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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of March 15 , 1972

between

BERWICK FORGE AND FABRICATING, A
DIVISION OF WHITTAKER CORPORATION

and

THE STATE TEACHERS RETIREMENT
BOARD OF OHIO

AGREEMENT AND ASSIGNMENT dated as of March 15, 1972, between BERWICK FORGE AND FABRICATING, A DIVISION OF WHITTAKER CORPORATION (hereinafter called the "Manufacturer") and THE STATE TEACHERS RETIREMENT BOARD OF OHIO with offices at 275 East Broad Street, Columbus, Ohio 43215 (hereinafter called the "Assignee").

WHEREAS the Manufacturer and INDUSTRIAL LEASING CORPORATION (hereinafter called the "Vendee") have entered into a Conditional Sale Agreement dated as of March 15, 1972 (hereinafter called the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (each unit of said equipment being hereinafter called individually a "Unit" and, collectively the "Units"); and

WHEREAS the Vendee and DETROIT, TOLEDO and IRONTON RAILROAD COMPANY (hereinafter called the "Lessee") have entered into a Lease dated as of March 15, 1972 with respect to the Units (hereinafter called the "Lease");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this "Assignment") WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

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

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

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

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

without any recourse, however, against the Manufacturer for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Units in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 12 and 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 12, 13 and 24 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Vendee with respect to the Units shall be and remain enforceable by the Vendee and its respective successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may

become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Units to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Vendee that at the time of delivery of each Unit to the Vendee under the Conditional Sale Agreement it will have legal title to such Unit and good and lawful right to sell such Unit, free of all claims, liens, security interests and other encumbrances of any nature by, through or under the Manufacturer except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Vendee to pay the Owner's Cost of such Unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim

whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims by, through or under the Manufacturer originating prior to said delivery of such Unit by the Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. The Manufacturer will not deliver any of the Units to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada (1970-RSC).

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Owner's Cost of the Units, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Vendee or the Lessee arising out of the breach by the Manufacturer of any obligation with respect to the Units or the construction, delivery or warranty thereof, or under Articles 12 and 13 of the Conditional Sale Agreement, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Vendee or the Lessee. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee

herein described, and will move or take other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim whatsoever asserted by the Vendee or the Lessee therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except in cases of designs, processes and combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liabilities, 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 any or all of the Units of any design, article or material which infringes or is claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Vendee or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim, lien, security

interest or other encumbrance on any Units in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

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

" , SECURITY OWNER"

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

SECTION 5. On the Settlement Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to the Units, the Assignee shall pay to the Manufacturer \$16,666.67 for each Unit settled for on said date but in no event to exceed in the aggregate \$1,250,000. The Manufacturer will give the Assignee not less than five days notice of the Settlement Date. It is agreed that the obligation of the Assignee to participate in the payment of the Owner's Cost is subject

to the fulfillment to the satisfaction of the Assignee, of the following conditions on or prior to the Settlement Date:

(a) There shall have been delivered to the Assignee and its counsel (with a signed counterpart to the Vendee) the following documents in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel, Messrs. Cadwalader, Wickersham & Taft:

(i) A bill of sale from the Manufacturer to the Assignee confirming the transfer to the Assignee of security title to each Unit which it has manufactured and warranting to the Assignee and to the Vendee that at the time of delivery to the Vendee under the Conditional Sale Agreement the Manufacturer had legal title to such Unit and good and lawful right to sell such Unit and title to such Unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement with respect to such Unit and the rights of the Lessee under the Lease (and of any sublessee under any authorized sublease);

(ii) a Certificate of Acceptance with respect to each Unit as contemplated by Article 2 of the Con-

ditional Sale Agreement with respect to such Unit and Lease Supplements as contemplated by Section 1 of the Lease; and

(iii) an invoice addressed to the Assignee for each Unit accompanied by, or having endorsed thereon, a certification by the Vendee and the Lessee as to the correctness of the price of such Unit as set forth in said invoice.

(b) The Vendee and the Assignee shall have received a favorable opinion addressed to such Assignee from Messrs. Edwards & Angell, counsel for the Vendee, satisfactory in scope and substance to the Vendee and the Assignee and special counsel for the Assignee as to:

(i) the Vendee being legally incorporated, validly existing and in good standing under the laws of the State of Rhode Island;

(ii) the due authorization, execution and delivery by the Vendee of the Conditional Sale Agreement, the Lease, including each Lease Supplement, the Acknowledgment of Notice of Assignment affixed to this Agreement and Assignment and the Collateral Assignment of Lease and Agreement;

(iii) the validity and binding effect of the instruments referred to in clause (ii) immediately above upon the Vendee, assuming the due authorization, execution and delivery by the other party or parties thereto;

(iv) the entering into and performance under the documents referred to in Clause (ii) im-

mediately above not contravening any law binding upon the Vendee or resulting in any breach of, or constituting a default under, or resulting in the creation of any lien, charge or encumbrance upon the Vendee's interest in the Units pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Vendee is a party or by which it may be bound; and

(v) 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 interests therein of the Vendee, attaching or hereafter attaching to the Units so as to affect adversely the Vendee's right, title and interest therein.

Such opinion may be qualified so as not to express or purport to express any opinion as to laws other than the laws of the State of Rhode Island and the federal laws of the United States.

(c) The Vendee and the Assignee shall have received the opinion referred to in Section 17 of the Lease.

(d) The Vendee and the Assignee shall have received a favorable opinion addressed to the Vendee and the Assignee from counsel for the Manufacturer, satisfactory in scope and substance to the Vendee and the Assignee and their counsel as to:

(i) the due authorization, valid existence and good standing of such Manufacturer, and the power, authority and legal right of such Manufacturer to execute, deliver and carry out the terms of the Conditional Sale Agreement and the Assignment with respect to such Manufacturer;

(ii) the due authorization, execution and delivery by such Manufacturer of the Conditional Sale Agreement and the Assignment with respect to such Manufacturer;

(iii) the valid and binding effect of the Conditional Sale Agreement and the Assignment with respect to such Manufacturer;

(iv) the Assignee being vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by such Manufacturer in the Agreement and Assignment; and

(v) the security title to each Unit with respect to such Manufacturer being validly vested in the Assignee and each such Unit, at the time of delivery thereof to the Vendee, under the Conditional Sale Agreement with respect thereto, was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the aforesaid Conditional Sale Agreement and the rights of the Lessee under the Lease.

(e) The Assignee shall have received from Messrs. Cadwalader, Wickersham & Taft, special counsel for the Assignee, a favorable opinion, addressed to the Assignee, dated the Settlement Date and satisfactory in form and substance to the Assignee, stating that the Assignee is justified in relying on the opinions furnished pursuant to subsections (b), (c) and (d) of this Section 5 and covering such other matters incident to the transactions contemplated hereby as the Assignee may reasonably request. Such opinion may be qualified so as not to express or purport to express any opinion as to laws other than the laws of the State of New York and the federal laws of the United States.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving opinions specified in this Section 5, counsel may in fact rely as to the title to the Units at the time of delivery to the Vendee under the Conditional Sale Agreement upon the opinion of counsel for the Manufacturer. In giving the opinion specified in subparagraph (a) of this Section 5, special counsel for the Assignee may state (1) to the extent the opinions set forth in such opinion are also stated in, or involve conclusions stated in, the opinions referred to in subparagraphs (b), (c) and (d) of this Section 5, special counsel for the Assignee have relied completely upon the opinions referred to in said subparagraphs and (2) the validity, binding effect and enforceability of any rent and other sums payable under the Lease are subject to any federal laws relating to taxes imposed upon or measured by income or profit.

The obligation of the Assignee hereunder to make payment for any Unit is hereby expressly conditioned upon payment by, or on behalf of, the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article

3 of the Conditional Sale Agreement. The Manufacturer agrees for the benefit of the Vendee that, irrespective of anything contained in the Conditional Sale Agreement to the contrary notwithstanding, the Vendee shall have no obligation to make any payment with respect to any Unit provided for in subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement unless on the Settlement Date (i) all of the conditions of this Section 5 relating to the Settlement Date have been satisfied in a manner satisfactory to Vendee and it shall have received a copy of each document referred to in this Section 5 to be delivered on such Settlement Date and (ii) simultaneously with such payment by Vendee the Assignee shall make the payment to the Manufacturer required by the terms of this Section 5 to be made by the Assignee on such Settlement Date.

Neither the Assignee nor the Vendee shall be obligated to make any of the above-mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement.

It is agreed that the obligation of the Assignee and the Vendee to make the initial payment in respect of the Owner's Cost shall be subject to the fulfillment, to the satisfaction of such party, of the following additional conditions precedent prior to or on the Settlement Date:

(a) The following documents shall have been duly authorized, executed and delivered by the respective party or parties thereto and shall be in full force and effect on the Settlement Date, and an executed counterpart of each thereof shall have been delivered to the Vendee and the Assignee:

- (i) the Lease;
- (ii) Purchase Contract Assignment and Assumption and Consent and Agreement;
- (iii) Conditional Sale Agreement;
- (iv) Agreement and Assignment and Acknowledgement of Notice of Assignment; and
- (v) Collateral Assignment of Lease and Agreement and Lessee's Consent and Agreement;

(b) Such party shall have received the following, in each case in form and substance satisfactory to such party:

- (i) a copy of resolutions of the Board of Directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee, duly authorizing the lease by the Lessee of the Units under the Lease and the execution, delivery and performance by the Lessee of the Lease, the Purchase Contract Assignment and Assumption, the Lessee's Consent and Agreement

to the Collateral Assignment of Lease and Agreement and the Acknowledgement of Notice of Assignment of this Agreement, together with incumbency certificates as to the person or persons authorized to execute and deliver said documents on behalf of the Lessee;

(ii) a copy of resolutions of the Board of Directors of the Manufacturer, certified by the Secretary or an Assistant Secretary of the Manufacturer, evidencing the due authorization, execution, delivery and performance by the Manufacturer of this Agreement, the Conditional Sale Agreement and the Consent and Agreement to the Purchase Contract Assignment and Assumption, together with an incumbency certificate as to the person or persons authorized to execute and deliver said documents on behalf of the Manufacturer;

(iii) a certificate signed by a duly authorized officer of the Vendee as to the authority and signatures of the officers of the Vendee who will execute the Lease, the Conditional Sale Agreement, the Purchase Contract Assignment and Assumption, the Acknowledgement of Notice of Assignment of this Agreement, the Collateral Assignment of Lease and Agreement and other documents contemplated by any of the

foregoing documents;

(iv) reproduced copies of all consents or approvals with respect to the transactions contemplated hereby which are required to be obtained by the Lessee, certified by the Secretary or Assistant Secretary of the Lessee; and

(v) such other documents and evidence with respect to the Lessee or any other party hereto as the Vendee or the Assignee or their respective counsels may reasonably request in order to establish the consummation of the transactions contemplated, the taking of all corporate proceedings in connection therewith and compliance with the conditions set forth in Section 5 hereof.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Units (and all related rights, titles and interests in, to and under the Conditional Sale Agreement) with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee represents and warrants that it is acquiring its interest in the indebtedness in respect of the Owner's Cost of the Units under the Conditional Sale Agreement for its own account for investment and not with a view to distribution or resale thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. Subject to the foregoing, the Assignee may assign all or any of

rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder provided that the Assignee secure from its assignee the representation and warranty stated in the first sentence hereof. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Vendee) it is a valid and existing agreement binding upon the Manufacturer 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 or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

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

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of March 15, 1972, the actual date or dates of execution hereof by the parties hereto is or are respectively the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed

and duly attested, all as of the date first above written.



BERWICK FORGE AND FABRICATING, A
DIVISION OF WHITTAKER CORPORATION

By Frederick J. Hill
(Authorized Signatory)

Attest:

Walter F. Vercesi
(Authorized Signatory)

THE STATE TEACHERS RETIREMENT
BOARD OF OHIO

By James L. Sublett
(Assignee)
JAMES L. SUBLETT, Secretary

Attest:

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF LUZERNE (COLUMBIA) } ss:

On this 14TH day of APRIL, 1972, before me personally appeared Frederick J. Hilsinger, to me personally known, who, being by me duly sworn, says that he is an Authorized Signatory of BERWICK FORGE AND FABRICATING, A DIVISION OF WHITTAKER CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

Lloyd H. Adams

Notary Public

LOYD H. ADAMS, NOTARY PUBLIC
BERWICK BOROUGH, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 19, 1974
Member, Pennsylvania Association of Notaries

My Commission expires:

STATE OF *Ohio* }
COUNTY OF *Franklin* } ss:

On this 14TH day of April, 1972, before me personally appeared *James S. Hill*, to me personally known, who, being by me duly sworn, says that he is *Secretary* of THE STATE TEACHERS RETIREMENT BOARD OF OHIO, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

Arthur F. Wohlfrom Jr.

Notary Public

ARTHUR F. WOHLFROM Jr.
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 24, 1976

My Commission expires:

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 15, 1972.

INDUSTRIAL LEASING CORPORATION

By

[Signature]
Title: *President*

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY

By

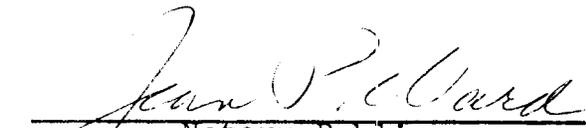
R. C. Courtney
Title: *Vice President*

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

On this 31st day of March , 1972, before me personally appeared R. C. Courtney to me personally known, who being by me duly sworn, says that he is the Vice President of Detroit, Toledo and Ironton Railroad Company , that the seal 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.

[SEAL]

My commission expires _____


Notary Public
JEAN P. WARD
Notary Public, State of New York
No. 24-1150010
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1973

STATE OF RHODE ISLAND)
 : ss.:
COUNTY OF PROVIDENCE)

On this 29th day of March , 1972, before me personally appeared John W. Wibel to me personally known, who being by me duly sworn, says that he is the President of Industrial Leasing Corporation , that the seal 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.

[SEAL]


Notary Public

My commission expires June 30, 1976