

**CONRAIL**



RECORDATION NO. 8804 B Filed & Recorded

122A052  
Date MAY 8 1977  
Fee \$ 1.50  
INTERSTATE COMMERCE COMMISSION  
FEE OF SERVICE DR. 8804 A  
I.C.C.  
WASHINGTON, D. C.

May 2, 1977

RECORDATION NO. 8804 A Filed & Recorded

Robert L. Oswald, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 8804 C Filed & Recorded  
MAY 2 1977-10 40 AM  
INTERSTATE COMMERCE COMMISSION

MAY 2 1977-10 40 AM

Dear Mr. Oswald:

**INTERSTATE COMMERCE COMMISSION**

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 29 Code of Federal Regulations Sections 1116.1 through 1116.4, we present the following documents, all dated as of April 15, 1977, for recordation:

A) Interim Conditional Sale Agreement between General Electric Company and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Agreement and Assignment between General Electric Company and J. P. Morgan Interfunding Corp.;

B) Interim Conditional Sale Agreement between General Motors Corporation and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 D Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Agreement and Assignment between General Motors Corporation and J. P. Morgan Interfunding Corp.;

Interim Lease of Railroad Equipment between Consolidated Rail Corporation and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 E Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Assignment of Lease and Agreement between United States Trust Company, as Trustee, and J. P. Morgan Interfunding Corp.

The names and addresses of the parties to the documents are:

With respect to the documents described under A):

Vendor and Assignor      General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16531

*[Handwritten signature: C. D. ...]*

Three of our checks, in the amount of \$50.00 each, are enclosed to cover the recordation fees.

These documents have not been previously recorded with the Interstate Commerce Commission.

After retaining two counterpart originals of the documents please return the remaining copies, stamped with your recordation number, to Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, in the custody of the individual presenting them for recordation.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "B. D. Wellmon", with a long horizontal flourish extending to the right.

B. D. Wellmon  
Assistant Treasurer

ANNEX D

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RECORDATION NO. 8804 Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

INTERIM  
AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1977

between

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

J. P. MORGAN INTERFUNDING CORP.

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INTERIM AGREEMENT AND ASSIGNMENT dated as of April 15, 1977, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (the "Builder") and J. P. MORGAN INTERFUNDING CORP., a Delaware corporation (the "Assignee").

WHEREAS, the Builder and United States Trust Company of New York, a New York trust company, acting as Trustee (the "Vendee") under a Trust Agreement (A) dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding Corp., have entered into an Interim Conditional Sale Agreement dated as of the date hereof, which Interim Conditional Sale Agreement may be superseded and restated as therein provided (such Interim Conditional Sale Agreement, and such Interim Conditional Sale Agreement as it may be superseded and restated, being hereinafter called the "Conditional Sale Agreement") covering the construction, conditional sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment (the "Equipment") described in Annex B to the Conditional Sale Agreement;

WHEREAS, the Vendee and Consolidated Rail Corporation, a Pennsylvania corporation (the "Lessee") have entered into an Interim Lease of Railroad Equipment (the "Lease"), dated as of the date hereof, providing for the lease to the Lessee of the Equipment; and

WHEREAS, the Builder is willing to guarantee certain obligations of the Lessee under the Lease and of the Vendee under the Conditional Sale Agreement pursuant to a Guaranty Agreement dated the date hereof;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Assignment. The Builder hereby assigns transfers and sets over unto the Assignee, and its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, such acceptance and such transfer of title to be evidenced by a Certificate of Acceptance substantially in the form attached hereto as Exhibit 1, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof, and of the amounts due from the Vendee to the Builder under the Conditional Sale Agreement, in respect of the Purchase Price of each such Unit;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement pursuant to Article 6 thereof for certain amounts which may be paid by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement;

provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its representations and warranties or relieve the Vendee from its obligations to the Builder contained in Articles 2, 4 and 6 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement,

but at the expense and liability and for the sole benefit of the Assignee. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 2. Continuing Obligations of the Builder.

The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver such equipment upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and the Builder

further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

SECTION 3. Indemnification. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses (including without limitation fees and expenses of counsel), loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder provided, however, that the Assignee promptly notifies the Builder of the asserted defense, setoff,

counterclaim or recoupment and gives the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

SECTION 4. Payment of Purchase Price. The Assignee, on each date for payment of the Purchase Price in respect of any Equipment fixed as provided in Article 4 of the Conditional Sale Agreement, shall pay to the Builder an amount equal to the Purchase Price of the Units of Equipment being made subject to the Conditional Sale Agreement, as shown on the invoice therefor then being settled for, which, under the terms of subparagraph (b) of the third paragraph of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Davis Polk & Wardwell, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Assignee dated the date of delivery thereof and transferring to the Assignee the Builder's retained title to and its security interest in such units, warranting to the Assignee and to the Vendee that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all

claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment as contemplated by Section 1(a) hereof and by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder for the units of Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective (in conjunction with the passage of title as between the parties upon delivery to the Builder of the Certificate of Acceptance in respect of such units) to vest

in the Assignee the Builder's retained title to and its security interest in the units of Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement and is subject to the provisions of the Conditional Sale Agreement relating to the Maximum Purchase Price (as defined therein) payable thereunder. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. Assigns. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, and each successor of the Assignee or its assignees shall enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Representations and Warranties; Additional Agreements. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is a legal, valid and binding agreement of the Builder in accordance with its terms;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further

instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee or its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York, provided, however, that the parties shall be entitled to all the rights conferred by Section 77(j) of the Bankruptcy Act (as the same is presently in force or as the substance thereof may hereafter be re-enacted), Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the

several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any Unit of the Equipment shall be located, and any rights arising out of the marking on the Units of Equipment.

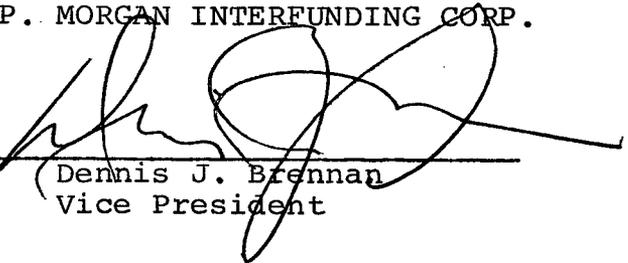
SECTION 8. Counterparts. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

by   
Roger B. Smith  
Executive Vice President

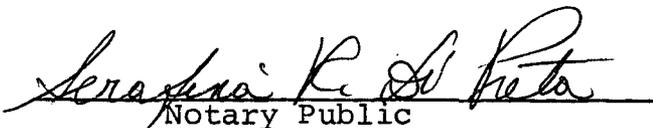
J. P. MORGAN INTERFUNDING CORP.

by   
Dennis J. Brennan  
Vice President



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

On this 1st day of May, 1977, before me personally appeared Dennis J. Brennan, to me personally known, who, being by me duly sworn, says that he is Vice President of J. P. MORGAN INTERFUNDING CORP., that said instrument was signed on behalf of said corporation by due corporate authority and he acknowledged that the execution of the foregoing instrument was the free act and deed of said ~~trust company~~ <sup>corporation</sup>.

  
Notary Public  
[stamp]

SERAFINA R. DI PRETA  
Notary Public, State of New York  
No. 41-0967225 Queens County  
Cert. filed in New York County  
Term Expires March 30, 1979

CERTIFICATE OF ACCEPTANCE

The undersigned, the duly authorized representative of Consolidated Rail Corporation, (the "Lessee"), hereby certifies with respect to the Diesel-Electric Locomotives, manufactured by General Motors Corporation (Electro-Motive Division), (the "Manufacturer"), bearing the identifying reporting marks and numbered as follows:

pursuant to the Interim Conditional Sale Agreement, dated as of April 15, 1977, between the Manufacturer and United States Trust Company of New York (the "Vendee-Lessor") (the "Conditional Sale Agreement") and the Interim Lease of Railroad Equipment, dated as of April 15, 1977, between the Vendee-Lessor and the Lessee (the "Lease"):

1. that said locomotives have been inspected and accepted on behalf of the Vendee-Lessor under the Conditional Sale Agreement and on behalf of the Lessee under the Lease at LaGrange, Illinois.

2. that there was plainly, distinctly, and conspicuously placed upon each side of each such locomotive at the time of its delivery and acceptance a legend bearing the following words in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A CONDITIONAL  
SALE AGREEMENT FILED UNDER THE  
INTERSTATE COMMERCE ACT, SECTION 20c"

and that each such locomotive was otherwise marked in conformity with the requirements of § 5 of the Lease. Delivery of this Certificate to the Manufacturer by the Lessee on behalf of the Vendee-Lessor shall evidence the passage to J. P. Morgan Interfunding Corp. (the "Assignee") as assignee of the

