

FEB 14 1975 - 10 44 PM
INTERSTATE COMMERCE COMMISSION

SALE AND LEASE BACK AGREEMENT

SALE AND LEASE BACK AGREEMENT dated as of June 1, 1974, between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Trustee with respect to separate and distinct Subtrusts (hereinafter called "Subtrusts") under a Trust Agreement (hereinafter called the "Trust Agreement") dated as of June 1, 1974 (hereinafter called the "Trustee"), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act of 1970, as amended, and the laws of the District of Columbia (hereinafter called the "Railroad");

WHEREAS the Railroad has agreed to purchase the railroad equipment (hereinafter called the "Equipment") described in Schedule A to the Conditional Sale Agreement (hereinafter called the "Conditional Sale Agreement") dated as of June 1, 1974, between General Electric Company and the Railroad; and

WHEREAS the Railroad desires to sell all its right, title and interest in and to the Equipment to, and to lease the Equipment back from, the Trustee, and the Trustee, with respect to the separate and distinct Subtrusts, desires to purchase the Equipment from, and lease the Equipment to, the Railroad as aforesaid; and

WHEREAS the Trustee is acting for each of the

Trustors (defined in the Trust Agreement) with respect to the Equipment to be acquired on behalf of the respective Subtrusts (more fully described in the Trust Agreement); and

WHEREAS the Trustee will enter into five Equipment Leases (hereinafter called the "Leases") dated as of June 1, 1974, between the Trustee, as Lessor, and the Railroad, as Lessee, each such Lease to cover Equipment owned by a particular Subtrust;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. The Railroad hereby agrees to sell, and the Trustee, with respect to the separate and distinct Subtrusts, hereby agrees to purchase, subject to the rights of the Vendor as defined in the Conditional Sale Agreement, the Equipment prior to the same having been placed in service by the Railroad; provided that all the conditions of Section 15 of the Lease applicable to such Equipment have been satisfied.

ARTICLE 2. The Trustee agrees that, upon request of the Railroad following delivery of the Equipment to the Railroad (as evidenced by delivery of the Certificate of Acceptance provided for in the Conditional Sale Agreement), and conveyance of title (subject to the security title of the Vendor under the Conditional Sale Agreement) thereto by bill of sale, the Trustee will, with respect to the separate and distinct Subtrusts, subject to all the terms and conditions provided for in the

Lease applicable to such Equipment and this Agreement, purchase the Equipment from the Railroad by making the payments and assuming the obligations provided for in Article 3 hereof and accept title thereto for the respective Sub-trusts (subject as aforesaid) by a bill of sale in the form attached hereto as Schedule I and lease the Equipment back to the Railroad.

ARTICLE 3. As the Purchase price for each item of the Equipment being purchased by the Trustee from the Railroad hereunder, the Trustee, with respect to each Subtrust, agrees as follows:

(a) to pay to the Railroad from time to time, upon request of the Railroad following delivery to the Railroad of such item of Equipment and the payment by the Railroad to the Builder, as defined in the Conditional Sale Agreement, of any payment required by subparagraph (a) of Article 3 of the Conditional Sale Agreement, an amount equal to such payment made by the Railroad under said subparagraph (a) in respect of such item of Equipment;

(b) to assume and pay the instalments of the Conditional Sale Indebtedness (hereinafter called the Conditional Sale Indebtedness), as defined in the Conditional Sale Agreement, including interest thereon and prepayments thereof required or permitted by the last two paragraphs of Article 3 of the Conditional Sale Agreement in respect of such item of Equipment; and

(c) to assume and discharge all the other obligations of the Railroad under the Conditional Sale Agreement in respect of such item of Equipment.

The obligations so assumed by the Trustee under paragraph (a) of this Article 3 shall be payable only to the extent of amounts furnished by each of the Trustors, with respect to its Subtrust, to the Trustee pursuant to the Trust Agreement.

The obligations so assumed by the Trustee under paragraphs

(b) and (c) of this Article 3, with respect to items of Equipment owned by a particular Subtrust, shall be payable only out of the "income and proceeds from the Subtrust's Equipment" (as hereinafter defined), and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Subtrust's Equipment" to make such payments. The Railroad agrees that the Trustee in its capacity as trustee and each of the Subtrusts in respect of which the Trustee is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except, in so far as payments under paragraph (a) of this Article 3 are concerned, as hereinabove provided, and except, in so far as payments under paragraphs (b) and (c) of this Article 3 are concerned, from the "income and proceeds from the Subtrust's Equipment" to the extent actually received by the Trustee or any assignee of the Trustee as above provided. As used herein the term "income and proceeds from the Subtrust's Equipment" shall mean (1) if one of the events of default specified in Article 15 of the Conditional Sale Agreement shall have occurred and while it shall be continuing,

so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof:

(i) all amounts of rental and amounts in respect of Casualty Occurrences, as defined in Section 11 of the Lease applicable to the particular Subtrust, paid for or with respect to the Equipment owned by such Subtrust pursuant to such Lease and

(ii) any and all payments (excluding, however, any amounts paid by the Railroad to the Trustee pursuant to Sections 6, 10.2, 16.1 or 16.2 of such Lease) or proceeds received by the Trustee or any assignee of the Trustee under such Lease or for or with respect to the Equipment owned by such Subtrust as the result of the sale (including any purchase by the Railroad pursuant to Section 25 of such Lease), lease or other disposition thereof (after deducting all reasonable costs and expenses of such sale, lease or other disposition), and (2) at any other time only that portion of the amounts referred to in the foregoing clauses (i) and (ii) as are indefeasibly received by the Trustee or any assignee thereof and as shall equal the portion of the Conditional Sale Indebtedness (including required prepayments) and/or interest thereon due and payable on the date such amounts received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease applicable to the particular Subtrust, except that, in the event of a purchase by the Railroad pursuant to Section 25 of such Lease, there shall be included such portion of the pur-

chase price received by the Trustee as shall equal the unpaid balance of the Conditional Sale Indebtedness and the interest accrued thereon, it being understood that "income and proceeds from the Subtrust's Equipment" shall in no event include amounts referred to in the foregoing clauses (i) and (ii) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including required prepayments thereof) and/or interest thereon due and payable on the payment date corresponding to the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease applicable to the particular Subtrust or, in the case of the purchase price received by the Trustee pursuant to Section 25 of such Lease, which exceeded the amount required to pay the Conditional Sale Indebtedness and the interest accrued thereon. The obligations of the Railroad under the Conditional Sale Agreement assumed by the Trustee hereunder (other than the obligation to pay the Conditional Sale Indebtedness, and interest accrued thereon) shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Leases.

ARTICLE 4. The Railroad agrees that, notwithstanding the provisions of this Agreement, it shall remain liable to the Vendor for the discharge of all the obligations of the Railroad

under the Conditional Sale Agreement to the extent such obligations are not discharged by the Trustee under this Agreement.

ARTICLE 5. In the event that the Railroad shall purchase any Items of Equipment pursuant to Section 16.1 of any of the Leases, the Trustee shall have no further obligation with respect thereto under the Conditional Sale Agreement, including, without limitation, the obligation to pay the instalments of the Conditional Sale Indebtedness with respect to such Items of Equipment becoming due after the date of purchase, or interest thereafter accruing, and in such event the Railroad agrees to release the Trustee from all its obligations assumed hereunder with respect to such Items of Equipment, including the obligation to pay such Conditional Sale Indebtedness and the interest thereafter accruing thereon.

ARTICLE 6. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia.

ARTICLE 7. Before any amendment or modification of this Agreement, or any assignment or transfer of the interest of the Trustee hereunder or any Trustor under the Trust Agreement (other than to insurance companies, commercial and savings banks and financing corporations of recognized standing organized under the laws of the United States or of any state thereof) or of the interest of the Railroad hereunder,

becomes effective, the Federal Railroad Administrator must approve the same in writing. However, the Trustee or any Trustor under the Trust Agreement may assign to the Vendor its rights hereunder and under the Trust Agreement. In consideration of his guaranty of the Railroad's financial obligations under this Agreement, the Federal Railroad Administrator shall have the right to enforce this provision irrespective of any other provision of this Agreement.

ARTICLE 8. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized,

and their respective corporate seals to be hereunto affixed
and duly attested.

NATIONAL RAILROAD PASSENGER
CORPORATION,

by Robert C. Moot
Vice President

[Corporate Seal]

Attest:

Walter N. Smith
Secretary

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, as Trustee,

by Donna [Signature]
Authorized Officer

[Corporate Seal]

Attest:

[Signature]
Authorized Officer

CITY OF WASHINGTON,)
) ss.:
 DISTRICT OF COLUMBIA,)

On this 5 day of Dec 1974, before me
 me personally appeared Robert C. Moor, to me personally
 known, who being by me duly sworn, says that he is a Vice
 President of NATIONAL RAILROAD PASSENGER 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 execu-
 tion of the foregoing instrument was the free act and deed
 of said corporation.

Leticia A. Squillace
 Notary Public

[Seal]

My Commission expires:

My Commission Expires August 31, 1978

STATE OF UTAH,)
) ss.:
 COUNTY OF SALT LAKE,)

On this *7th* day of *November* 1974, before me personally appeared *Donna Rosenlof*, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Delbert J. Sangerfeld

 Notary Public

[Seal]

My Commission expires:

July 22, 1978

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS THAT:

NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act of 1970, as amended, and the laws of the District of Columbia (hereinafter referred to as the "Seller") in consideration of One Dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and assign to First Security Bank of Utah, National Association, a national banking association, as Trustee under a Trust Agreement dated as of June 1, 1974 (hereinafter referred to as "Buyer") the following property for the following Subtrust described in such Trust Agreement:

<u>Seller's R. R. Nos.</u>	<u>Description</u>	<u>Subtrust</u>
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TO HAVE AND TO HOLD said property to Buyer, its successors and assigns, to its and their own use forever.

The interest of Seller in said property, and the interest transferred by this Bill of Sale, is that of absolute ownership.

Seller hereby warrants that it is the lawful owner of said property and that its title to said property is free and clear of all liens, security interests, charges, claims and encumbrances of every kind whatsoever (except the security title of the Vendor as defined in the Conditional Sale Agreement dated as of June 1, 1974, between General Electric Company and the Seller); that its title to said property is hereby conveyed to Buyer free and clear of all liens, charges, security interests, claims and encumbrances of every kind whatsoever (except the security title of the Vendor as defined in the Conditional Sale Agreement referred to above); and that Seller will warrant and defend such title forever against all claims and demands whatsoever.

IN WITNESS WHEREOF, National Railroad Passenger Corporation has caused this instrument to be executed in its corporate name by its respective officer thereunto duly autho-

rized and its corporate seal to be hereunto duly affixed an attested this day of 197 .

NATIONAL RAILROAD PASSENGER CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Secretary

CITY OF WASHINGTON,)
) ss.:
DISTRICT OF COLUMBIA,)

On this day of , 197 , before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of National Railroad Passenger 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

[SEAL]

My Commission expires: