

RECORDATION NO. 7620 <sup>A</sup> Filed & Recorded

SEP 13 1974

INTERSTATE COMMERCE COMMISSION

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**ASSIGNMENT OF LEASE AND AGREEMENT**

**Dated as of June 3, 1974**

**BETWEEN**

**AMERICAN SECURITY AND TRUST COMPANY,  
*as Trustee***

**AND**

**METROPOLITAN LIFE INSURANCE COMPANY**

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**ASSIGNMENT OF LEASE AND AGREEMENT** dated as of June 3, 1974 (hereinafter called this Assignment), by and between AMERICAN SECURITY AND TRUST COMPANY, as Trustee under a Trust Agreement dated as of the date hereof with the Trustors of certain trusts established thereunder, (such Trustee, together with its successors and assigns, being hereinafter called the Lessor or the Vendee) and METROPOLITAN LIFE INSURANCE COMPANY (hereinafter called the Vendor).

WHEREAS, the Vendee and SEABOARD COAST LINE RAILROAD COMPANY (hereinafter called the Lessee) are entering into Conditional Sale Agreements dated as of the date hereof (hereinafter collectively called the Security Documents), with GENERAL ELECTRIC COMPANY and GENERAL MOTORS CORPORATION (Electro-Motive Division), respectively, (hereinafter called the Builders) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS the Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documents and as an inducement to the Vendor to acquire the Conditional Sale Indebtedness (as that term is defined in the Security Documents), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Documents, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals,

profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documents, subject to the limitations contained in the last paragraph of Article 4 of the Security Documents, and any balance shall be paid within five business days to and retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease.

Notwithstanding the preceding paragraph until such time as (i) there shall occur an Event of Default under the Lease, or (ii) there shall occur an event of default or an event which with the lapse of time and/or demand provided for in the Security Documents could constitute an event of default under the Security Documents, or (iii) the Lessee shall be directed otherwise by the Vendor, the Lessee shall pay to the Vendor only that portion of any Payment which the Vendor is entitled (pursuant to the immediately preceding paragraph) to apply to the obligations of the Lessor under the Security Documents. Subject to items (i), (ii) and (iii) of the foregoing sentence, the balance of any Payment shall be paid to the Lessor.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor

to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and

agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessee's and the Lessor's obligations under the Security Documents, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. On each Closing Date (as defined in the Security Documents) the Lessor will furnish the Vendor (a) with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and, assuming due authorization, execution and delivery by the Vendor is a legal, valid and binding agreement, enforceable in accordance with its terms, subject as to enforcement of remedies to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) with such other documents as the Vendor may reasonably request.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interests of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the District of Columbia, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documents, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documents or an Event of Default under the Lease has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

AMERICAN SECURITY AND TRUST  
COMPANY, as Trustee,

by *John R. Whelan*  
Vice President

[CORPORATE SEAL]

Attest:

*Charles A. Grouble*  
Assistant Secretary

METROPOLITAN LIFE INSURANCE  
COMPANY

by *William Blanchfield*  
Vice President

by *John C. Kelch*  
Assistant General Counsel

[CORPORATE SEAL]

Attest:

*J. M. Steinmüller*  
Assistant Secretary

**J. M. Steinmüller**

DISTRICT OF COLUMBIA ss.:

On this *13<sup>th</sup>* day of September, 1974, before me personally appeared *John R. Whitmore* to me personally known, who, being by me duly sworn, says that he is *SENIOR VICE PRESIDENT* of AMERICAN SECURITY AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company and that said instrument was signed and sealed on behalf of said trust company 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 trust company.

*Gregory M. Philbrick*  
Notary Public

[NOTARIAL SEAL]

My Commission expires *6-30-76*



STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this *5<sup>th</sup>* day of September, 1974, before me personally appeared *William J. Blanchfield* and *John C. Kersh*, to me personally known, who, being by me duly sworn, says that they are Vice President and Assistant General Counsel, respectively, of METROPOLITAN LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Joseph P. Bracken*  
Notary Public

[NOTARIAL SEAL]

My Commission expires

JOSEPH P. BRACKEN  
NOTARY PUBLIC, State of New York  
No. 41-0381010 Qualified in Queens Co.  
Certificate filed in New York County  
Commission Expires March 30, 1975

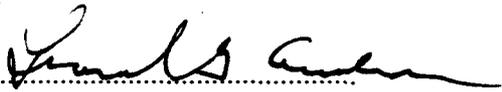
**LESSEE'S CONSENT AND ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT**

1. Subject in all respects to the provisions of the last paragraph of Paragraph 1 of the foregoing Assignment of Lease and Agreement (the Lease Assignment), Seaboard Coast Line Railroad Company agrees to pay to the Vendor that portion of each Payment (as defined therein) which the Vendor, pursuant to the second paragraph of Paragraph 1 of the Lease Assignment, is entitled to apply to satisfy the obligations of the Lessor under the Security Documents, and agrees to pay the balance of any such Payment to the Lessor. In the event that any occurrence specified in item (i), (ii) or (iii) of the last paragraph of said Paragraph 1 should occur, the Lessee agrees to pay the entire amount of any Payment to the Vendor.

2. Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of June 3, 1974.



SEABOARD COAST LINE RAILROAD  
COMPANY

by   
Vice President and  
Treasurer