

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

ROBERT J. MCLEAN  
EXECUTIVE VICE PRESIDENT-FINANCE  
BRUCE G. MCPHEE  
ASSISTANT VICE PRESIDENT AND TREASURER  
D. E. ENRIGHT  
ASSISTANT TREASURER  
E. F. GRADY  
ASSISTANT TREASURER

RECORDATION NO. 11757/A  
MAY 1 1980-3 52 PM  
APR 30, 1980

11757  
RECORDATION NO. Filed 1425  
MAY 1 1980-3 52 PM  
INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue  
Washington, D.C. 20423

No. 0-122A110  
Date MAY 1 1980  
Fee \$ 50.00  
ICC Washington, D. C.

RECEIVED  
MAY 1 3 48 PM '80  
I.C.C.  
FEE OPERATION BR.

Re: Southern Pacific Transportation Company  
Conditional Sale Agreement  
Dated as of April 15, 1980

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a), I enclose herewith on behalf of Southern Pacific Transportation Company, for filing and recordation, counterparts of the following:

- (1) Conditional Sale Agreement dated as of April 15, 1980, between each of General Motors Corporation (Electro-Motive Division) and ACF Industries, Incorporated, and Southern Pacific Transportation Company; and
- (2) Agreement and Assignment dated as of April 15, 1980, between First Pennsylvania Bank N.A., as Agent and each of General Motors Corporation (Electro-Motive Division) and ACF Industries, Incorporated.

The addresses of the parties to these agreements are:

Builders (Vendors):

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

ACF Industries, Incorporated  
750 Third Avenue  
New York, New York 10017

Railroad (Purchaser):

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105

*C. J. Koppelen*

Ms. Agatha L. Mergenovich  
Page Two  
April 30, 1980

Agent (Assignee, Vendor):

First Pennsylvania Bank N.A.  
15th and Chestnut Streets  
Philadelphia, Pennsylvania 19101

The equipment covered by these agreements consists of 24 GP-38-2, 2,000 h.p. diesel electric locomotive (AAR designation B-B), bearing road numbers SP 4818-4841; 22 SD-40-2, 3,000 h.p. diesel electric locomotives (AAR designation C-C), bearing road numbers SP 8256-8277; one GP-40-2, 3,000 h.p. diesel electric locomotive (AAR designation B-B), bearing road number SP 7959; and 155 100-ton, 4,650 cubic foot covered hopper cars (AAR designation L0), bearing road numbers SP 496545-496699. Each unit of such equipment bears the legend "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission".

Please accept for recordation one complete counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number, and return them to the delivering messenger.

Very truly yours,



BRUCE G. MCPHEE  
Assistant Vice President  
and Treasurer

Enclosures

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

5/1/80

OFFICE OF THE SECRETARY

Bruce G. McPhee  
Assist. Vice President & Treasurer  
Southern Pacific Transp. Co.  
Southern Pacific Building  
One Market Plaza  
San Francisco, Calif. 94105  
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 5/1/80 at 3:55pm, and assigned re-  
recording number(s). 11757 & 11757-A

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

11757A

REGISTRATION NO. .... Filed 1425

MAY 1 1980 - 8 53 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of  
April 15, 1980

Between

FIRST PENNSYLVANIA BANK N.A., as Agent

and each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

ACF INDUSTRIES, INCORPORATED

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AGREEMENT AND ASSIGNMENT dated as of April 15, 1980, between FIRST PENNSYLVANIA BANK N.A., a national banking association acting as agent under a finance agreement dated as of the date hereof (the "Finance Agreement"), said First Pennsylvania Bank N.A., in its capacity as such Agent being hereinafter called the "Assignee", and each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and ACF INDUSTRIES, INCORPORATED (each individually a "Builder", both collectively the "Builders").

#### RECITALS

The Builders and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad"), have entered into a conditional sale agreement dated as of the date hereof (the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Railroad of the railroad equipment described in Schedule II to the Conditional Sale Agreement (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 WITNESSETH: That, in consideration of the sum of One Dollar (\$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, the parties do hereby agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to such Builder of the amount required to be paid to such Builder under section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive

the payments specified in sections 4.3 and 4.6(b) thereof and in the last paragraph of section 15.3 thereof and reimbursements for taxes paid or incurred by such Builder as provided in section 6 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all such Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

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 Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in section 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to such Builder contained or referred to in sections 2, 3, 4, 6, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of section 15 of the Conditional Sale Agreement, all obligations of such Builder to the Railroad with respect to its 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

Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. CONSTRUCTION AND DELIVERY OF EQUIPMENT. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement 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 Conditional Sale Agreement); 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 Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in section 19 of the Conditional Sale Agreement 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. BUILDER TO INDEMNIFY. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, 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 section 15 of the Conditional Sale Agreement, 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 to indemnify, protect and hold harmless the Assignee and any Investor under the Finance Agreement 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 rights. 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 Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment 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. PAYMENTS TO BUILDER. The Assignee, on each Closing Date fixed as provided in section 4 of the Conditional Sale Agreement with respect to a Group (as defined in section 4.4 of the Conditional Sale Agreement) of the Equipment, shall pay to each 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 section 4.5 of the Conditional Sale Agreement 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 section 4.6, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in section 15 of the Conditional Sale Agreement, at least five Business Days (as defined in the Conditional Sale Agreement) prior to such Closing Date, the following documents, in form and scope satisfactory to the Assignee and to each of the Investors and to special counsel for the Investors hereinafter mentioned, in such number of counterparts as may be reasonably requested by such special counsel:

(a) a bill of sale from each Builder whose Equipment shall be included in such Group to the Assignee transferring to the Assignee the title of such Builder in such Equipment, warranting to the Assignee and to the Railroad that at the time of delivery of the units of Equipment in such Group under the Conditional Sale Agreement such Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), 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 Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by section 3.1 of the Conditional Sale Agreement;

(c) an invoice of each Builder whose Equipment shall be included in such Group for the units of Equipment in such Group and any supplemental invoice (as described in section 4.5 of the Conditional Sale

Agreement) accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Debevoise, Plimpton, Lyons & Gates, special counsel for the Investors named in the Finance Agreement, dated as of such Closing Date and addressed to the Assignee and each such Investor, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery thereof by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable against the parties thereto in accordance with its terms, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and each Builder and is a legal, valid and binding instrument enforceable against the parties thereto in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by each Builder and the Assignee and is a legal, valid and binding instrument, enforceable against the parties thereto in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by each Builder under this Assignment, (v) title to and a security interest in the units of the Equipment in such Group is validly vested in the Assignee (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 Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and no other filing or recordation is necessary to establish, perfect and protect in any state of the United States of America or in the District of Columbia the rights of the Assignee in the units of Equipment in such Group or in the Conditional Sale Agreement, (viii) such counsel has caused the register maintained pursuant to 49 U.S.C. § 11303 to be searched and no record has been found of any interest in or claim, lien, security interest or other encumbrance against any unit of the Equipment in such Group or against the Conditional Sale Agreement which would rank prior to

or equal with rights of the Assignee in such units or in the Conditional Sale Agreement; (ix) registration of the Conditional Sale Agreement and this Assignment or the 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, (x) the opinions of counsel specified in subparagraphs (e), (f) and (g) of this section 4 are satisfactory in scope and form to such special counsel and each such Investor is justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any of the Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date and addressed to the Assignee and each such Investor, to the effect set forth in clauses (i) (but limited as to enforceability to the Railroad), (ii) (but limited as to enforceability to the Railroad), (v), (vi), (vii), (viii) and (ix) of subparagraph (d) above 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 now conducted and to enter into and carry out the terms of the Finance Agreement and the Conditional Sale Agreement and to consent to this Assignment, (ii) the execution, delivery and performance by the Railroad of the Finance Agreement, the Conditional Sale Agreement and the consent to this Assignment do not require any approval of the stockholders of the Railroad or any approval or consent of any holder (or trustee therefor) of any indebtedness or other obligation of the Railroad or any affiliate thereof, and will not result in any breach of, or constitute a default under, or result in the creation of any lien, security interest or other encumbrance in respect of any property of the Railroad, pursuant to the charter or by-laws of the Railroad or any agreement, instrument, judgment, order, statute, rule or regulation applicable to the Railroad or any of its properties; (iii) each unit of the Equipment in such Group is free and clear of all claims, liens, security interests and other encumbrances resulting from any act of or claim against the Railroad (other than those created by the Conditional Sale Agreement); (iv) in the event the Railroad should become a debtor in a

proceeding under Chapter 11 of the Bankruptcy Code (11 U.S.C. Chapter 11), the interests of the Assignee in any unit of the Equipment in such Group are such that the Assignee would be entitled to the benefits of section 1168 of the Bankruptcy Code (11 U.S.C. § 1168) with respect to such units; and (y) in the event that a court should determine that California law applies and that the issue is raised in a California court, neither of the Conditional Sale Agreement nor the Conditional Sale Indebtedness is invalid or unenforceable in accordance with its respective terms on account of usury (with respect to the principal, premium or interest on the Conditional Sale Indebtedness), nor would any holder of a Certificate of Interest be liable on account of usury in respect of any amount paid to such holder in respect of the Conditional Sale Indebtedness;

(f) an opinion of counsel for each Builder whose Equipment is being settled for on such Closing Date, dated as of such Closing Date and addressed to the Assignee and each such Investor, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above 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 now conducted and to enter into and carry out the terms of the Conditional Sale Agreement and this Assignment, (ii) the Conditional Sale Agreement 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 and (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 enforceable against such Builder in accordance with its terms, and (iv) title to the units of the Equipment in such Group, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement);

(g) an opinion of counsel for First Pennsylvania Bank N.A. (the "Bank"), dated the Closing Date

and addressed to each such Investor, stating that the Bank is a national banking association duly organized, validly existing and in good standing under the laws of the United States and has the corporate power and authority to execute, deliver and carry out the Finance Agreement and this Assignment, (ii) the Finance Agreement and this Assignment have been duly authorized, executed and delivered by the Bank and constitute legal and valid instruments binding upon the Bank and enforceable against it in accordance with their respective terms, and (iii) the Certificates of Interest delivered pursuant to the Finance Agreement on or prior to such Closing Date have been duly executed and delivered by the Bank;

(h) a certificate of a Vice President or the Treasurer of the Railroad, dated as of such Closing Date, to the effect that (i) no Potential Event of Default or Event of Default (as defined in the Conditional Sale Agreement) shall have occurred and is then continuing, and (ii) 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, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment; and

(i) a receipt from each Builder whose Equipment is being settled for on such Closing Date 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 its 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), (f) and (g) of this section 4, counsel may (i) qualify any opinion to the effect that an 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 of general application which may affect the enforcement of creditors' rights generally, (ii) state that the enforceability of the Conditional Sale Agreement in accordance with its terms may be limited by applicable laws affecting the remedies provided therein, which laws, however, no not, in the

opinion of such counsel, affect the validity of the Conditional Sale Agreement or make the remedies provided therein or otherwise available inadequate for the realization of the benefits provided by the Conditional Sale Agreement, and (iii) state that no opinion is expressed as to the enforceability of section 12.7 of the Finance Agreement. Counsel for each of the parties may, in giving their respective opinions, rely on the opinions of counsel for other parties as to the due authorization, execution and delivery of any document by such other parties, and may assume due authorization, execution and delivery of any document by the Investors. In giving the opinions specified in subparagraphs (d) and (e) of this section 4, counsel may rely on an opinion of Messrs. Alvord and Alvord as to the filing of documents with the Interstate Commerce Commission and as to the absence of liens of record on the register maintained by the Interstate Commerce Commission and counsel may assume that each Builder whose Equipment is being settled for on such Closing Date had good title to such Builder's Equipment at the time of delivery thereof under the Conditional Sale Agreement; and in giving the opinion specified in such subparagraph (d), counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for such Builder or the opinion of counsel for the Railroad or the opinion of counsel for the Bank as to such matter.

All corporate and other proceedings in connection with the consummation of the transactions on any Closing Date, and all documents and instruments incident thereto, shall be satisfactory in form and substance to each Investor and its special counsel and each Investor and its special counsel shall have received such counterpart originals or certified or other copies of all such documents and instruments and of all records of corporate proceedings in connection with such transactions as each Investor or its special counsel may reasonably request.

The Assignee shall not be required to make payment for the Equipment assigned hereunder:

(i) on any Closing Date, unless the Assignee shall have on deposit on such Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment;  
or

(ii) if a Potential Event of Default or an Event

of Default shall have occurred and be continuing under the Conditional Sale Agreement.

In the event that the Assignee shall not make any such payment, 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, except that, if the Assignee shall not make payment in respect of a supplemental invoice for any Equipment after having made a payment in respect of a preliminary invoice for such Equipment, the Assignee shall retain all right, title and interest in and to such Equipment, but such Builder shall retain, as an unsecured obligation, the right to receive and collect from the Railroad the payment due under such supplemental invoice.

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

SECTION 6. BUILDERS' REPRESENTATIONS, ETC.  
Each Builder hereby severally:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement 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 Conditional Sale Agreement is a valid and existing agreement binding upon it 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 or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinafter 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, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

#### SECTION 7. MISCELLANEOUS.

7.1. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided that the parties shall be entitled to all the rights conferred as provided in section 22.6 of the Conditional Sale Agreement.

7.2. Rights and Obligations Several. The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in the first paragraph hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

7.3. Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. 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 acknowledgement hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due 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 \_\_\_\_\_  
Vice President

[CORPORATE SEAL]

Attest:

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

ACF INDUSTRIES, INCORPORATED

By E. H. Holahan  
Vice President

[CORPORATE SEAL]

Attest:

[Signature]  
Assistant Secretary

FIRST PENNSYLVANIA BANK N.A.,  
as Agent

By [Signature]  
~~Vice President~~  
P. M. GIULIANTE  
SENIOR CORPORATE TRUST OFFICER  
& ASSISTANT SECRETARY

[CORPORATE SEAL]

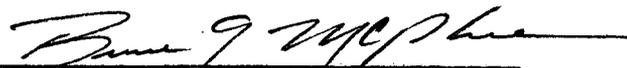
Attest

[Signature]  
Assistant Secretary  
T. A. O'CONNELL  
CORPORATE TRUST OFFICER  
& ASSISTANT SECRETARY

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

SOUTHERN PACIFIC TRANSPORTATION COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of April 15, 1980.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

BY   
Assistant Vice President  
and Treasurer

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

On this 15<sup>th</sup> day of May 1980, before me personally appeared P. M. Giuliano, to me personally known, who, being by me duly sworn, says that she is a Senior Corporate Trust Officer of FIRST PENNSYLVANIA BANK N.A., that one of the seals affixed to the foregoing instrument is the national banking association seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and she acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Dorothy Doster  
Notary Public

DOROTHY DOSTER:  
NOTARY PUBLIC, State of New York  
No. 31-1002947  
Qualified in New York County  
Commission Expires March 30, 1981

[NOTARIAL SEAL]

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

On this \_\_\_\_\_ day of April 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), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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 NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

On this 30th day of April in the year 1980,  
before me personally came E. H. Holahan,  
to me known, who, being by me duly sworn, did depose and say  
that he is Vice President of ACF INDUSTRIES, INCORPORATED,  
the corporation described in and which executed the above  
instrument; that he knows the seal of said corporation; that  
one of the seals affixed to said instrument is such corpor-  
ate seal; that it was so affixed by order of the Board of  
Directors of said corporation, and that he signed his name  
thereto by like order.

Anthony M. Romanello  
Notary Public

[NOTARIAL SEAL]

ANTHONY M. ROMANELLO  
Notary Public, State of New York  
No. 31-4703607  
Qualified in New York County  
Commission Expires March 30, 1981





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INTERSTATE COMMERCE COMMISSION

**AGREEMENT AND ASSIGNMENT**

Dated as of  
April 15, 1980

Between

FIRST PENNSYLVANIA BANK N.A., as Agent

and each of

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

ACF INDUSTRIES, INCORPORATED



AGREEMENT AND ASSIGNMENT dated as of April 15, 1980, between FIRST PENNSYLVANIA BANK N.A., a national banking association acting as agent under a finance agreement dated as of the date hereof (the "Finance Agreement"), said First Pennsylvania Bank N.A., in its capacity as such Agent being hereinafter called the "Assignee", and each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and ACF INDUSTRIES, INCORPORATED (each individually a "Builder", both collectively the "Builders").

#### RECITALS

The Builders and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad"), have entered into a conditional sale agreement dated as of the date hereof (the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Railroad of the railroad equipment described in Schedule II to the Conditional Sale Agreement (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 WITNESSETH: That, in consideration of the sum of One Dollar (\$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, the parties do hereby agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to such Builder of the amount required to be paid to such Builder under section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive

the payments specified in sections 4.3 and 4.6(b) thereof and in the last paragraph of section 15.3 thereof and reimbursements for taxes paid or incurred by such Builder as provided in section 6 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all such Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

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 Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in section 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to such Builder contained or referred to in sections 2, 3, 4, 6, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of section 15 of the Conditional Sale Agreement, all obligations of such Builder to the Railroad with respect to its 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

Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. CONSTRUCTION AND DELIVERY OF EQUIPMENT. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement 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 Conditional Sale Agreement); 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 Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in section 19 of the Conditional Sale Agreement 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. BUILDER TO INDEMNIFY. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, 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 section 15 of the Conditional Sale Agreement, 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 to indemnify, protect and hold harmless the Assignee and any Investor under the Finance Agreement 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 rights. 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 Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment 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. PAYMENTS TO BUILDER. The Assignee, on each Closing Date fixed as provided in section 4 of the Conditional Sale Agreement with respect to a Group (as defined in section 4.4 of the Conditional Sale Agreement) of the Equipment, shall pay to each 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 section 4.5 of the Conditional Sale Agreement 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 section 4.6, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in section 15 of the Conditional Sale Agreement, at least five Business Days (as defined in the Conditional Sale Agreement) prior to such Closing Date, the following documents, in form and scope satisfactory to the Assignee and to each of the Investors and to special counsel for the Investors hereinafter mentioned, in such number of counterparts as may be reasonably requested by such special counsel:

(a) a bill of sale from each Builder whose Equipment shall be included in such Group to the Assignee transferring to the Assignee the title of such Builder in such Equipment, warranting to the Assignee and to the Railroad that at the time of delivery of the units of Equipment in such Group under the Conditional Sale Agreement such Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), 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 Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by section 3.1 of the Conditional Sale Agreement;

(c) an invoice of each Builder whose Equipment shall be included in such Group for the units of Equipment in such Group and any supplemental invoice (as described in section 4.5 of the Conditional Sale

Agreement) accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Debevoise, Plimpton, Lyons & Gates, special counsel for the Investors named in the Finance Agreement, dated as of such Closing Date and addressed to the Assignee and each such Investor, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery thereof by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable against the parties thereto in accordance with its terms, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and each Builder and is a legal, valid and binding instrument enforceable against the parties thereto in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by each Builder and the Assignee and is a legal, valid and binding instrument, enforceable against the parties thereto in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by each Builder under this Assignment, (v) title to and a security interest in the units of the Equipment in such Group is validly vested in the Assignee (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 Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and no other filing or recordation is necessary to establish, perfect and protect in any state of the United States of America or in the District of Columbia the rights of the Assignee in the units of Equipment in such Group or in the Conditional Sale Agreement, (viii) such counsel has caused the register maintained pursuant to 49 U.S.C. § 11303 to be searched and no record has been found of any interest in or claim, lien, security interest or other encumbrance against any unit of the Equipment in such Group or against the Conditional Sale Agreement which would rank prior to

or equal with rights of the Assignee in such units or in the Conditional Sale Agreement; (ix) registration of the Conditional Sale Agreement and this Assignment or the 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, (x) the opinions of counsel specified in subparagraphs (e), (f) and (g) of this section 4 are satisfactory in scope and form to such special counsel and each such Investor is justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any of the Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date and addressed to the Assignee and each such Investor, to the effect set forth in clauses (i) (but limited as to enforceability to the Railroad), (ii) (but limited as to enforceability to the Railroad), (v), (vi), (vii), (viii) and (ix) of subparagraph (d) above 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 now conducted and to enter into and carry out the terms of the Finance Agreement and the Conditional Sale Agreement and to consent to this Assignment, (ii) the execution, delivery and performance by the Railroad of the Finance Agreement, the Conditional Sale Agreement and the consent to this Assignment do not require any approval of the stockholders of the Railroad or any approval or consent of any holder (or trustee therefor) of any indebtedness or other obligation of the Railroad or any affiliate thereof, and will not result in any breach of, or constitute a default under, or result in the creation of any lien, security interest or other encumbrance in respect of any property of the Railroad, pursuant to the charter or by-laws of the Railroad or any agreement, instrument, judgment, order, statute, rule or regulation applicable to the Railroad or any of its properties; (iii) each unit of the Equipment in such Group is free and clear of all claims, liens, security interests and other encumbrances resulting from any act of or claim against the Railroad (other than those created by the Conditional Sale Agreement); (iv) in the event the Railroad should become a debtor in a

proceeding under Chapter 11 of the Bankruptcy Code (11 U.S.C. Chapter 11), the interests of the Assignee in any unit of the Equipment in such Group are such that the Assignee would be entitled to the benefits of section 1168 of the Bankruptcy Code (11 U.S.C. § 1168) with respect to such units; and (v) in the event that a court should determine that California law applies and that the issue is raised in a California court, neither of the Conditional Sale Agreement nor the Conditional Sale Indebtedness is invalid or unenforceable in accordance with its respective terms on account of usury (with respect to the principal, premium or interest on the Conditional Sale Indebtedness), nor would any holder of a Certificate of Interest be liable on account of usury in respect of any amount paid to such holder in respect of the Conditional Sale Indebtedness;

(f) an opinion of counsel for each Builder whose Equipment is being settled for on such Closing Date, dated as of such Closing Date and addressed to the Assignee and each such Investor, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above 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 now conducted and to enter into and carry out the terms of the Conditional Sale Agreement and this Assignment, (ii) the Conditional Sale Agreement 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 and (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 enforceable against such Builder in accordance with its terms, and (iv) title to the units of the Equipment in such Group, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement);

(g) an opinion of counsel for First Pennsylvania Bank N.A. (the "Bank"), dated the Closing Date

and addressed to each such Investor, stating that the Bank is a national banking association duly organized, validly existing and in good standing under the laws of the United States and has the corporate power and authority to execute, deliver and carry out the Finance Agreement and this Assignment, (ii) the Finance Agreement and this Assignment have been duly authorized, executed and delivered by the Bank and constitute legal and valid instruments binding upon the Bank and enforceable against it in accordance with their respective terms, and (iii) the Certificates of Interest delivered pursuant to the Finance Agreement on or prior to such Closing Date have been duly executed and delivered by the Bank;

(h) a certificate of a Vice President or the Treasurer of the Railroad, dated as of such Closing Date, to the effect that (i) no Potential Event of Default or Event of Default (as defined in the Conditional Sale Agreement) shall have occurred and is then continuing, and (ii) 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, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment; and

(i) a receipt from each Builder whose Equipment is being settled for on such Closing Date 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 its 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), (f) and (g) of this section 4, counsel may (i) qualify any opinion to the effect that an 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 of general application which may affect the enforcement of creditors' rights generally, (ii) state that the enforceability of the Conditional Sale Agreement in accordance with its terms may be limited by applicable laws affecting the remedies provided therein, which laws, however, no not, in the

opinion of such counsel, affect the validity of the Conditional Sale Agreement or make the remedies provided therein or otherwise available inadequate for the realization of the benefits provided by the Conditional Sale Agreement, and (iii) state that no opinion is expressed as to the enforceability of section 12.7 of the Finance Agreement. Counsel for each of the parties may, in giving their respective opinions, rely on the opinions of counsel for other parties as to the due authorization, execution and delivery of any document by such other parties, and may assume due authorization, execution and delivery of any document by the Investors. In giving the opinions specified in subparagraphs (d) and (e) of this section 4, counsel may rely on an opinion of Messrs. Alvord and Alvord as to the filing of documents with the Interstate Commerce Commission and as to the absence of liens of record on the register maintained by the Interstate Commerce Commission and counsel may assume that each Builder whose Equipment is being settled for on such Closing Date had good title to such Builder's Equipment at the time of delivery thereof under the Conditional Sale Agreement; and in giving the opinion specified in such subparagraph (d), counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for such Builder or the opinion of counsel for the Railroad or the opinion of counsel for the Bank as to such matter.

All corporate and other proceedings in connection with the consummation of the transactions on any Closing Date, and all documents and instruments incident thereto, shall be satisfactory in form and substance to each Investor and its special counsel and each Investor and its special counsel shall have received such counterpart originals or certified or other copies of all such documents and instruments and of all records of corporate proceedings in connection with such transactions as each Investor or its special counsel may reasonably request.

The Assignee shall not be required to make payment for the Equipment assigned hereunder:

(i) on any Closing Date, unless the Assignee shall have on deposit on such Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment;  
or

(ii) if a Potential Event of Default or an Event

of Default shall have occurred and be continuing under the Conditional Sale Agreement.

In the event that the Assignee shall not make any such payment, 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, except that, if the Assignee shall not make payment in respect of a supplemental invoice for any Equipment after having made a payment in respect of a preliminary invoice for such Equipment, the Assignee shall retain all right, title and interest in and to such Equipment, but such Builder shall retain, as an unsecured obligation, the right to receive and collect from the Railroad the payment due under such supplemental invoice.

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

SECTION 6. BUILDERS' REPRESENTATIONS, ETC.  
Each Builder hereby severally:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement 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 Conditional Sale Agreement is a valid and existing agreement binding upon it 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 or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinafter 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, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

#### SECTION 7. MISCELLANEOUS.

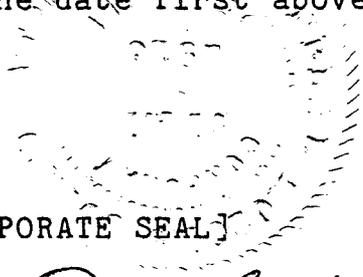
7.1. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided that the parties shall be entitled to all the rights conferred as provided in section 22.6 of the Conditional Sale Agreement.

7.2. Rights and Obligations Several. The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in the first paragraph hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

7.3. Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. 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 acknowledgement hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due 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 P.K. Hoglund  
Vice President

[CORPORATE SEAL]

Attest: [Signature]  
Assistant Secretary

ACF INDUSTRIES, INCORPORATED

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

[CORPORATE SEAL]

Attest:  
\_\_\_\_\_  
Assistant Secretary

FIRST PENNSYLVANIA BANK N.A.,  
as Agent

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

[CORPORATE SEAL]

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

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

SOUTHERN PACIFIC TRANSPORTATION COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of April 15, 1980.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

By \_\_\_\_\_  
Assistant Vice President  
and Treasurer

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

On this \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of FIRST PENNSYLVANIA BANK N.A., that one of the seals affixed to the foregoing instrument is the national banking association seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

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

On this 30<sup>th</sup> day of April 1980, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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. Lovick  
Notary Public

My Commission Expires September 18, 1983

[NOTARIAL SEAL]

