

CONRAIL



8863
RECORDATION NO. Filed & Recorded

JUN 24 1977 -7 15 PM

RECORDATION NO. 8863^B Filed & Recorded

JUN 24 1977 -7 15 PM

INTERSTATE COMMERCE COMMISSION June 23, 1977

INTERSTATE COMMERCE COMMISSION

Date 6/24/77
Fee \$ 100.00

ICC Washington, D.C.

RECORDATION NO. 8863^C Filed & Recorded

JUN 24 1977 -7 15 PM

RECORDATION NO. Filed & Recorded

8863-A

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

INTERSTATE COMMERCE COMMISSION JUN 24 1977 -7 15 PM

Dear Mr. Oswald:

INTERSTATE COMMERCE COMMISSION

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 49 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 *Vendor* General Motors Corporation and United States Trust Company, as Trustee, and

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

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

Interim Assignment of Lease and Agreement between United States Trust Company, as Trustee, General Electric Credit Corporation 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 Motors Corporation (Electro-Motive Division) LaGrange, Illinois
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Purchaser United States Trust Company ✓
of New York, as Trustee
45 Wall Street
New York, New York 10005

Assignee J.P. Morgan Interfunding Co. ✓
37 Wall Street
New York, New York 10005

General Electric Credit Corporation ✓
P.O. Box 8300
Stanford, Connecticut 06904

With respect to the documents described under B):

Lessor United States Trust Company ✓
of New York, as Trustee
45 Wall Street
New York, New York 10005

Lessee Consolidated Rail Corporation ✓
1310 Six Penn Center Plaza
Philadelphia, Pa. 19104

Guarantor General Motors Corporation and ✓
General Electric Corporation

The equipment covered by the documents are:

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>No. of Units</u>	<u>Marked*</u>	<u>Numbers (Inclusive)</u>
3000 HP Model U23-B diesel- electric locomotive	CC	10	Conrail	2789-2798
3000 HP Model SD40-2 diesel- electric locomotive	CC	18	Conrail	6390-6407

Wrong #s
see doc.

*Each unit will have marked thereon the following legend:
"Ownership subject to a Security Agreement filed
under the Interstate Commerce Act, Section 20c".

Conditional Sale

Robert L. Oswald, Secretary
June 23, 1977
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<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>No. of Units</u>	<u>Marked*</u>	<u>Numbers (Inclusive)</u>
2000 HP Model GP38-2 diesel- electric locomotive	BB	8.	Conrail	8173-8180

Two 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 one counterpart original of the documents please return the remaining copy, 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,



A. Carl Kaseman, III
Senior Tax & Finance Counsel

ACKIII/cmm

*Each unit will have marked thereon the following legend:
"Ownership subject to a ~~Security~~ Agreement filed
under the Interstate Commerce Act, Section 20c".

Conditional Sale

RECORDATION NO. 8863-E Filed & Recorded

JUL 26 1977-9 40 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1977

between

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

J. P. MORGAN INTERFUNDING CORP.

and

GENERAL ELECTRIC CREDIT CORPORATION

THIS AGREEMENT AND ASSIGNMENT AMENDS AND RESTATES
IN ITS ENTIRETY AN INTERIM AGREEMENT AND ASSIGNMENT
DATED AS OF APRIL 15, 1977, BETWEEN GENERAL MOTORS
CORPORATION (ELECTRO-MOTIVE DIVISION), AND J. P.
MORGAN INTERFUNDING CORP. AND GENERAL ELECTRIC
CREDIT CORPORATION.

AGREEMENT AND ASSIGNMENT dated as of April 15, 1977, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (hereinafter called the Builder) and J. P. MORGAN INTERFUNDING CORP. and GENERAL ELECTRIC CREDIT CORPORATION (hereinafter in their capacity as assignees collectively called the Assignees).

WHEREAS the Builder and United States Trust Company of New York, as Trustee (hereinafter called the Vendee) under a Trust Agreement (B) dated as of the date hereof with J. P. Morgan Interfunding Corp. and General Electric Credit Corporation, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, conditional sale and delivery, on the conditions therein set forth, by the Builder and the conditional purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

WHEREAS the Vendee and Consolidated Rail Corporation (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) 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 (hereinafter called the Guaranty Agreement);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignees to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignees, their 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, subject to payment by the Assignees to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to such Builder under the Conditional Sale Agreement;

(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 for taxes paid or incurred 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 Assignees 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 warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, 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 assign-

ment and transfer, the Builder hereby authorizes and empowers the Assignees in the name of the Assignees, or in the name of the Assignees' 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 Assignees are 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 Assignees.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same 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 Assignees 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. The Builder agrees with the Assignees that in any suit, proceeding or action brought by the Assignees under the Conditional Sale Agreement for any instalment 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 Assignees from and against all expenses, 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. The Builder's obligation so to indemnify, protect and hold harmless the Assignees is conditional upon (a) the Assignees' timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignees' prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignees' giving 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 Assignees 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 Assignees or their 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 Assignees will give prompt notice to the Builder of any claim actually known to the Assignees 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. 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 Assignees, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignees, on each Closing Date 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 Equipment 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 instalments, provided that there shall have been delivered to the Assignees (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to them and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignees, 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 Assignees dated the date of delivery thereof and transferring to the Assignees the Builder's title to and its security interest in such units, warranting to the Assignees 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 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 the Equipment as contemplated 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 Assignees 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 to vest in the Assignees the Builder's 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 Assignees 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 Assignees with funds furnished to them for that purpose by the Vendee.

The obligation of the Assignees hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignees' having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and 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. In the event that the Assignees shall not make any such payment, the Assignees shall reassign to the Builder, without recourse to the Assignees, all right, title and interest of the Assignees in and to the units of Equipment with respect to which payment has not been made by the Assignees.

SECTION 5. The Assignees may assign all or any of their rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to them 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, enjoy all the rights and privileges and be subject to all the obligations of the Assignees hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignees, 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, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms, that it is now in force without amendment thereto and that no authoriz-

ation or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by the Builder of the Conditional Sale Agreement;

(b) agrees that it will from time to time, at the request of the Assignees or their 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 Assignees or intended so to be; and

(c) agrees that, upon request of the Assignees, 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. This Assignment supersedes, amends and restates in its entirety an Interim Agreement and Assignment dated as of the date hereof between the Builder and the Assignees.

SECTION 8. The terms of this Assignment and all 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 the rights conferred by 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 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignees shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execu-

tion hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 10. The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Guarantor in the event of any variation or modification of this Assignment or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor.

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 officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[Corporate Seal]
Attest:

W. R. Thomas
Assistant Secretary

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION),

by *P. K. Hoglund*
Vice President

J. P. MORGAN INTERFUNDING CORP.,

by *Homer P. K. Rees*
Vice President

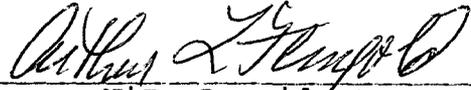
[Corporate Seal]

Attest:

James D. Goodpasture
Authorized Officer

GENERAL ELECTRIC CREDIT CORPORATION,

by



~~Vice President~~

§ 72

SENIOR LOAN OFFICER

[Corporate Seal]

Attest:



Authorized Officer

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

On this *22nd* day of July 1977, before me personally appeared *Homer McK. Rees*, to me personally known, who, being by me duly sworn, says that he is a *Vice President* of J. P. MORGAN INTERFUNDING CORP., 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ferdinand Caiocca
Notary Public
FERDINAND CAIOCCA
NOTARY PUBLIC, State of New York
No. 31-0534625
Qualified in New York County
Commission Expires March 30, 1979

[Notarial Seal]
My Commission expires

New York
STATE OF ~~CONNECTICUT~~,)
New York) ss.:
COUNTY OF ~~FAIRFIELD~~,)

On this *25* day of July 1977, before me personally appeared *ARTHUR V. FENBOLD*, to me personally known, who, being by me duly sworn, says that he is a **SENIOR LOAN OFFICER** of GENERAL ELECTRIC CREDIT CORPORATION, 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Caryn E. Weinberg
Notary Public
CARYN E. WEINBERG
NOTARY PUBLIC, State of New York
No. 03-4633991
Qualified in Bronx County
Commission Expires March 30, 1978
Certificate filed in New York County

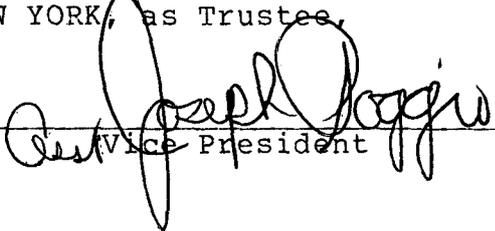
[Notarial Seal]
My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 15, 1977.

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by


Vice President