

RECORDATION NO. 5194-B Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of July 15, 1970

among

ERIE LACKAWANNA RAILWAY COMPANY,

GIRARD TRUST BANK,

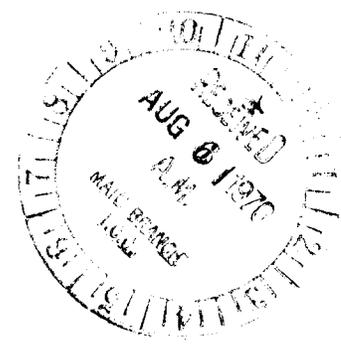
and

JOHN J. PRENDERGAST

and

JANE S. KUBIAK,
as Trustees,

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MAIL ROOMS
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LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1970, among ERIE LACKAWANNA RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessee), GIRARD TRUST BANK, a bank and trust company organized under the banking law of the Commonwealth of Pennsylvania (hereinafter called the Bank) and JOHN J. PRENDERGAST and JANE S. KUBIAK, as Trustees under a Trust Agreement dated as of July 15, 1970 (hereinafter called the Trust Agreement and said Trustees being together hereinafter called the Lessor), with the Bank and GIRARD TRUST BANK, as Fiscal Agent.

WHEREAS, the Lessor, the Bank and the Lessee have entered into a Conditional Sale Agreement dated as of July 15, 1970 (hereinafter called the Security Document), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Document to THE FIDELITY BANK, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Security Document on or prior to November 15, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee here-

under or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled “Model Lease Provisions” annexed to the Security Document as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease, except that the term the “Security Documents” as used therein shall be deemed to mean the Security Document.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semi-annual payments, each in an amount equal to 5.9776% of the Purchase Price (as defined in the Security Document). The first of the semi-annual payments shall be payable five days prior to six months after the Closing Date (as defined in the Security Document) and subsequent installments shall be paid semi-annually thereafter five days prior to each semi-annual and annual anniversary of the Closing Date (or if any such date is not a business day, on the next succeeding business day), *provided, however*, that if any Unit is delivered and accepted in accordance with § 2 hereof prior to the Closing Date therefor, the Lessee agrees to pay as additional rental an amount equal to .0332% of the Purchase Price of each Unit so delivered and accepted for each day elapsed from and including the date of the Certificate of Delivery to the Closing Date.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in immediately available Philadelphia or Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor c/o Girard Trust Bank, as Fiscal Agent for John J. Prendergast and Jane S. Kubiak, as Trustees (hereinafter called the Fiscal Agent), Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101 or at such other place as the Lessor shall designate in writing. The Lessor shall cause the Fiscal Agent on or before the date upon which payments to the Vendor under the Security Document are due and owing, to make such payments (out of funds received hereunder) in immediately available Philadelphia or Federal funds to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreement and Assignment between the Builder and the Vendor, dated as of July 15, 1970, under which the Security Document is being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document accrued at the time such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance may be retained by the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason

of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms thereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final semi-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in

and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document. If a Declaration of Default (as defined in the Security Document) should be made under the Security Document due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Security Document as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 17 of the Security Document that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor

with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103.79%	16	71.75%
2	103.79	17	68.21
3	103.46	18	64.58
4	102.77	19	60.86
5	101.70	20	57.03
6	100.24	21	53.11
7	98.40	22	49.08
8	96.25	23	44.99
9	93.81	24	40.87
10	91.08	25	36.68
11	88.09	26	32.59
12	85.00	27	28.44
13	81.82	28	24.13
14	78.55	29	19.65
15	75.19	30 and there- after	15.00

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. Such insurance shall include the Vendor and the Lessor as additional named insureds as their interests may appear. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such net insurance proceeds after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or re-

ceiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon

the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a $8\frac{1}{2}\%$ per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof.

§ 13. *Purchase Option.* Not more than six months prior to the expiration of the term of this Lease, the Lessee may cause the Appraiser (as hereinafter defined) to make, at the expense of the Lessee, an appraisal of the fair market value of the Units, and the report of the Appraiser setting forth its determination of the then fair market value shall be delivered to the Lessor and the Lessee not later than three months and 15 days prior to the expiration of the term of this Lease. Such fair market value as so determined in respect of any Unit is hereinafter called the Market Value of such Unit.

If the Lessee shall cause such appraisal to be made, the Lessee, by written notice delivered to the Lessor not later than three months prior to the expiration of the term of this Lease, unless an Event of Default as defined in § 10 hereof shall have occurred and be continuing hereunder, may elect to purchase all, but not fewer than all, the Units, the Market Value of which shall have been determined as herein provided, for an aggregate purchase price in cash equal to the Market Value of such Units, payable on the date on which the term of this Lease expires. Upon payment of such purchase price, the Lessor shall upon request of the Lessee execute and deliver to Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 11½% per annum of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, c/o Girard Trust Bank, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101; and

(b) if to the Lessee, at Midland Building, 101 Prospect Avenue, N. W., Cleveland, Ohio 44115, Attention: Milford M. Adams, Esq., Secretary-Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and

supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2, 6 or 7 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of July 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 22. If the trust created by the Trust Agreement is terminated pursuant to the provisions of Article IX thereof and title to the Trust Estate (as defined in the Trust Agreement) vests in the Bank, the Bank hereby agrees to undertake the obligations of the Lessor hereunder and the Bank shall be entitled to the benefits inuring to the Lessor hereunder. In such case, unless the context otherwise requires, each reference to the Lessor in this Agreement shall be deemed to refer to the Bank.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

JOHN J. PRENDERGAST and JANE S. KUBIAK, as Trustees under a Trust Agreement dated as of July 15, 1970,

John J. Prendergast
.....
JOHN J. PRENDERGAST

Jane S. Kubiak
.....
JANE S. KUBIAK

ERIE LACKAWANNA RAILWAY COMPANY,

by *J. R. Turley*
.....
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
.....
ASSISTANT Secretary

GIRARD TRUST BANK,

by *H. T. Samsel*
.....
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
.....
Asst. Treasurer

STATE OF OHIO }
COUNTY OF CUYAHOGA } ss.:

On this *30* day of *July*, 1970, before me personally appeared *J. S. [unclear]*, to me personally known, who, being by me duly sworn, says that he is a Vice President of ERIE LACKAWANNA RAILWAY 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.

Harry P. [unclear]
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

HELEN C. [unclear]
.....
Notary Public

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *31st* day of *July*, 1970, before me personally appeared JOHN J. PRENDERGAST and JANE S. KUBIAK, as Trustees, to me personally known, to be the persons described in and who executed the foregoing instrument and they acknowledged that the execution of the foregoing instrument was his or her free act and deed as a Trustee.

Helen C. [unclear]
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

HELEN C. [unclear]
PHILA., PHILA. COUNTY, PA.
My Commission Expires Jan. 14, 1974

COMMONWEALTH OF PENNSYLVANIA } ss.:
COUNTY OF PHILADELPHIA

On this *31st* day of *July*, 1970, before me personally appeared *H. T. ENSSLER* to me personally known, who, being by me duly sworn, says that he is a Vice President of GIRARD TRUST BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Helen C. Kuech
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

HELEN C. KUECH, Notary Public
PHILA., PHILADELPHIA COUNTY, PENN.
My Commission Expires Jan 14, 1974

SCHEDULE A

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3600 H. P. Model SD 45 locomotives	No. 8062 dated June 2, 1969, as amended by Specification Amendment No. 8062-3 dated July 1, 1968 and Specifications Supplement dated June 17, 1970	McCook, Illinois	15	3654-3668	\$290,313.84*	\$4,354,707.60	August 1970 Hammond, Indiana

*Includes \$162.84 freight charges.