

6792-B

RECORDATION NO. _____ Filed & Recorded

APR 25 1973 -3 50 PM

ASSIGNMENT OF LEASE

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE dated as of January 22, , 1973 by XTRA, INC., a Massachusetts corporation ("XTRA"), having an office and keeping its records at 150 Causeway Street, Boston, Massachusetts 02114, in favor of FIRST NATIONAL CITY BANK, a national banking association organized under the laws of the United States of America, (the "Assignee").

WHEREAS, the Electro Motive Division of General Motors Corporation (hereinafter called the "Manufacturer"), and XTRA have entered into an Equipment Purchase Order dated August 14, 1972 (hereinafter called the "Equipment Purchase Order"), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by XTRA of Twelve (12) Model GP-38-2, 2000 H.P. Diesel-Electric Locomotives (said locomotives being hereinafter called collectively the "Locomotives" and individually a "Locomotive"); and

WHEREAS, XTRA and the Assignee have entered into a Loan Agreement dated as of January 22, 1973 (such Loan Agreement, as it now exists and as it may hereafter be amended, supplemented or modified from time to time, hereinafter called the "Loan Agreement"); and

WHEREAS, the Assignee and XTRA have entered into a Chattel Mortgage dated as of January 22, 1973 (hereinafter called

the "Chattel Mortgage") providing for a mortgage on and security interest in the Locomotives on the terms therein set forth, by XTRA in favor of the Assignee; and

WHEREAS, XTRA and John F. Nash and Robert C. Halde-
man, Trustees of the property of LEHIGH VALLEY RAILROAD COM-
PANY, Debtor, and the successors of said Trustees or of either
of them (hereinafter called the "Lessee") have entered into a
Lease Agreement dated as of September 6, 1972 (such Lease, as
it now exists and as it may hereafter be amended, supplemented
or modified from time to time, hereinafter called the "Lease"),
bearing recordation no. 6792 filed and recorded on November 10,
1972 with the Interstate Commerce Commission, providing for the
lease, on the terms therein set forth, by XTRA to the Lessee
of the Locomotives;

NOW, THEREFORE, in consideration of the premises and
other good and valuable consideration, the receipt and adequacy
of which are hereby acknowledged by XTRA, XTRA does hereby agree
as follows:

SECTION 1. XTRA does hereby sell, assign, transfer
and set over unto the Assignee, its successors and assigns, all
of the right, title and interest of XTRA in, to and under the Lease
(including, without limitation, any schedules, supplements, amend-
ments and modifications thereto which may now or from time to time
hereafter be entered into or effected). The right, title and

interest assigned hereunder include all right, title and interest of XTRA in and to all rental payments and other moneys (including, without limitation, the proceeds of all insurance, indemnity payments, and payments of liquidated damages under the Lease) from time to time paid or payable under or in connection with the Lease, all claims for damages arising out of any breach of any of the terms of the Lease, and the right of XTRA to terminate the Lease in whole or in part and to exercise and perform all rights and remedies thereunder; provided, however, that so long as no Event of Default under the Loan Agreement shall have occurred and be continuing, XTRA shall have the sole right to enforce the Lease against the Lessee and shall also have the right to waive any default by the Lessee thereunder.

SECTION 2. This Assignment is executed and delivered as security for the prompt payment of the Note (as such term is defined in the Loan Agreement, being hereinafter referred to as the "Note"), and interest thereon, by XTRA, and the due and punctual performance of XTRA of all other obligations of XTRA and the due and punctual payment of any and all other sums payable by XTRA under the Loan Agreement. XTRA hereby agrees that from and after the occurrence of any Event of Default under the Loan Agreement, and so long as the same shall be unremedied, XTRA will cause all payments payable by the Lessee under the Lease to be paid directly by the Lessee to the Assignee at its office at

399 Park Avenue, New York, New York 10022; it being agreed that prior to such time all such payments may be made by the Lessee directly to XTRA and, notwithstanding this Assignment, XTRA shall retain such payments for its own account prior to the occurrence of any such Event of Default which shall be continuing unremedied. It is agreed that the Assignee shall apply any and all such amounts from time to time paid to it as above provided, to the extent required to pay in full the unpaid principal balance of the Note, and interest accrued and unpaid thereon, and shall pay the balance, if any, of such payments remaining thereafter to XTRA. Nothing contained herein shall be deemed to release XTRA of any of its obligations under the Loan Agreement to the extent that any of the amounts received by the Assignee from time to time hereunder shall be insufficient to pay such obligations as the same shall become due and payable in accordance with the terms of the Loan Agreement.

SECTION 3. XTRA agrees that, until payment in full of the Note and all interest thereon, but only after the occurrence and during the continuance of any Event of Default under the Loan Agreement, (i) all powers, remedies, consents, approvals and other rights of all kinds of XTRA under the Lease may be exercised exclusively by the Assignee without necessity of consent or approval of XTRA, and (ii) without limitation of the generality of the foregoing, XTRA shall not have the right, and

will not, without the prior written consent of the Assignee, amend, supplement, modify or waive any of the terms of the Lease.

SECTION 4. It is expressly agreed that, anything herein contained to the contrary notwithstanding (a) XTRA shall remain liable under the Lease to perform all of its obligations and agreements thereunder, (b) the obligations of XTRA under the Lease may be performed by the Assignee or its nominee or assignees without releasing XTRA therefrom, and (c) neither the Assignee nor any such nominee or assignees shall have any obligation or liability under the Lease by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or agreements of XTRA thereunder or to make any payment or make any inquiry of the sufficiency of any payment received by XTRA or the Assignee, or such nominee or assignees, or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder.

SECTION 5. XTRA hereby constitutes the Assignee, and its successors and assigns, the true and lawful attorney of XTRA, irrevocably, with full power of substitution in the name of XTRA or otherwise, to give notice to the Lessee of the fact of assignment of the Lease in and by this Assignment at such time as the Assignee may deem advisable, and, on the occurrence and during the continuance of any Event of Default under the

Loan Agreement, to ask, require, demand, receive, compound, sue for and give acquittance for any and all rental and other moneys and any and all claims for rental and other moneys due and to become due at any time under, or arising out of, the Lease, to endorse any checks or other instruments or orders in connection therewith, and to file any claims or take any actions or institute any proceedings with respect thereto which to the Assignee may seem to be necessary or advisable in the premises.

SECTION 6. At any time and from time to time, upon the written request of the Assignee and at the expense of XTRA, XTRA shall promptly and duly execute and deliver any and all such further instruments and documents, and take such further action, as the Assignee may deem necessary or desirable, to obtain for the Assignee the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, (i) the filing or recording of this Assignment under Section 20(c) of the Interstate Commerce Act and the filing of any financing or continuation statements with respect hereto in accordance with the applicable laws of any jurisdiction, and (ii) the taking of such further action as the Assignee may deem necessary or desirable for the perfection against XTRA and all third parties whatsoever of the security interest created hereby. XTRA hereby authorizes the Assignee to file any such financing

or continuation statements or amendments thereto without the signature of XTRA to the extent permitted by applicable law. The costs and expenses of the Assignee with respect to such actions shall be payable by XTRA on demand.

SECTION 7. XTRA hereby represents and warrants that it has not, as of the date hereof, assigned or pledged, and hereby covenants that it shall not assign or pledge, as long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned to anyone other than the Assignee and its successors or assigns.

SECTION 8. XTRA hereby agrees to indemnify, reimburse and hold the Assignee harmless from any and all claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons, or loss or damage to property, which may result from or grow in any manner out of the control, use or operation of the Locomotives under the Lease whether or not in the possession of the Lessee.

SECTION 9. This Assignment shall be binding upon XTRA and its successors and assigns and shall inure to the benefit of the Assignee and its successors and assigns. The terms of this Assignment and the rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, and to the recording provisions of any other statute pursuant to which this Assignment may be recorded. This Assignment may not be

modified or waived without the written consent of the Assignee.

SECTION 10. Although this Lease Assignment is dated for convenience as of January 22, 1973, the actual date of execution hereof is the date stated in the acknowledgment hereto annexed.

IN WITNESS WHEREOF, XTRA has caused this instrument of Assignment to be executed and delivered by its officer thereunto duly authorized as of the day and year first above written.

XTRA, INC.

BY *Charles H. Day*
Vice Chairman of the Board

[Corporate Seal]

Attest:

John J. Quinn
Assistant Clerk

~~Commonwealth of Mass.~~
~~STATE OF NEW YORK~~
Suffolk ss.:
~~COUNTY OF NEW YORK~~

On this 23rd day of April in the year 1973 before me personally came Charles H. Day, to me know, who, being by me duly sworn, did depose and say that he resides at Littleton, Mass; that he is a Vice Chairman of the Board of XTRA, INC., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Marion L. Ewell
Notary Public

[Notarial Seal]