

EXECUTED IN 10 COUNTERPARTS  
OF WHICH THIS IS NO. 7

6777 - D

LEASE OF RAILROAD EQUIPMENT  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded  
OCT 27 1972 - 11 00 AM

Dated as of September 15, 1972

between

CITIZENS FIDELITY BANK AND TRUST COMPANY,  
*Lessor*

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,  
*Lessee*

[Covering 35 Locomotives]

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on ..... 1972 at .....M., Recordation No. ....

**LEASE OF RAILROAD EQUIPMENT** dated as of September 15, 1972, between CITIZENS FIDELITY BANK AND TRUST COMPANY, a Kentucky banking corporation (hereinafter called the Lessor), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into two Conditional Sale Agreements dated as of September 15, 1972 (hereinafter called the Security Documents), with GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY, respectively (hereinafter called the Builders), wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builders have assigned or will assign their respective interests in the Security Documents to UNITED STATES TRUST COMPANY OF NEW YORK, 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 (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to December 31, 1972 (hereinafter called the Cut-Off Date), 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 hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 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 Documents 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.

§ 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, payable on January 1 and July 1 in each year commencing with January 1, 1973 (or if any such date is not a business day, on the next succeeding business day). The first such payment shall be in an amount equal to the sum of (x) .01498% of the Purchase Price (as defined in the Security Document pursuant to which such Unit is being acquired by Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under such Security Document to January 1, 1973 plus (y) an amount equal to 4.16486% of the Purchase Price of each such Unit; and the next 29 semi-annual payments shall each be in an amount equal to 4.16486% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available New York or Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o United States Trust Company of New York, 130 John Street, New York, N. Y. 10038 on or before 11 o'clock a.m. New York time on the date on which payments are due and payable. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents due and payable at the time such payments are due hereunder and, so long as no event of default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due, or by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, 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 or of the Security Documents, 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 hereof. 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, 10 and 13 hereof, shall terminate six months after the date on which the final semi-annual payment of rent in respect thereof is due pursuant to § 3.

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 Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, 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 Documents.

§ 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 Lessor or 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 promptly and 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 rental payment that would have been payable for such Unit on the date of such payment but for such Casualty Occurrence 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 forth 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 such rental payment date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
1-1-73 -----	100.5654%	1-1-75 -----	96.8351%
7-1-73 -----	100.1909	7-1-75 -----	95.4905
1-1-74 -----	99.1796	1-1-76 -----	89.3330
7-1-74 -----	98.1831	7-1-76 -----	87.6645

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
1-1-77 -----	85.7449%	7-1-82 -----	49.0041%
7-1-77 -----	83.8259	1-1-83 -----	45.8732
1-1-78 -----	77.1850	7-1-83 -----	42.7154
7-1-78 -----	75.0245	1-1-84 -----	39.4423
1-1-79 -----	72.6458	7-1-84 -----	36.1395
7-1-79 -----	70.2550	1-1-85 -----	32.7328
1-1-80 -----	63.1764	7-1-85 -----	29.2920
7-1-80 -----	60.5671	1-1-86 -----	25.7476
1-1-81 -----	57.7776	7-1-86 -----	22.1627
7-1-81 -----	54.9671	1-1-87 -----	18.4745
1-1-82 -----	51.9977	7-1-87 and thereafter ---	15.0000

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 similar 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 any 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. *Reports and Inspections.* On or before November 1 in each year, commencing with the year 1973, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding June 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Units, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, such Units are marked as required by § 5 hereof and Article 10 of the Security Documents. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 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 (each such event being hereinafter sometimes called an Event 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, representations, warranties and agreements on the part of the Lessee contained herein or in the Security Documents 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 proceeding 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 Documents 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 Documents), 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 Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding 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 Documents 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 terminate 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 such 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: (1) any and all amounts of rentals 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); (2) as damages for loss of the bargain and not as a penalty, (i) 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 5% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to or imposed upon banking corporations in the State of Kentucky, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and computing any such Federal tax by deducting 48% of the amount of any such state and local tax (such

rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to the following:

(A) an amount equal to any portion of the 7% investment credit with respect to the Purchase Price of the Units as provided in Section 38 and related Sections of the Internal Revenue Code of 1954, as amended (hereinafter called the Investment Credit), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default; plus

(B) such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if the Lessor had been entitled to take a deduction (hereinafter called the Class Life Deduction) in respect of the depreciation of each Unit over an 11-year life to a net value equal to 0% of the Purchase Price under regulations to be prescribed by the Secretary of the Treasury or his delegate under Section 167(m) of the Internal Revenue Code of 1954, as amended, which Class Life Deduction was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the failure of said Secretary to permit a Class Life Deduction to the extent described above or as the result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addi-

tion 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 except that the last two sentences of the first paragraph thereof shall be deleted and replaced with the following:

“All the rights of the Lessor hereunder shall inure to the benefit of the Lessor’s assigns.”

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, (i) elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the “Fair Market Value” of such Units as of the end of such term or (ii) elect to extend the term of this Lease in respect of all, but not fewer than all, such Units then covered by this Lease for an additional one-year period at a rental payable in semi-annual payments, in an amount equal to the “Fair Market Rental” of such Units as of the commencement of such extended term; such semi-annual payments to be made on January 1 and July 1 in the year of the extended term.

Fair Market Value or Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value or rental which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. 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. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

In the event the Lessee elects to purchase the Units, upon payment of the 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.

§ 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 hereby amended by deleting the word "Lessee" in the first sentence of the last paragraph thereof and substituting the word "Lessor". § 16 of the Model Lease Provisions, as so amended, is herein incorporated as § 16 hereof.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended from time to time, and the regulations thereunder (hereinafter called the Code) to an owner of property, including (without limitation) the Investment Credit and the Class Life Deduction (as defined in § 10 of this Lease), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Class Life Deduction with respect to the Units.

Lessee represents, warrants and agrees that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time Lessor becomes the owner of the Units, the Units will constitute "new Section 38 property" within the meaning of Section 48(b) of the Code and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code; and (iv) at the time Lessor be-

comes the owner of the Units, and at all times during the term of this Lease, each Unit will constitute property eligible for the Class Life Deduction.

The rental in § 3 has been computed on the assumption that the lower limit of the asset depreciation range over which the Units may be depreciated for Federal income tax purposes is 11 years; in the event that Lessor shall not be permitted to use such period but shall be permitted to use an asset depreciation period of 12 years, and elects to do so, the figure of 4.16486% in § 3 shall instead be deemed to be 4.20312% as of the commencement of the term of this Lease, and Lessee will pay to Lessor any difference in the two amounts, together with interest at the rate of 7.75% per annum from the date of each rental payment to the date of such payment.

§ 18. *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, to the extent legally enforceable, an amount equal to 10% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *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, at P. O. Box 1140, Louisville, Kentucky 40201, Attention: David S. Schoen, Vice President; and

(b) if to the Lessee, at 2 North Charles Street, Baltimore, Maryland 21201, Attention: Treasurer,

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

§ 20. *Severability; Effect and Modification of Lease.* 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.

§ 21. *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 September 15, 1972, 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.

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

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

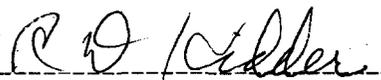
CITIZENS FIDELITY  
BANK AND TRUST COMPANY

[CORPORATE SEAL]

By

  
Vice President

Attest:

  
Assistant Secretary

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY.

[CORPORATE SEAL]

By L.C. Gray  
Treasurer

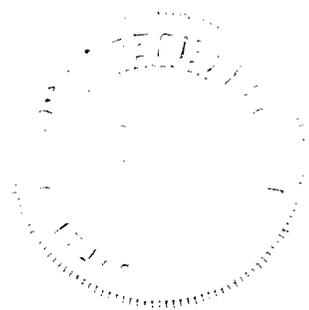
APPROVED AS TO FORM

C. Kimball  
General Attorney

10/23/72

Attest:

A. B. Npton  
Assistant Secretary



STATE OF KENTUCKY }  
COUNTY OF Jefferson } ss.:

On this 24 day of October, 1972, before me personally appeared David S. Schwen, to me personally known, who, being by me duly sworn, says that he is a Vice President of CITIZENS FIDELITY BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking corporation by authority of its Board of Directors and who acknowledged that the execution of the foregoing instrument was the free act and deed of said banking corporation.

*Barbara P. Cox*  
Notary Public

[NOTARIAL SEAL]

My Commission Expires 10-27, 1973.

STATE OF MARYLAND }  
CITY OF BALTIMORE } ss.:

On this 23 day of October, 1972, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO 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.

*Russell E. Schreiber*  
RUSSELL E. SCHREIBER  
Notary Public

[NOTARIAL SEAL]

My Commission Expires July 1, 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>
3000 H.P. Model GP-40-2 locomotives	No. 8091 dated January 3, 1972, as amended by Specification Amendment No. 8091-3, dated January 3, 1972	McCook, Illinois	20	4165-4184	\$267,400	\$5,348,000	Nov.-Dec., 1972 at Lessee's Rockwell Street Yard, Chicago, Illinois
3000 H.P. Model U30B locomotives	No. 3330-C, dated July, 1968	Erie, Pennsylvania	15	8210-8224	\$282,125	\$4,231,875	Oct.-Nov., 1972 at Russell, Kentucky
			<u>35</u>			<u>\$9,579,875</u>	