

CRAVATH, SWAINE & MOORE RECEIVED

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11612/A

11612

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RECORDATION NO. 11612/A  
Filed 1425  
MAR 28 1980 - 9 50 AM

RECORDATION NO. 11612  
Filed 1425  
MAR 28 1980 - 9 50 AM

INTERNATIONAL COMMERCE COMMISSION

0-083A018

INDEPENDENT STATE COMMERCE COMMISSION

Date MAR 28 1980

Fee \$ 50.00

ICC Washington, D. C.

March 25, 1980

The Atchison, Topeka and Santa Fe Railway Company  
12-1/4% Conditional Sale Indebtedness Due October 1, 1995

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Atchison, Topeka and Santa Fe Railway Company for filing and recordation counterparts of the following documents:

*See number*

*A*

(a) Conditional Sale Agreement dated as of March 1, 1980, between The Atchison, Topeka and Santa Fe Railway Company, and each of General Motors Corporation (Electro-Motive Division), PACCAR Inc, Difco Inc., Santa Fe Rail Equipment Co. and General Electric Company;

(b) Agreement and Assignment dated as of March 1, 1980, between Harris Trust and Savings Bank, as Agent, and each of General Motors Corporation (Electro-Motive Division), PACCAR Inc, Difco Inc., Santa Fe Rail Equipment Co. and General Electric Company;

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Assignee-Agent:

Harris Trust and Savings Bank,  
111 West Monroe Street,  
Chicago, Illinois 60690.

## (2) Builders-Vendors:

General Motors Corporation  
(Electro-Motive Division),  
La Grange, Illinois 60525.

PACCAR Inc,  
1400 North 4th Street,  
Renton, Washington 98055.

Difco Inc.,  
Differential Avenue,  
Findley, Ohio 45840.

Santa Fe Rail Equipment Co.,  
109 West Ninth Street,  
Topeka, Kansas 66628.

General Electric Company,  
2901 East Lake Road,  
Erie, Pennsylvania 16531.

## (3) Railroad:

The Atchison, Topeka and Santa Fe  
Railway Company,  
80 East Jackson Boulevard,  
Chicago, Illinois 60604.

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Builders-Vendors and the Railroad.

The equipment covered by the aforementioned documents consists of the following:

10 2,300 h.p. Model GP-39-2 Diesel Electric Locomotives bearing identifying numbers of the Railroad 3696-3705, both inclusive;

54 62' Insulated Box Cars, AAR Mechanical Designation XLI, bearing identifying numbers of the Railroad AT-625378-AT-625431, both inclusive;

300 61' Insulated Box Cars, AAR Mechanical Designation XLI, bearing identifying numbers of the Railroad AT-622800-AT-623099, both inclusive;

30 77-ton, 50 cu. yd. Air Dump Gondola Cars, AAR Mechanical Designation MWD, bearing identifying numbers of the Railroad AT-186230-AT-186259, both inclusive;

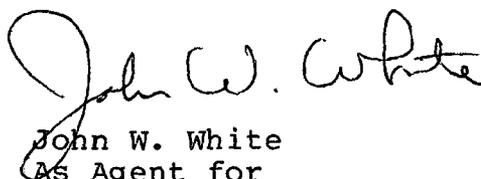
107 60' Plain Box Cars, AAR Mechanical Designation XF, bearing identifying numbers of the Railroad AT-612000-AT-612106, both inclusive; and

24 3,000 h.p. Model C-30-7 Diesel Electric Locomotives, bearing identifying numbers of the Railroad 8099-8122, both inclusive.

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



John W. White  
As Agent for  
The Atchison, Topeka and Santa Fe  
Railway Company

Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

22A

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

3/28/80

OFFICE OF THE SECRETARY

**John W. White**  
**Cravath, Swaine & Moore**  
**One Chase Manhattan plaza**  
**New York, N.Y. 10005**

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 **3/28/80** at **9:50am**, and assigned re-  
recording number (s) - **11612, & 11612-A**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

11612 A

RECORDATION NO. .... Filed 1425

MAR 28 1980 -9 50 AM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref.: 1274-095]

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

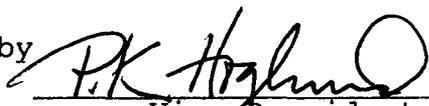


[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by   
\_\_\_\_\_  
Vice President

PACCAR INC,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

DIFCO INC.,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

GENERAL ELECTRIC COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

HARRIS TRUST AND SAVINGS BANK,  
as Agent,

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
hereby acknowledges due notice of and consents to the  
assignment made by the foregoing Agreement and Assignment  
as of March 1, 1980.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

\_\_\_\_\_  
President

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this *24<sup>th</sup>* day of March 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me P. K. HOGLUND duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, 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.

*J. K. Procki*  
\_\_\_\_\_  
Notary Public

My Commission Expires September 18, 1983

[Notarial Seal]

STATE OF WASHINGTON, )  
 ) ss.:  
COUNTY OF KING, )

On this \_\_\_\_\_ day of March 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, 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]

STATE OF OHIO,        )  
                          )  ss.:  
COUNTY OF HANCOCK,)

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., 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]

STATE OF ILLINOIS,)  
                          )  ss.:  
COUNTY OF COOK,     )

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., 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]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is 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]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of HARRIS TRUST AND SAVINGS BANK, 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]

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by

[Corporate Seal]

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

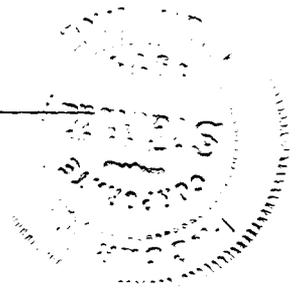
Attest:

\_\_\_\_\_  
Assistant Secretary

PACCAR INC,

by

J. J. Galley  
Vice President



[Corporate Seal]

Attest:

Don Brown  
ASSISTANT Secretary

DIFCO INC.,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

GENERAL ELECTRIC COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

HARRIS TRUST AND SAVINGS BANK,  
as Agent,

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
hereby acknowledges due notice of and consents to the  
assignment made by the foregoing Agreement and Assignment  
as of March 1, 1980.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

\_\_\_\_\_  
President

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of March 1980, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, 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]

STATE OF WASHINGTON, )  
 ) ss.:  
COUNTY OF KING, )

On this <sup>25<sup>th</sup></sup> day of March 1980, before me personally appeared *J. J. Golley*, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, 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.

*Virginia L. Dwyer*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

STATE OF OHIO,        )  
                          )  ss.:  
COUNTY OF HANCOCK,)

On this        day of March 1980, before me  
personally appeared  
to me personally known, who, being by me duly sworn, says  
that he is a Vice President of DIFCO INC., 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]

STATE OF ILLINOIS,)  
                          )  ss.:  
COUNTY OF COOK,     )

On this        day of March 1980, before me  
personally appeared  
to me personally known, who, being by me duly sworn, says  
that he is the President of SANTA FE RAIL EQUIPMENT CO.,  
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]



AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

PACCAR INC,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

DIFCO INC.,

by

*Fred F. Flowers*

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

[Corporate Seal]

Attest:

*Mary Schindler*  
\_\_\_\_\_  
Asst. Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

GENERAL ELECTRIC COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

HARRIS TRUST AND SAVINGS BANK,  
as Agent,

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
hereby acknowledges due notice of and consents to the  
assignment made by the foregoing Agreement and Assignment  
as of March 1, 1980.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

\_\_\_\_\_  
President



STATE OF OHIO,        )  
                          )  ss.:  
COUNTY OF HANCOCK,)

On this <sup>15<sup>th</sup></sup> day of March 1980, before me personally appeared FRED F. FLOWERS to me personally known, who, being by me duly sworn, says that he is a ~~Vice~~ President of DIFCO INC., 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.

*North E. Buckland*  
\_\_\_\_\_  
Notary Public  
Exp 7-9-82

[Notarial Seal]

STATE OF ILLINOIS,)  
                          )  ss.:  
COUNTY OF COOK,     )

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., 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]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is 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]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of HARRIS TRUST AND SAVINGS BANK, 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]

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

PACCAR INC,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

DIFCO INC.,

by

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

[Corporate Seal]

Attest:

*G. A. Scheckel*  
ASSISTANT Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

*J. P. Briscoe*  
President



[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

GENERAL ELECTRIC COMPANY,

by

\_\_\_\_\_

HARRIS TRUST AND SAVINGS BANK,  
as Agent,

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
hereby acknowledges due notice of and consents to the  
assignment made by the foregoing Agreement and Assignment  
as of March 1, 1980.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

  
\_\_\_\_\_  
VICE President - FINANCE



STATE OF OHIO, )  
 ) ss.:  
COUNTY OF HANCOCK, )

On this        day of March 1980, before me personally appeared  
to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., 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]

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this <sup>24th</sup> day of March 1980, before me personally appeared A.J. Briscoe  
to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., 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.

E.D. Gray  
Notary Public

My Commission Expires January 19, 1981

[Notarial Seal]



COMMONWEALTH OF PENNSYLVANIA,)
)
) ss.:
COUNTY OF ERIE, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is 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]

STATE OF ILLINOIS,)
)
) ss.:
COUNTY OF COOK, )

On this day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of HARRIS TRUST AND SAVINGS BANK, 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]

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

PACCAR INC,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

DIFCO INC.,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

*scf*  
\_\_\_\_\_  
Attesting Secretary  
*campbell*

GENERAL ELECTRIC COMPANY,

by

*R. M. Mory*  
\_\_\_\_\_

MANAGER-MARKETING  
LOCOMOTIVE MARKETING DEPARTMENT

HARRIS TRUST AND SAVINGS BANK,  
as Agent,

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
hereby acknowledges due notice of and consents to the  
assignment made by the foregoing Agreement and Assignment  
as of March 1, 1980.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

by

\_\_\_\_\_  
President

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK, )

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, 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]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING, )

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, 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]

STATE OF OHIO,        )  
                          )  ss.:  
COUNTY OF HANCOCK,)

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., 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]

STATE OF ILLINOIS,)  
                          )  ss.:  
COUNTY OF COOK,     )

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., 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]

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss.:  
COUNTY OF ERIE, )

On this 25<sup>th</sup> day of March 1980, before me personally appeared R.D. Morey to me personally known, who, being by me duly sworn, says that he is *Manager-Marketing locomotive Marketing 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.

*Doris W. Chilcott*  
Notary Public

Doris W. Chilcott, Notary Public  
Lawrence Park Twp., Erie Co., Pa.  
My Commission Expires Nov. 26, 1983

[Notarial Seal]

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of HARRIS TRUST AND SAVINGS BANK, 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]

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

and

PACCAR INC,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.,

and

GENERAL ELECTRIC COMPANY,

and

HARRIS TRUST AND SAVINGS BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

AGREEMENT AND ASSIGNMENT, dated as of March 1, 1980, between HARRIS TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee"), and each of GENERAL MOTORS CORPORATION (Electro-Motive Division), PACCAR INC, DIFCO INC., SANTA FE RAIL EQUIPMENT CO. and GENERAL ELECTRIC COMPANY (collectively the "Builders" or severally the "Builder").

WHEREAS the Builders and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by each Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) the security interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, and when and as payment (other than amounts owing under supplemental invoices) is made (i) by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and (ii) to such Builder by the Railroad pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and, except as aforesaid, in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each 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 such 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 to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on

its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment of such Builder under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings and recordations referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the

Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental

invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the

effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Assignee and the Investors, to the effect set forth in clauses (i) (insofar as it relates to the Railroad), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) this Assignment is a legal, valid and binding instrument and (iii) if any units of Equipment were subject to an Interim Document (as defined in the CSA) (each such Interim Document to be specified), such Interim Document has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery of the first such unit;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, addressed to the Assignee and the Railroad, to the effect set forth in clause (iv) of subparagraph (d) above in respect of its Equipment insofar as such matters relate to such Builder and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and (iv) the bill of sale referred to in subparagraph (a) above has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created

by the CSA and this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, after due inquiry, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) the representations and warranties of the Railroad contained in Paragraph 15 of the Finance Agreement are true and correct on and as of such Closing Date with the same effect as if made on and as of such Closing Date and (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief, after due inquiry, no other tax liens have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) to the extent requested by counsel for the Assignee, a release or releases in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, arising by, through or under any Interim Document relating to such Group; and

(i) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, 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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion

of counsel for such Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the laws of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for such Builder as to claims, liens, security interests and other encumbrances arising from, through or under such Builder; and in giving the opinion specified in said subparagraph (f), counsel may assume that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment, and upon compliance by the Builder of the Equipment to be paid for with the provisions of Article 3 of the CSA. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment (other than payments in respect of supplemental invoices), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment of the sums due it hereunder and under the CSA, upon request of the Assignee it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be executed by both the Assignee and any Builder so long as each such party has executed one counterpart hereof and delivered the same to Messrs. Cravath, Swaine & Moore, as special counsel for the Assignee, at their offices in New York, New York, whereupon this Assignment shall become effective between the Assignee and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Assignment or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, 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. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns.

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.

GENERAL MOTORS CORPORATION,  
(Electro-Motive Division),

by

[Corporate Seal]

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

Attest:

\_\_\_\_\_  
Assistant Secretary

PACCAR INC,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

DIFCO INC.,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

GENERAL ELECTRIC COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary





STATE OF OHIO,        )  
                          )    ss.:  
COUNTY OF HANCOCK,)

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., 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.

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Notary Public

[Notarial Seal]

STATE OF ILLINOIS, )  
                          )    ss.:  
COUNTY OF COOK,    )

On this        day of March 1980, before me personally appeared to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., 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.

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Notary Public

[Notarial Seal]

