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AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1972

between

GENERAL ELECTRIC COMPANY

and

FIRST SECURITY BANK OF IDAHO,
NATIONAL ASSOCIATION,
as Agent

AGREEMENT AND ASSIGNMENT dated as of April 1, 1972, between the corporation first named following the testimonium below (hereinafter called the Builder), and FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, with offices at 119 North 9th Street, Boise, Idaho 83707, acting as Agent under a Finance Agreement dated as of April 1, 1972 (hereinafter called the Finance Agreement), said Agent, so acting, being hereinafter called the Assignee.

WHEREAS the Builder, FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION (hereinafter called the Vendee) and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of April 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

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

SECTION 1. *Incorporation of Model Provisions.* Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the

document entitled "Model Assignment Provisions for Lease Transactions" annexed to the Conditional Sale Agreement as Part III of Annex C thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full herein.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to the payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof and of the amounts due from the Vendee to the Builder under the Conditional Sale Agreement;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 4 thereof, in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the 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 Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Guarantor 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 Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Article 14 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Builder contained in Articles 2, 3, 4, 6, 8, 14, 15 and 20 and the first paragraph of Article 23 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Guarantor with the terms and agreements

on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, AGENT, SECURITY OWNER".

SECTION 6. Section 6 of the Model Assignment Provisions is herein incorporated as Section 6 hereof except that the second sentence of the second paragraph is amended to read "Counsel for each of the parties may assume due authorization, execution and delivery of the documents executed by the other parties in rendering its opinion; counsel for the Guarantor may in rendering its opinion rely on the opinion of counsel for the Builder as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement and in giving the opinions specified in said subparagraphs (e), (g) and (h), counsel may rely, to the extent appropriate, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Vendee as to such matter."

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. 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 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, 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, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 10. 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 this Assignment is dated as of April 1, 1972, for convenience, 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 officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

General Electric Company,

by .....

~~Vice President~~
General Manager
Locomotive Products Department

[corporate seal]

Attest:

.....

~~Assistant~~ Secretary
Attesting

First Security Bank of Idaho,
National Association, as
Agent,

by .....

Vice President

[corporate seal]

Attest:

.....

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ERIE } ss.:

On this 9th day of May, 1972, before me personally appeared Olaf F. Voss, to me personally known, who, being by me duly sworn, says that he is ~~a Vice President~~ General Manager - Locomotive Products Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission Expires

STATE OF UTAH
COUNTY OF SALT LAKE } ss.:

On this [illegible] day of [illegible], 1972, before me personally appeared GEORGE L. DENTON, JR. to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

[NOTARIAL SEAL]

My Commission Expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 1, 1972.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,

by .....
Senior Vice President

THE WESTERN PACIFIC RAILROAD
COMPANY,

by .....
Vice President