA/da
Enc.

cc: Thomas R. Cox, Vice President, Texas Commerce Bank N.A.
Walter Scott, Administrator of Contracts, Electro-Motive Div.
General Motors Corporation
K. R. Ziebarth

Counterpart

Interstate Commerce Commission
Washington, D.C. 20423

8/7/80

OFFICE OF THE SECRETARY

Arthur M. Albin
General Attorney
Missouri-Kansas-Texas RR Co.
701 Commerce Street
Dallas, Texas 75202

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **8/7/80** at **1:00pm**, and assigned re-recordation number(s). **12076**

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

12076
RECORDATION NO. ..... Filed & Recorded

AUG 7 1980 -1 00 PM

INTERSTATE COMMERCE COMMISSION

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

CONDITIONAL SALE AGREEMENT

Dated as of June 18, 1980

FOR 10 DIESEL ELECTRIC LOCOMOTIVES

AGREEMENT AND ASSIGNMENT

between

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

and

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Dated as of June 18, 1980

THIS AGREEMENT, dated as of June 18, 1980, 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. 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 "Locomotive" and more than one or all of which are hereinafter referred to as "Locomotives") as follows:

> Ten (10) Model SD40-2 diesel electric locomotives with 3000 HP each, bearing Railroad's road numbers 619, 620, 621, 622, 623, 624, 625, 626, 627 and 628, to be constructed pursuant to Manufacturer's Specification 8087, dated January, 1972, as revised March, 1978, in accordance with Proposal 796305, pages 1 through 3, dated July 30, 1979.

2. DELIVERY. The Manufacturer will deliver the Locomotives to the Railroad free on tracks at Parsons, Kansas, not later than August 30, 1980, unless prevented from doing so by any railroad strike or labor condition, in which event said Locomotives should be delivered as soon thereafter as is reasonably possible. Any Locomotives not delivered and accepted on or before September 30, 1980, shall be excluded herefrom.

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, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion.

sabotage, strikes 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.

The Railroad shall accept the Locomotives upon delivery to it at Parsons, Kansas. Each of the Locomotives prior to shipment may be inspected by an authorized representative of the Railroad at Manufacturer's plant. If such Locomotives conform to specifications, such representative of the Railroad shall execute a certificate of inspection (hereinafter called "Certificate of Inspection") stating that such Locomotives have been inspected by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of this agreement, and that such Locomotives are marked in accordance with Article 5 hereof. Upon delivery at Parsons, Kansas, Railroad shall accept said Locomotives and shall execute a Certificate of Acceptance. Such Certificate of Acceptance shall constitute conclusive evidence that the Locomotives conform to specifications and are acceptable to the Railroad in all details. The Certificate of Acceptance shall be delivered to the Manufacturer at the time of the delivery of said Locomotives to Railroad. In the event Railroad has not inspected the Locomotives at the Manufacturer's plant and furnished a Certificate of Inspection at that time, Railroad shall also deliver said Certificate of Inspection at the time of delivery of the Locomotives to Railroad at Parsons, Kansas. Any number of said Locomotives may be included in any such Certificate of Inspection or Acceptance.

3. PURCHASE PRICE AND PAYMENT. The purchase price of all Locomotives shall be $7,857,700, plus estimated freight charges to Railroad's line at McBaine, Missouri, of $27,763.60, or a total purchase price of $7,885,463.60 f.o.b. McBaine, Missouri. If the total freight charges on all said Locomotives shall be more or less than $27,763.60, then said 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 Certificates of Inspection and Acceptance, the Railroad hereby promises to pay to the Manufacturer at its office in LaGrange, Illinois, or at such bank or trust company in the United States of America as the Manufacturer may designate, the aforesaid

price of the Locomotives as follows:

(a) That portion of the actual full purchase price (including freight charges) of all said Locomotives in excess of the sum of $6,960,000 shall be paid by Railroad to Manufacturer upon receipt of invoice therefor.

(b) $6,960,000 of the actual full purchase price (including freight charges) of said Locomotives (being the deferred purchase price thereof) shall be paid by Railroad in thirty-two consecutive quarterly installments, each of which said installments, except the last, shall be in the principal amount of $145,000, the first installment to be due and payable on January 12, 1981, and each subsequent installment on the 12th day of April, July, and October, 1981, and on the 12th day of January, April, July and October each year thereafter with the last installment in the amount of $2,465,000 being due and payable on October 12, 1988, together with interest from closing date on the amount of the balance remaining unpaid from time to time at a rate of one and one-half percent (1-1/2%) per annum over the prime interest rate to be determined initially on closing date, and thereafter on each principal payment date for the next succeeding quarter. Interest shall be payable as it accrued on the same date as the principal and shall be based upon the actual number of days elapsed in a year of 360 days.

The Railroad will pay, to the extent legally enforceable, interest at the rate of one and one-half percentage points per annum over and above the then payable interest rate upon all such amounts, principal and interest, remaining unpaid after the same become due and payable pursuant to the terms hereof.

All payments provided for in this 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 price of said 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 days' written notice to the Manufacturer or its assignee.

4. 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 and/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 pay promptly 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 contract.

5. 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. Any and all replacements of the Locomotives and of parts thereof or of any replacements thereof and additions thereto shall constitute accessions to the Locomotives and be subject to all the terms and conditions of this agreement and 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 the Locomotives the name of the Manufacturer or of the Manufacturer's assignee, as the case may be, in letters of not less than one inch in height followed by the word "Owner." The Railroad will not place any of the Locomotives in operation or exercise any control or dominion over any part thereof until the Locomotives have been so marked on both sides of each Locomotive. 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 any 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 public office 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 Locomotives.

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

6. REPLACEMENT. In the event of 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. The Railroad shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance applicable to such Locomotive or Locomotives or shall replace each such Locomotive at its own cost with a Locomotive of similar type and of substantially as good material and construction as that lost or destroyed and having a cost or fair value (whichever is less) at least equal to the fair value of the Locomotive replaced at the time of replacement. The Railroad will cause any such Locomotive to be marked as provided in Article 5 hereof and to be numbered with the same number as the Locomotive so replaced. Any and all such replacements of Locomotives or any of them and all and any parts shall constitute accessions to the Locomotives and shall be subject to all of the terms and conditions of this agreement as though part of the original Locomotives delivered hereunder and included in the word "Locomotives" as used in this agreement. Title to all such replacement Locomotives shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer (or, if this agreement shall have been assigned, in the name of the assignee or assignees, as the case may be), subject to the provisions hereof.

7. INSURANCE. The Railroad will at all times and at its own expense keep the Locomotives insured (with loss payable to the Manufacturer or 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 interests of the Manufacturer and the Railroad; provided that the contract for such insurance may provide insurance with loss deductible in an amount not exceeding $250,000 net loss per occurrence. In the event such a deductible becomes unobtainable, Railroad will use its best efforts to obtain as low a deductible as possible. Any monies paid under any such insurance policy shall be applied to the then unpaid balance applicable to the Locomotive with respect to which the monies are so paid or shall be applied toward the replacement or repair of such Locomotive. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Manufacturer until replacement or repair of the Locomotive or Locomotives lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Railroad is not then in default in any of the

obligations hereunder, the Manufacturer shall pay over such money to the Railroad. Any monies 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.

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

9. MANUFACTURER'S WARRANTY OF MATERIAL AND WORKMANSHIP. Manufacturer warrants to the Railroad that said 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.

Manufacturer further warrants the Locomotives 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 Locomotives have been operated 250,000 miles, whichever event shall first occur. Manufacturer agrees to correct such defects, which examination shall disclose to Manufacturer's satisfaction to be defective, by repair or replacement f.o.b. factory, and such correction shall constitute fulfillment of Manufacturer's obligation with respect to such defect under this warranty.

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

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY MANUFACTURER EXCEPT THE WARRANTIES SET OUT ABOVE.

10. 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 said laws or rules require the alteration 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.

11. 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 numbers and description of such Locomotives as may have been destroyed and replaced by others, and the then condition and state of repair of the Locomotives. The Railroad additionally will furnish to Manufacturer a Certificate of Insurance in a form and substance satisfactory to Manufacturer. The Railroad will also furnish such other information regarding the Locomotives as may be reasonably 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 said Locomotives have been 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.

12. 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 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, from and after delivery of the Locomotives by the Manufacturer to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, so long as Railroad shall not be in default under this Agreement or Agreement and Assignment, said Locomotives, or any of them, may be operated on the trackage of any other railroad within the boundaries of the continental United States for and in connection with unit train operations or purposes, also subject however to all of the terms and conditions contained in this Agreement.

13. 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 the Locomotives, or any of them superior to the title of the Manufacturer therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the 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 said Locomotives shall be an obligation of the Railroad and shall be secured by and under this contract.

14. 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 and all losses, damages, injuries, claims, and demands arising or resulting from defects of the manufacture or design thereof. However, without waiving any of its rights against the Manufacturer

arising hereunder, the Railroad will save, indemnify, and keep harmless the Manufacturer's assignee from and against all losses, damages, injuries, claims, and demands whatsoever, arising on account of the Locomotives or the use or operation thereof without exception. 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 5, 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 or all of the Locomotives; provided, however, that the Manufacturer and any successor or successors to its manufacturing property and business shall not, as to the Locomotives, be relieved from its warranty covering workmanship and material hereinbefore in Article 9 set forth.

15. PATENT INDEMNITIES. Except in cases of designs, articles or materials specified by the Railroad to the extent 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 infringing or claimed to infringe on any patent or other right.

In case any unit of the Locomotives, or any part thereof, is in such suit held to constitute 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 any such Assignee, the right to continue using such unit or part or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing or remove such unit and refund the purchase price and the transportation and installation costs thereof.

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 Manufacturer shall settle or defend any such claim as it shall see fit. The foregoing states the entire liability of the Manufacturer with regard to patent enfringements regarding said equipment or any part thereof.

16. ASSIGNMENTS. 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, 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 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 Articles 9 and 15 hereof or relieve the Railroad of its obligation to the Manufacturer under Articles 14 and 15 hereof and this Article 16 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the 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 all or 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 to the Locomotives or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment

whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing property and business. Any and 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 and all 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 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 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 thirteen percent (13%) per annum from such payment date to the date of payment by the Railroad.

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.

The term "Manufacturer," wherever used in this agreement, means General Motors Corporation (Electro-Motive Division); provided, however, to the extent that the rights of the Manufacturer hereunder shall have been assigned as to any Locomotive after it has been accepted by the Railroad, as herein provided, and for which payment has been received as provided in said assignment, the term "Manufacturer," with respect to such rights, shall mean the assignee of the Manufacturer; but this proviso shall not limit or affect the obligations of the Manufacturer under this contract.

17. 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 hereof 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 nor transfer possession of said Locomotives to any other firm, person or corporation without first obtaining written consent of the Manufacturer to such sale, assignment or transfer.

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

(a) the Railroad fails 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 3 hereof; or

(b) the Railroad shall, for more than 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 Subchapter IV of Chapter II of the Bankruptcy Code of 1978 as now constituted or as said Subchapter may be

hereafter amended, is filed by or against the Railroad and the trustee or trustees fail to adopt this agreement within 60 days of the date of his or their appointment unless such petition is dismissed prior to the expiration of such 60 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 11361 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 fail to adopt and assume and agree to perform the terms and obligations of this agreement within 60 days of the date of his or their appointment, unless such proceedings are dismissed prior to the expiration of such 60 days; or

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

(f) if the Railroad makes an assignment for the benefit of creditors, indicates in writing its inability to pay its debts as they mature, defaults under this debt obligation or agreement or becomes involved or has a final judgment rendered against it in an amount in excess of $500,000 that is not discharged within 30 days;

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 one and one-half percentage points per annum over the then current interest rate, and the Manufacturer shall be entitled to judgment for the whole amount so due from the Railroad with interest at said rate, together with costs and expenses incurred by Manufacturer or its assignee, including reasonable attorney's fees, and to collect said judgment out of any of the Railroad's property.

The Manufacturer may at its election (and, if before sale or before full performance of this agreement all costs and expenses of the Manufacturer incidental to any such default and to the enforcement by the Manufacturer of the provisions hereof, including reasonable attorney's fees, and all sums which shall then have become due and payable by the Railroad hereunder, other than such part of said purchase price as shall have become due only because of a

declaration under this paragraph as aforesaid, shall have been paid by the Railroad, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to the Manufacturer shall have been made, then and in every such case the Manufacturer may) waive any such event of default and its consequences 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 cured 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 right, upon any other default, or impair any right or remedies consequent thereon.

19. REMEDIES. If the Railroad makes 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/or 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 19 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 same 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 19, the Railroad shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Articles 4 and 7 hereof.

If the Railroad makes 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 19 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 such replacements, improvements, equipment, attachments and accessories, free from any and all 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 said 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 19.

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 the Locomotives, or any of them, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in the next to the last paragraph of this Article 19), 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.

20. 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 any and all rights of redemption.

21. 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.

22. RECORDING. The Railroad will cause this agreement, any assignments hereof or of any interests herein and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 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 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 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.

23. 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 said Locomotives.

24. 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 LaGrange, 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.

25. 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.

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

27. EFFECT AND MODIFICATION OF AGREEMENT. This agreement of conditional sale, together with the specifications hereinabove referred to, constitutes 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.

28. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas or applicable federal law which may supercede Texas law.

IN WITNESS WHEREOF,

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.

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

By P.K. Hughes
Vice President

ATTEST: M. Scott
Assistant Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By W. H. Zeidel
Vice President

ATTEST:

Secretary

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this 6th day of August, 1980, before me personally appeared P. K. HOGLUND, 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 Cook County, Illinois

My Commission expires: September 18, 1983

STATE OF TEXAS)
) ss:
COUNTY OF DALLAS)

On this 29th day of July, 1980, before me personally appeared W. H. Zeidel, 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.

Sue Matlock
Notary Public in and for Dallas County, Texas

My Commission expires: 12/31/80

AGREEMENT AND ASSIGNMENT, dated as of June 18, 1980, 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"), TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, with its principal office at Houston, Texas, (hereinafter called the "Bank") 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").

WHEREAS, the Manufacturer and the Railroad have entered into a Conditional Sale Agreement dated as of June 18, 1980, (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on conditions therein set forth, by the Manufacturer and the purchase by the Railroad of:

> Ten (10) Model SD40-2 diesel electric locomotives with 3000 HP each, bearing Railroad's road numbers 619, 620, 621, 622, 623, 624, 625, 626, 627 and 628, to be constructed pursuant to Manufacturer's Specification 8087, dated January, 1972, as revised March, 1978, in accordance with Proposal 796305, pages 1 through 3, dated July 30, 1979.

for an aggregate purchase price of $7,885,463.60.

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 payments specified in Article 3 thereof, reimbursement for taxes as provided in Article 4 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 in respect to which the Bank shall pay to the Manufacturer the purchase price thereof (provided, however, that the Bank shall not be required to pay the Manufactuer any amount on account of such purchase price in excess of $6,960,000, the excess, if any, over $6,960,000 for all Locomotives being represented by the Railroad's initial cash payment to the Manufacturer provided for in Article 3 of the Conditional Sale Agreement, or if less than ten Locomotives are delivered by Manufacturer, then the Bank shall not be required to pay any amount of such purchase price in excess of $696,000 for each such Locomotive so delivered), pursuant to Article 3 thereof (such Locomotives being hereinafter called the Locomotives) and in and to any and 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 and 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 to its obligations to construct and deliver the Locomotives or in respect to its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Manufacturer or the Bank under Articles 3, 14 and 16 of the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad in respect to 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, of 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 by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect to the manufacture or delivery of the Locomotives or under Articles 9 and 15 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 properties and business and shall not be enforceable against the Bank or or any party or parties in whom title to the Locomotives or any of them or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or transfer or of successive sales,

assignments or transfers; and the Manufacturer will save harmless and idemnify the Bank from any expense, losses or damage suffered by reason of any defense, set-off, counterclaim, or recoupment of Railroad resulting from the breach by Manufacturer of any terms or conditions of said Conditional Sale Agreement. The Manufacturer will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgements, 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. Railroad 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 appliances, devices, or materials specified or required by the Railroad which are 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 each of the Locomotives to the Railroad, marking bearing the words in letters not less than one inch in height:

"TEXAS COMMERCE BANK NATIONAL ASSOCIATION, OWNER"

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

6. The Bank will pay to Manufacturer following delivery to and acceptance by Railroad of said Locomotives the full purchase price of said Locomotives (including freight charges) as stated in the Conditional Sale Agreement up to the Amount of $6,960,000 upon receipt by the Bank of the following documents in form and substance satisfactory to it, payment to be made within five days following receipt of said documents (such payment date being the "closing date"):

(a) A Bill of Sale from the Manufacturer to the Bank, transferring to the Bank title to all Locomotives so delivered and warranting said title to be free, as of the time of delivery to the Railroad, of all liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

(b) Certificates of Inspection and Acceptance signed by an authorized representative of the Railroad stating that the Locomotives covered by such Certificates have been inspected and accepted by it on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement, and further stating that there was plainly, distinctly, permanently, and conspicuously stenciled on each side of each Locomotive at the time of its acceptance the words in letters not less than one inch in height:

"TEXAS COMMERCE BANK NATIONAL ASSOCIATION, OWNER"

(c) A duplicate of the Manufacturer's invoice covering each Locomotive so accepted, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of prices set forth in the invoice.

(d) An Opinion of Counsel from the Railroad substantially as set forth in Exhibit A, attached hereto and made a part hereof.

(e) An Opinion of Counsel from the Manufacturer substantially as set forth in Exhibit B, attached hereto and made a part hereof.

(f) Corporate resolutions of both Railroad and Manufacturer authorizing execution of the Conditional Sale Agreement and the Agreement and Assignment and compliance with the provisons thereof.

(g) Certificates of incumbency covering all officers or representatives of Railroad and Manufacturer executing any agreements or documents relating to the Conditional Sale Agreement, Agreement and Assignment or any related or required document.

7. The Bank may assign its rights under the Conditional Sale Agreement, as a whole in respect to 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 thereunder in respect to such Locomotives. In the event of any such assignment, any such subsequent or successive 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 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 Manufacturer and that said agreement 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 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 payments in amount equal to excess of final purchase price of all Locomotives over the sum of $6,960,000) have been made by the Railroad to the Manufacturer under said Conditional Sale Agreement.

9. It is agreed that all sums, both principal and interest, due hereunder shall be paid by the Railroad to said Bank at its place of business in Houston, Harris County, Texas.

10. It is expressly understood and agreed that the right, title and interest of the Manufacturer assigned herein to Bank and the security interest created herein in favor of Bank shall also secure any and all indebtedness, including but not limited to accrued and unpaid interest, of Railroad to Bank resulting in connection with any Line of Credit, not to exceed $1,000,000, made available by Bank to Railroad, during the term of this Agreement and the Conditional Sale Agreement attached hereto. All rights and remedies granted to Manufacturer under the terms and provisions of the Conditional Sale Agreement or arising pursuant to this Agreement and Assignment shall also be available to Bank and inure to the benefit of the Bank in the event Railroad

breaches and/or defaults under the terms and provisions of any loan, hypothecation, pledge or other agreement executed by Railroad and Bank in connection with said Line of Credit and such breach or default is not promptly cured pursuant to the terms and provisions of the applicable loan, hypothecation, pledge or other agreement. In the event of such breach or default not promptly cured, Bank may exercise all of its rights and remedies hereunder or arising under Section 19 of the Conditional Sale Agreement attached hereto.

11. It is expressly understood and agreed that the right, title, and interest of the Manufacturer assigned herein to Bank and the security interest created herein in favor of Bank because of its payment to Manufacturer shall also secure any and all indebtedness of Railroad to Bank resulting in connection with any Irrevocable Letter of Credit issued on or before the expiration date hereof by Bank for the account of Railroad to EXXON Company U.S.A., Division of Exxon Corporation (hereafter "Exxon"), which Irrevocable Letter of Credit may be issued to Exxon in order to secure timely and full payments of amounts due and owing by Railroad to Exxon arising from Railroad's purchases of diesel fuel or other petroleum products from Exxon. All rights and remedies granted to Manufacturer under the terms and provisions of the Conditional Sale Agreement or as arising pursuant to this Agreement and Assignment shall also be available to Bank and inure to the benefit of the Bank in the event it is necessary for Bank to make any payments whatsoever to Exxon pursuant to the provisions of any such Irrevocable Letter of Credit.

12. The Railroad will have this Assignment filed, registered and recorded in the same manner as provided in Article 22 of the Conditional Sale Agreement hereby assigned.

13. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together shall constitute but one and the same instrument. The 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 June 18, 1980, 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.

14. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Texas or applicable federal law which may supercede Texas law.

IN WITNESS WHEREOF, the Manufacturer, the Bank and the Railroad Company have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, as of the day and year first above written.

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

By P. K. Hoglund
Vice President

ATTEST: W. Scott
Assistant Secretary

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

By Thomas R. Cox
Vice President

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By W. H. Zeidler
Vice President

ATTEST:

A. M. Allin
Asst. Secretary

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared P. K. HOGLUND, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a corporation, and that he executed the same as the act of said corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of August, 1980.

T. K. Gorecki
Notary Public in and for Cook County, Illinois

My Commission expires: September 18, 1983

STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Thomas R. Cox, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, and that he executed the same as the act of said association for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of August, 1980.

Fawn Manguson
Notary Public in and for Harris County, Texas

My Commission expires:

FAWN MANGUSON
Notary Public in Harris County, Texas
My Commission Expires Oct 2 1981

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 1st day of August, 1980, before me personally appeared W. H. Zeidel, to me personally known, who, being by me duly sworn, says that he is Vice President of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals 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.

Ruth Murdock
Notary Public in and for Dallas
County, Texas

My Commission expires: 12/31/80

ACKNOWLEDGMENT OF NOTICE OF
ASSIGNMENT

Missouri-Kansas-Texas Railroad Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By W. H. Zeidel
Vice President

DATED: AUG 4 1980

EXHIBIT A

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

WILLIAM A. THIE
GENERAL COUNSEL
JOE C. CRAWFORD
GENERAL SOLICITOR

ARTHUR M. ALBIN
GENERAL ATTORNEY
MICHAEL E. ROPER
COMMERCE COUNSEL

IN REPLY REFER TO: 410.043-55

General Motors Corporation
Electro-Motive Division
LaGrange, Illinois 60525

and

Texas Commerce Bank National Association
P.O. Box 2558
Houston, Texas 77001

Re: Conditional Sale Agreement and Agreement and Assignment dated as of June 18, 1980 - purchase of ten Diesel-Electric Locomotives by Missouri-Kansas-Texas Railroad Company

Gentlemen:

As counsel for Missouri-Kansas-Texas Railroad Company (the "Railroad"), in connection with the Conditional Sale Agreement dated as of June 18, 1980, between the Railroad and General Motors Corporation (Electro-Motive Division) (the "Manufacturer"), providing for the purchase of ten diesel electric locomotives, Model SD40-2 (the "Units"), said Conditional Sale Agreement having been assigned to Texas Commerce Bank National Association under an Agreement and Assignment dated as of June 18, 1980, I have examined such corporate and other documents and records and such questions of law as I have considered necessary or appropriate for this opinion. On the basis of such examination, I advise you that in my opinion:

1. The Railroad is corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into the Conditional Sale Agreement and the Agreement and Assignment, and the Railroad has the power to own its properties and to carry on its business as common carrier by railroad under Part I of the Interstate Commerce Act.

2. The Conditional Sale Agreement and the Agreement and Assignment have been duly authorized, executed, and delivered by the Railroad and constitute valid, legal, and binding agreements enforceable in accordance with their terms.

3. The Conditional Sale Agreement and Agreement and Assignment, as filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of the Interstate Commerce Act, as amended, protects the title and interest of the Manufacturer and of the Assignee in and to the Units in the United States of America and no filing, recording, or deposit (or giving of notice) with any other Federal, State or Local Government or agency or instrumentality thereof is necessary to protect the title and interest of the Manufacturer or the Assignee in and to the Units.

4. No approval is required from any public regulatory body with respect to the entering into or performance of the Conditional Sale Agreement.

5. The entering into and performance of the Conditional Sale Agreement will not result in any breach of, or constitute a default on, the part of the Railroad under any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Railroad is a party or by which it may be bound.

6. No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of the Railroad now attaches nor hereafter will attach to the Units, themselves, nor in any manner affects nor will affect adversely the right, title, and interest of the Manufacturer and of the Assignee therein; provided, however, that such liens may attach to the rights of the Railroad which accrue to it under the Conditional Sale Agreement in accordance with the provisions thereof.

Very truly yours,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Arthur M. Albin
General Attorney

AMA/da

EXHIBIT B

GENERAL MOTORS CORPORATION
General Motors Building · 767 Fifth Avenue, New York, New York 10022
Room 2600
Telephone
(212) 486-5000

Texas Commerce Bank National Association
Houston, Texas 77001

Dear Sirs:

With reference to the construction, conditional sale and delivery of ten (10) 3000 H.P. Model SD40-2 Diesel Electric Locomotives by General Motors Corporation (Electro-Motive Division) to Missouri-Kansas-Texas Railroad Company (hereinafter called "Railroad") and the assignment and transfer of the right, title and interest in and to such locomotives to Texas Commerce Bank National Association, as Assignee, I advise as follows:

An attorney in the Office of the General Counsel for General Motors Corporation has examined, among other things:

(a) The Certificate of Incorporation of General Motors Corporation as amended to date;

(b) The By-Laws of General Motors Corporation as amended to date;

(c) The Conditional Sale Agreement dated as of June 18, 1980 between General Motors Corporation and the Railroad;

(d) Agreement and Assignment dated as of June 18, 1980 between General Motors Corporation and the Assignee; and

(e) Bill of Sale No. from General Motors Corporation to the Assignee covering ten (10) 3000 H.P. Model SD40-2 Diesel Electric Locomotives bearing the Railroad's Road Numbers 619 through 628 inclusive.

On the basis of the foregoing and on the basis of such further examination of documents, corporate records, resolutions and matters of law as has been deemed relevant, it is my opinion that:

(1) General Motors Corporation is a duly organized and existing corporation in good standing under the laws of the its state of incorporation, and has power and authority to own its properties and to carry on its business as now conducted;

(2) The Conditional Sale Agreement has been duly authorized, executed and delivered by General Motors Corporation and assuming due authorization, execution and delivery by the other party thereto, is a legal and valid instrument binding upon General Motors Corporation and enforceable against General Motors Corporation in accordance with its terms;

(3) The Agreement and Assignment has been duly authorized, executed and delivered by General Motors Corporation and assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon General Motors Corporation in accordance with its terms;

(4) The Assignee is vested with all the rights, titles, interests, powers, privileges and remedies of General Motors Corporation purported to be assigned to the Assignee by the Agreement and Assignment; and

(5) The aforesaid Bill of Sale has been duly authorized, executed and delivered by General Motors Corporation and title to the locomotives described therein is validly vested in the Assignee, and such locomotives, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all liens and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

Very truly yours,

John J. Higgins
Assistant General Counsel