

Executed in / counterparts or
which this is counterpart no. / .

REGISTRATION NO. 6444
DEC 29 1971 - 3 50 PM
INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT, made this 15th day of December, 1971, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a corporation of the State of Delaware, hereinafter called "Lessor", and SOUTHERN RAILWAY COMPANY, a corporation of the Commonwealth of Virginia, hereinafter called "Lessee";

W I T N E S S E T H:

WHEREAS, Lessor has in process of construction and nearing completion at its plant in McCook, Illinois, 15 - SD40 Locomotives, bearing Lessee's road numbers 3186 to 3200, both inclusive, and 55 - GP38 Locomotives, bearing Lessee's road numbers 5000 to 5054, both inclusive (hereinafter together referred to as the "Locomotives") pursuant to Lessee's Purchase Order No. 106946 dated August 27, 1971, and Lessee's Purchase Order No. 106588 dated August 17, 1971 (hereinafter together referred to as the "Purchase Agreement"); that the construction of said Locomotives is in accordance with the terms of the Purchase Agreement.

WHEREAS, Lessee intends to have the Locomotives accepted under a permanent plan of financing the terms of which are not yet completed, and consequently Lessee is not in a position to accept delivery of and pay for the Locomotives under the terms of the Purchase Agreement at this time. Lessee, in order that it may use the Locomotives pending completion of the above financing arrangements, has requested the Lessor to give the Lessee temporary custody and possession of the Locomotives on their completion, solely as a lessee of the Locomotives, and the Lessor is willing

to do so upon the following terms and conditions:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The terms of the Purchase Agreement are by reference made a part of this Agreement as fully as though expressly set forth herein.

2. Lessor agrees to lease to Lessee and Lessee hereby hires from Lessor each of the Locomotives for use upon the lines of railroad owned or operated by Lessee or upon connecting or other railroads over which through service may from time to time be afforded, but upon and subject to the terms and conditions hereinafter set forth. For the use of each Locomotive, Lessee shall pay to Lessor or its assigns upon bill rendered by Lessor or its assigns, a daily rental computed on the basis of a 360-day year, at the minimum commercial lending rate, charged from time to time by Morgan Guaranty Trust Company of New York for loans in New York City to responsible and substantial borrowers, on the purchase price of each Locomotive, which shall be \$308,500 for each Model SD40 Locomotive and \$267,955 for each Model GP38 Locomotive, both of these purchase prices being subject to adjustment as provided in the Purchase Agreement. Such rental shall accrue from and include the respective dates of delivery and acceptance until the termination of this Agreement as provided herein. The initial rental charged with respect to any Locomotive shall be based upon the minimum commercial lending rate of Morgan Guaranty Trust Company of New York in effect

on the first day of the month during which such Locomotive was delivered; provided, however, that in the case of the first Locomotive delivered hereunder and any other locomotive delivered during the same month the initial rental charged with respect thereto shall be based on the minimum commercial lending rate of Morgan Guaranty Trust Company of New York in effect on the date of delivery and acceptance of such first Locomotive. Upon any change in such minimum commercial lending rate the rental will be adjusted effective on the 1st day of the month following such change. Such rental shall be due and payable on the first day of the month next succeeding the date of delivery and acceptance and monthly thereafter on the first day of each succeeding month.

3. Lessor will deliver the Locomotives leased hereunder on tracks of Lessee at a point to be designated by the Lessee, with freight charges prepaid, and added, during the months of January 1972, to March, 1972, subject to any delays caused by fires, strikes or other causes beyond the reasonable control of Lessor. The shipment of the Locomotives shall be routed as requested by the Lessee. Each of the Locomotives shall be inspected upon arrival at said place of delivery under this Agreement by an authorized representative of Lessee, and if found to conform to said specifications, a certificate of inspection and acceptance of delivery thereof under this Agreement shall be furnished to Lessor by Lessee.

4. Lessee will throughout the term of this Agreement keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each of the Locomotives, in letters not less than one-half

(1/2) inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT.

In contemplation of the subsequent delivery of the Locomotives to be made under a permanent plan of financing pursuant to the Purchase Agreement, Lessee will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each of the Locomotives, a legend in form acceptable to the secured party under the permanent financing agreement.

For convenience of identification of the leasehold interest hereunder of Lessee in the Locomotives, the Locomotives may be lettered with the name, initials or insignia of the Lessee, or of any affiliate which is permitted to use the Locomotives, or in some other appropriate manner. Lessee or any third party or parties acquiring an interest in the Locomotives by reason of the conditional sale, equipment trust or other financing of the purchase price of the Locomotives by Lessee, shall not by virtue of this Agreement or the possession and use of the Locomotives by Lessee under or pursuant to this Agreement or of anything permitted to be done by Lessee hereunder in respect of the Locomotives, acquire any title to or ownership of the Locomotives, or any thereof, and the title to or ownership of the Locomotives shall remain solely in Lessor.

5. The Locomotives are leased by Lessor and hired by Lessee hereunder for use by Lessee only upon tracks in the possession

or control of Lessee or upon connecting or other railroads over which through service may from time to time be afforded, and Lessee agrees that it will, while the Locomotives, or any thereof, are in its possession under this Agreement use the same only upon such tracks and will not remove or allow the removal of the same therefrom.

6. From and after the time of delivery of the Locomotives to Lessee, and until their surrender and redelivery to Lessor under this Agreement, the possession, use, operation and maintenance of the Locomotives shall be at the sole risk and expense of Lessee; and except for loss or damage resulting from negligence of Lessor, or from defects in design (except design specified by Lessee) or manufacture of the locomotives, Lessee will assume and shall be solely responsible for, and shall indemnify and save harmless Lessor from and against (a) any and all loss or damage, usual wear and tear excepted, of or to the Locomotives, and (b) any and all claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons other than Lessor's representatives, agents, or employees, or loss or damage to property, which may result from or grow in any manner out of the presence, use or operation of the Locomotives while in the possession of Lessee under this Agreement.

7. Lessee shall comply with all laws and regulations of any state or governmental authority respecting the manner of using or operating the Locomotives, or any thereof, during the term of this Agreement.

8. Lessee shall maintain and keep said Locomotives in good order and repair at all times, subject to the right of the Lessor to inspect the condition and supervise the maintenance thereof, and in accordance with Lessor's recommendations in any case affecting the repair parts, quality of fuel oil and lubricating oil, the fitness of the Locomotives for operation in any class or type of service different from that for which designed or offered and which might involve the possible impairment of the Locomotives due to overloading or other abuses, and any other factors material to and necessary for the proper maintenance and operation of said Locomotives. Lessee shall not effect any change in the design, construction or specifications of the Locomotives, body or power plant equipment or component parts thereof, without the written authority and approval of Lessor.

9. Lessee agrees promptly to pay any and all taxes or other assessments which may be imposed upon or in respect of said Locomotives by reason of or in connection with Lessee's possession or use of the Locomotives under this Agreement. It is understood, however, that the Lessee shall not be required to pay or discharge any such tax so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor in and to the Locomotives.

10. The term of this Agreement including the obligation of Lessee to pay the rental provided in paragraph 2 hereof shall in respect of each of the Locomotives be for the period beginning on the

date of delivery of such Locomotive to Lessee under this Agreement and terminate on a date simultaneous with settlement for and payment of the full purchase price of each of such Locomotives under a permanent plan of financing, or on October 1, 1972, whichever event shall first occur. Lessee's obligation to purchase the Locomotives under the purchase Agreement or to provide a purchaser therefor on or before October 1, 1972, at the purchase price on which rental payments hereunder are based, shall be absolute, regardless of the condition thereof at such time.

11. All or any of the rights, benefits and advantages of the Lessor, including the right to receive payment of rental for, or the purchase price of, any Locomotive or any other payments under this agreement, may be assigned by the Lessor and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Lessor's warranties, indemnities or any of its other obligations contained in this Agreement or any other agreement relating to the Locomotives. In the event the Lessor assigns its rights to receive any payments under this Agreement and the Lessee receives written notice thereof from the Lessor, together with a counterpart of such assignment, stating the identity and post office address of the assignee, all payments thereafter to be made by the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Lessee.

12. In the event of any assignment by Lessor of its rights to receive any payments under this Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Lessor in respect of the Locomotives or the manufacture, construction, delivery, guaranty or warranty thereof or in respect of any indemnity contained in this Agreement, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Lessor. Any and all such obligations howsoever arising shall be and remain enforceable by the Lessee, its successors and assigns only against the Lessor, its successors and assigns (other than assignees as such, of rights, benefits, or advantages assigned pursuant to this Agreement).

13. It is expressly understood and agreed, and the Lessor expressly agrees, warrants and guarantees that, upon due and full payment of all payments provided to be made by the Lessee under this Agreement for each Locomotive, Lessor shall thereupon execute and deliver to the Lessee, or to the party designated by the Lessee in writing, a bill of sale in customary form with full warranty of title, free and clear of all liens with respect to such Locomotive and, upon request of the Lessee's counsel, the Lessor shall also thereupon furnish to such counsel any reasonable evidence showing that, despite any assignment permitted under this Agreement, Lessor owns and has full title, free and clear of

all liens, to such Locomotive at the time such bill of sale is executed and delivered.

14. Lessee will, with all convenient speed and at its expense, upon execution and delivery of this Agreement and the first assignment of any of Lessor's rights hereunder, cause this Agreement and said assignment to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act, and in such other place or places as Lessor may reasonably request for the protection of its title.

15. This Agreement may be simultaneously executed in two or more counterparts each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute but one and the same agreement, which shall be sufficiently evidenced by any such original counterpart.

16. This Agreement shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by the recordation provisions of any other Act pursuant to which this Agreement is recorded.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly

authorized and their corporate seals to be hereto affixed as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By . . . *S. D. [Signature]* . . .
Vice President.

W.H.

ATTEST:

W. A. [Signature]
~~Assistant Comptroller~~
ASSISTANT SECRETARY

SOUTHERN RAILWAY COMPANY

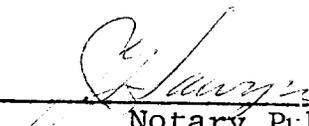
SM By . . . *K. A. [Signature]* . . .
Vice President

ATTEST:

M. M. [Signature]
~~Assistant~~ Secretary.

STATE OF ILLINOIS)
County of Cook) ss.

On this 20 day of December, 1971, before me personally appeared A. B. BROWNELL to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

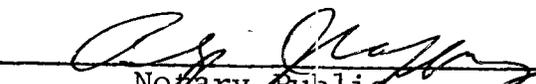


Notary Public

My commission expires October 28, 1975

DISTRICT OF COLUMBIA.

On this 27^m day of December, 1971, before me personally appeared K. A. STOECKER to me personally known, who, being by me duly sworn, says that he is a Vice President of Southern 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 foregoing instrument was the free act and deed of said corporation.



Notary Public

My commission expires June 14, 1973

STATE OF ILLINOIS
NOTARY PUBLIC
COMMISSION EXPIRES 10/28/75

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Manufacturer"), a Delaware corporation, and SOUTHERN RAILWAY COMPANY, a corporation of the Commonwealth of Virginia (the "Railroad"), have heretofore entered into a certain agreement (the "Lease"), dated as of December 15, 1971, for the lease and sale by Manufacturer and hire and purchase by the Railroad of certain railroad equipment (the "Locomotives"), to wit:

Fifteen (15) Model SD-40 and Fifty-Five (55) Model GP-38-2 Diesel-electric Locomotives bearing Railroad's road numbers 3186 through 3200 and 5000 through 5054 respectively,

upon the terms and conditions, and for the rental and purchase price, as in and by the Lease provided; and

WHEREAS, pursuant to Section 14 of the Lease the Railroad has agreed to duly file and record this Assignment and the Lease as therein provided, for the protection of the right, title and interest of the parties to this Assignment and the Lease; and

WHEREAS, Morgan Guaranty Trust Company of New York, a New York corporation, with its office and place of business in the City of New York (the Assignee"), has agreed, subject to the terms and conditions set forth in a certain Commitment Agreement dated December 20, 1971, between the Manufacturer and the Assignee, to buy the Manufacturer's rights under the Lease;

NOW, THEREFORE, for value received and upon the terms and conditions hereinafter set forth

1. The Manufacturer does hereby sell, assign, transfer and set over to the Assignee all of the right, title and interest of the Manufacturer in the Locomotives and in and to the rentals payable by the Railroad with respect to the Locomotives and in and to the payment by the Railroad of the purchase price of the Locomotives under the Lease and all other rights under the Lease except the right to construct and deliver the Locomotives and the right to be indemnified as provided in paragraphs 6 and 9 of the Lease if and to the extent that the Manufacturer incurs liabilities to which any such indemnity applies but without limiting the right of Assignee to the protection afforded by any such indemnity. In furtherance of this assignment and transfer, the Manufacturer does hereby authorize and empower the Assignee in its own name to sue for, collect, receive and enforce all payments to be made and compliance on the part of the Railroad with the terms and provisions of the Lease.

2. The Manufacturer warrants and covenants that it is the lawful owner of all of the rights in and title to said Locomotives under the Lease; that it has good and lawful right to sell and assign the same and that its right and title thereto are free from all liens and encumbrances and that notwithstanding this Assignment, it will perform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by the Manufacturer and not intended to be transferred by this Assignment.

3. The Manufacturer represents and warrants that the Lease has been duly authorized and executed by it and covenants that it will notify the Railroad in writing of this Assignment and that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things in the premises, to give effect to the provisions hereof and more perfectly to confirm the right, title and interest hereby assigned and transferred to the Assignee or intended so to be.

4. The Manufacturer represents and warrants that no modification of the terms of the Lease will be made without the written consent of the Assignee.

IN WITNESS WHEREOF the Manufacturer has caused this instrument to be executed by its proper officer hereunto duly authorized and its corporate seal to be hereunto affixed as of the 20th day of December, 1971.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By *S. D. [Signature]*
Vice-President

ATTEST:

H. A. [Signature]
Assistant Secretary

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 20th day of December, 1971, before me personally appeared B. B. Brownell to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

My Commission Expires: October 28, 1975

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally appeared _____ to me personally known, who, being by me duly sworn, says that he is a _____ of _____, 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 foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires: _____