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RECORDATION NO. _____ FILED & RECORDED

JAN 16 1974 -4 49 PM

INTERSTATE COMMERCE COMMISSION



Citizens Fidelity Bank

7314

LEASE OF RAILROAD EQUIPMENT

RECORDATION NO. _____ Filed & Recorded

JAN 16 1974 -4 40 PM

Dated as of January 14, 1974 INTERSTATE COMMERCE COMMISSION

between

CITIZENS FIDELITY BANK AND TRUST COMPANY,
Lessor

and

KENTUCKY AND INDIANA TERMINAL RAILROAD COMPANY,
Lessee

[Covering 2 Locomotives]

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

LEASE OF RAILROAD EQUIPMENT (hereinafter called Lease) dated as of January 14, 1974, between CITIZENS FIDELITY BANK AND TRUST COMPANY, 500 West Jefferson Street, Louisville, Kentucky, 40201, a Kentucky banking corporation (hereinafter called the Lessor), and THE KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY, 2910 Northwestern Parkway, Louisville, Kentucky, 40212, (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Purchase Agreement dated as of October 8, 1973 (hereinafter called the Purchase Agreement), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Exhibit A hereto;

WHEREAS, the Lessee has assigned or will assign its interest in the Purchase Agreement to the Lessor; 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 Purchase Agreement on or prior to June 30, 1974 (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:

#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 Lease of Railroad Equipment 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, provided the rights, duties and liabilities of the respective Lessor and Lessee shall be determined with specific reference to the Purchase Agreement and this Lease, and that all reference in the Model Lease Provisions to "Security Documents" shall be deemed to mean the "Purchase Agreement," and to "Schedule A" shall be deemed to mean "Exhibit A" of this Lease.

Purchase Agreement as used herein and in the Model Lease Provisions shall mean the Builder's Locomotive Proposal #73635 dated July 26, 1973 and the Lessee's Purchase Order #5091 dated October 8, 1973 as Exhibits C and D respectively herein appended.

#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 180 consecutive payments, payable monthly on the first day of each month in each year commencing with February 1, 1974 (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 .985207% of the Purchase Price of each such Unit; and the next 179 monthly payments shall each be in an amount equal to .985207% of the Purchase Price of each such Unit.

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 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, 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.

The Lessee and The Baltimore and Ohio Railroad Company, Monon Railroad and Southern Railway Company (hereinafter collectively called "Owner Railroads") entered into an Agreement dated August 2, 1960 (hereinafter "Operating

Agreement"), which provides, in Article II, for the payment of the Lessee's operating and maintenance expenses by the Owner Railroads, to wit:

"2. The Baltimore Company, the Monon Company and the Southern Company shall pay for the use of the properties and facilities of said Terminal Company such sums of money as shall from time to time be required, in addition to other revenues of the Terminal Company, to meet all expenses of operation and maintenance of the property of the Terminal Company and all of its obligations for taxes, and interest on such of the New Bonds as may then be outstanding, as well as the interest payable on advances; the amounts to be paid by each company being fixed and determined as herewith provided."

the aforesaid Operating Agreement by its terms expires on February 28, 1986. In the event that 90 days before the expiration date of the Operating Agreement the provisions of Article II of the Operating Agreement are not incorporated in substantial form in another agreement of the same or similar nature whereby the Owner Railroads, or their respective successors or assigns, undertake to assume the obligations and pay the operating and maintenance expenses of the Lessee for a period of not less than three (3) years after February 28, 1986, then and in that event it is specifically agreed the Lessee shall deposit the aggregate total of monthly rental payments remaining under this Lease in an escrow account with the Lessor, such account to bear interest at the Lessor's highest Certificate of Deposit rate available for that amount and maturity, it being understood that the Lessor shall be authorized to draw upon the escrow account each remaining month hereunder in the amount of the rental payment. Each rental payment thus paid out of escrow shall be considered to have been paid by the Lessee. Lessor shall, upon the termination of this Lease, pay over to the Lessee any funds accumulated in the escrow account in excess of funds necessary to pay the rental payments.

#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 one month after the date on which the final monthly payment of rent in respect thereof is due pursuant to #3.

#5. Identification Marks. #5 of the Model Lease Provisions is herein incorporated as #5 hereof, except that the markings referred to in the first sentence in the first paragraph are to read "Citizens Fidelity Bank and Trust Company, Louisville, Kentucky, Lessor" and "Kentucky & Indiana Terminal Railroad Company, Louisville, Kentucky, Lessee."

#6. Taxes. #6 of the Model Lease Provisions is herein incorporated as #6 hereof except that the paragraph referencing Article 6 of the Security Document is deleted.

#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 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 preceeding the last monthly rental payment 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>
2/1/74 -----	100.5654%	2/1/76 ----	96.8351%
8/1/74 -----	100.1909	8/1/76 ----	95.4905
2/1/75 -----	99.1796	2/1/77 ----	89.3330
8/1/75 -----	98.1831	8/1/77 ----	87.6645

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
2/1/78 -----	85.7449%	8/1/83 -----	49.0041%
8/1/78 -----	83.8259	2/1/84 -----	45.8732
2/1/79 -----	77.1850	8/1/84 -----	42.7154
8/1/79 -----	75.0245	2/1/85 -----	39.4423
2/1/80 -----	72.6458	8/1/85 -----	36.1395
8/1/80 -----	70.2550	2/1/86 -----	32.7328
2/1/81 -----	63.1764	8/1/86 -----	29.2920
8/1/81 -----	60.5671	2/1/87 -----	25.7476
2/1/82 -----	57.7776	8/1/87 -----	22.1627
8/1/82 -----	54.9671	2/1/88 -----	18.4745
2/1/83 -----	51.9977	8/1/88 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 Lessor as additional named insured as its interest 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 1974, the Lessee will furnish to the Lessor 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 Purchase Agreement, 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 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. 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, except that the words "under the provisions of Article 14 of the Security Document" are hereby deleted from the first sentence in the first paragraph and the words "under the Bill of Sale between the Builder and the Lessor the form of which is herein appended as Exhibit B of the Lease" substituted and the words "and the Vendor" are deleted as they appear and the words "whatsoever, regardless of the cause thereof," "but not limited to," "patent liabilities," "the ordering, acquisition," and "purchase" are hereby deleted.

#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 ten days after written notice thereof;

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 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 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), 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 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 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 monthly 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 a 12 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 addition 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."

and the second sentence of the second paragraph shall be modified by deleting the period and the addition of the following:

";provided however, that the Lessee shall be under no obligation to pay any and all claims of any kind so long as it is contesting in good faith and by appropriate legal proceedings such claims and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property rights of the Lessor hereunder."

and that the words "or under the Security Document in its capacity as Guarantor or otherwise" are deleted in the second and third paragraphs.

#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 February 1 and August 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 except that reference to #7 of the Model Lease Provisions will refer to #7 of this Lease.

#15. Opinion of Counsel. #15 of the Model Lease Provisions is herein incorporated as #15 hereof except that the Closing Date shall be January 14, 1974, and Paragraphs C and F thereof shall read in their entirety as follows:

"C. This Lease has been duly filed and recorded with the Interstate Commerce Commission on _____, at _____ pursuant to the provisions of Title 49 U.S.C.A., Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interest in and to the units."

"F. The Lessor's right, title and interest under this Lease shall be prior and superior to the security interest or lien of any person in and to the Units, and no mortgage, deed of trust or other lien of any nature whatsoever, which may now or hereafter cover or affect any of the property or interests of the Lessee, does or will affect adversely the Lessor's right, title and interest therein."

#16. Recording; Expenses. #16 of the Model Lease Provisions 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 becomes 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.

#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 500 West Jefferson Street, Louisville, Kentucky, 40201, Attention: William F. Gerard, Commercial Representative, and

(b) if to the Lessee, at Kentucky & Indiana Terminal Railroad Company, 2910 Northwestern Parkway, Louisville, Kentucky, Attention: Kermit I. Williams, Secretary-Auditor-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 consti-

tute but one and the same instrument. Although this Lease is dated as of January 14, 1974, 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 Kentucky provided, however, that the parties shall be entitled to all rights conferred by Section 20C of the Interstate Commerce Act.

#23. 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

BY [Signature]
Vice President

Attest:

[Signature]

KENTUCKY & INDIANA
TERMINAL RAILROAD COMPANY

BY [Signature]
President

APPROVED AS TO FORM

[Signature]
General Attorney

Attest:

[Signature]
Secretary

STATE OF KENTUCKY)
) SS.:
COUNTY OF Jefferson)

On this 14th day of January, 1974, before me personally appeared Richard A. Hess, to me personally known, 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.

Julia B. Smith
Notary Public

[NOTARIAL SEAL]

Notary Public, State at Large, Ky.

My Commission Expires My commission expires Sept. 4, 1974, 197 .

STATE OF Kentucky)
) SS.:
CITY OF Louisville)

On this 14th day of January 1974, before me personally appeared J. J. Palmer, to me personally known, who, being by me duly sworn, says that he is the President and General Manager Kentucky Division Terminal Railroad Co. 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.

Meredith J. Thomas
Notary Public

[NOTARIAL SEAL]

My Commission Expires August 6,, 1977.

MODEL LEASE PROVISIONS

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Document. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the

Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city

income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Document, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Document not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. Annual Reports. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease 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 repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Document have been preserved or replaced. 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; Indemnification. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Document. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable

regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate:

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time

while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occur-

rence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease: *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Document and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Document (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease;

E. The entering into and performance of the Security Document or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein: *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of

the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

EXHIBIT 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>
Model SW-1500 (Type 0440) 1500 HP, 125 Ton Diesel Electric Switching Locomotives	No. 8036 dated January 3, 1972 as amended by Specification Amendment No. 8036-2 dated January 3, 1972	McCook, Ill.	2	82-83	\$218,868	\$437,736	January, 1974 at Youngtown Yard, Louis- ville, Kentucky

EXHIBIT A

EXHIBIT B

BILL OF SALE NO. _____

General Motors Corporation, (Electro-Motive Division), LaGrange, Illinois, a Delaware corporation (hereinafter called the Builder), in consideration of the sum of One Dollar and other good and valuable considerations paid by Citizens Fidelity Bank and Trust Company, 500 West Jefferson Street, Louisville, Kentucky, a Kentucky corporation (hereinafter called the Bank), under the Purchase Order No. 5091 dated as of October 8, 1973 between the Kentucky & Indiana Terminal Railroad Company, 2910 Northwestern Parkway, Louisville, Kentucky, a Kentucky corporation (hereinafter called the Lessee) as assigned by the Lessee to the Bank in the Acquisition Agreement dated _____ between the Lessee and the Bank, as acknowledged and consented to in the Consent and Agreement as issued by the Builder dated _____, does hereby grant, bargain, sell, transfer and set over unto said Bank, its successors and assigns, the following described equipment which has been delivered by the Builder to the Bank or its agent pursuant to said documents to wit:

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>	<u>Serial Nos.</u>
Model SW-1500 (Type 0440) 1500 h.p.125 ton diesel electric switching lo- comotives	No. 8036, dated 1/3/72, as amended by Specification Amendment No. 8036-2, dated 1/3/72	2	82-83	

To have and to hold all and singular the said Equipment above described to the Bank, its successors and assigns, for its and their only use and behoof forever.

And the Builder hereby warrants to the Bank, its successors and assigns, that the Builder is the lawful owner of said equipment; that title to said equipment is free from all liens and encumbrances; and that the Builder has good right to sell the same as aforesaid; and the Builder covenants that it will warrant and defend such title against all claims and demands whatsoever.

The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in the Builder's Locomotive Proposal No. 73635 dated July 26, 1973 and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this warranty.

The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

Notwithstanding, anything to the contrary contained in the Proposal, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

The Builder further agrees with the Bank that neither the inspection as provided in Section 3 of the Acquisition Agreement dated _____ between Kentucky & Indiana Terminal Railroad Company and the Bank, nor any examination, nor the acceptance of any units of the Equipment as provided in said Acquisition Agreement shall be deemed a waiver or a modification by the Bank of any of its rights under this Bill of Sale.

IN WITNESS WHEREOF, The Builder has caused this instrument to be duly executed, in its name by its officers thereunto duly authorized and its corporate seal affixed this _____ day of _____, 1974.

GENERAL MOTORS CORPORATION (Electro-Motive Division)

ATTEST:

BY _____

Vice President

Assistant Secretary

KENTUCKY & INDIANA TERMINAL R. R. CO.

OFFICE OF MANAGER OF PURCHASES AND STORES

5091
ORDER NO. 5091

Electro-Motive Division,
General Motors Corp.,
Southeastern Region,
790 Great Southwest Parkway,
Atlanta, Georgia 30336.

LOUISVILLE, KY. 40212

10-8-1973

PLEASE SHIP THE FOLLOWING MATERIAL AND CONSIGN TO KENTUCKY & INDIANA TERMINAL RAILROAD CO., 34th AND GARFIELD STREETS LOUISVILLE, KY., CARE OF GEORGE E. EVERSON, Manager of Purchases and Stores.

Routing Instructions: 20 lbs. or less - Parcel Post; 21-300 lbs. - Railway Express; 301-4,999 lbs. - Cheapest Way. Over 5,000 lbs. via Southern Railway, Louisville and Nashville Railroad or Baltimore and Ohio Railroad whenever possible. Off-line Shipments: Deliver to above at closest connection from point of origin.

2 - Model SW-1500 - 1500 HP Diesel Electric Switching Locomotives to be furnished in accordance with EMD Proposal No. 73635 dated July 26, 1973 and further in accordance with EMD Specification No. 8036 dated January 3, 1972 + - - - - - \$202,500.00 E

Locomotive Modifications as listed on Page 2 of Locomotive Proposal No. 73635 dated July 26, 1973 - - - - - 16,368.00 E

TOTAL PRICE PER LOCOMOTIVE FOR EMD PLANT McCOOK, ILL. - - - - - \$218,868.00 E

ROUTING INSTRUCTIONS TO BE FOLLOWED

LOCOMOTIVES TO BE NUMBERED 82 AND 83

Color and finish to be same as on K&I Order No. 4512 dated May 24, 1973 - EMD Order No. 73603 covering K&I Locomotives Nos. 80 and 81.

FEBRUARY, 1974 DELIVERY

Items on this order are TAX EXEMPT from the Kentucky Use Tax by Section 175 (COMMON CARRIERS).

The nondiscrimination clause contained in Section 202 of the Executive Order 11246 relative to equal employment opportunity for all persons without regard to race, creed, color, or national origin and implementing rules and regulations are incorporated herein.

Payment for material purchased on this order due thirty days from receipt of material

IMPORTANT

THIS ORDER TO BE FILLED WITHOUT DELAY. PLEASE ACKNOWLEDGE RECEIPT OF SAME and unable to fill promptly, notify undersigned at once by mail. ROUTING INSTRUCTIONS MUST BE STRICTLY OBSERVED. Shippers will be required to assume any additional expense incurred through misrouting. PALLETIZE WHERE POSSIBLE. NO CHARGES FOR PACKAGE OR DRAYAGE ALLOWED.

ALL MATERIAL SHIPPED MUST BE MARKED OR TAGGED WITH ORDER NUMBER. RENDER INVOICES IN TRIPPLICATE AND FORWARD PROMPTLY TO THIS OFFICE. ENTER NUMBER OF THIS ORDER UPON YOUR INVOICES. Do not include more than one order in a invoice. CORRESPONDENCE RELATING TO THIS ORDER SHOULD GIVE ORDER NUMBER AND BE ADDRESSED TO THE UNDERSIGNED.


Manager of Purchases and Stores

**ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION
La Grange, Illinois 60525 (312) 485-7000**



LOCOMOTIVE PROPOSAL NO. 73635

This proposal, inclusive of the conditions stated on the reverse side hereof, when accepted in writing constitutes an agreement to purchase the following equipment:

Two (2) 1500 horsepower SW1500 locomotives in accordance with General Motors Locomotive Specification 8036.

Base price per new SW1500 locomotive -----	\$202,500
Modifications as listed on Page 2 -----	<u>16,368</u>
Total price per locomotive, F.O.B., EMD Plant, McCook, Illinois -----	\$218,868

All prices are subject to adjustment in accordance with Federal pricing regulations in effect at the time of delivery.

First Quarter 1974

Shipment from factory proposed for _____

_____ (Proposed delivery is subject to prior order)
 Accepted this date _____ 19 _____ Signed this date July 26, 1973

For KENTUCKY AND INDIANA TERMINAL RAILROAD

By _____

GENERAL MOTORS CORPORATION
ELECTRO-MOTIVE DIVISION
La Grange, Illinois

By [Signature]
R. E. Hill
Manager - Southeastern Region

Title

Title

ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION
La Grange, Illinois 60525 (312) 485-7000



PROPOSAL NO. 73635

KENTUCKY AND INDIANA TERMINAL

MODIFICATION PRICING

Provision for control service provided by P2A application valve -----	\$ 509
PC switch with light for power knockdown -----	180
Safety control from foot pedal -----	187
Provision for emergency including A-1 charging valve -----	455
Salem 580H automatic drains on both main reservoirs -----	187
Multiple unit control -----	2,978
Load type raised air end connections -----	160
Single step traction motor field shunting -----	768
Flexible truck -----	6,669
Hyatt JEM road freight type roller bearing journal boxes -----	2,068
END pin type slack adjusters -----	N/C
Load indicating ammeter -----	153
Spark arrester manifolds with carbon retention traps -----	153
Engine protector -----	332
1100 gallon fuel tank -----	762
Scotchlite letterboard and numerals -----	88
Step lights at all four corners in stepwells -----	343
Disposable carbody air filters -----	321
Extended throttle and reverser handles -----	49
Total Modifications -----	\$16,368

PERIOD OF OFFER

This offer will remain open for a period of 60 days from the date of the proposal.

PRICE ADJUSTMENTS

The price for the equipment herein described is subject to the following:

- (a) Upon acceptance of this proposal by the Buyer within 60 days from its date, the price set forth herein for the basic equipment and standard modifications shall remain firm for shipments delivered within 210 days from the date of this proposal.
- (b) Price of basic equipment and standard modifications delivered more than 210 days from the date of this proposal may be adjusted to the price currently in effect on the date of shipment, limited however, to a maximum cumulative escalation of 5% per year from the date of this proposal.
- (c) Prices of specialties and modifications not included in the basic specifications of the equipment and not of Seller's design and manufacture are subject to adjustment by the Seller at any time prior to the delivery of the equipment.

Seller shall in no event be responsible for, and no protection against escalation is afforded for, default or delay in delivery occasioned by any cause beyond its control such as outlined in the "Delays" clause.

Conversely, if delivery delays result through fault of Seller the prices determined as set forth above, and as though no delay in delivery had occurred, will prevail.

CERTIFICATE OF ACCEPTANCE

Upon delivery of the equipment to the F.O.B. or acceptance point called for herein, Buyer will furnish Seller a certificate, in quadruplicate, executed by its authorized agent, stating that such equipment has been delivered and is accepted without reservation on its behalf.

PAYMENT OF PURCHASE PRICE

Upon execution of the Certificate of Acceptance and receipt of Seller's invoice, Buyer will pay the full purchase price of the equipment, together with expense incurred by Seller for collection or other charges. Seller will not deliver equipment until Buyer specifies in writing a method of payment acceptable to Seller.

TAXES

In addition to the purchase price, Buyer will assume and pay all lawfully applicable taxes including sales and use taxes and/or gross receipts or gross income taxes in the nature of sales taxes (other than State or Federal Income and Excess Profits Taxes) levied or imposed and arising out of the sale, use or delivery of the equipment called for herein.

TITLE AND LIABILITY FOR DAMAGE

Notwithstanding delivery of the equipment to Buyer and its right to the use thereof, the title to the equipment specified herein shall not pass from Seller until the purchase price is fully paid, and Buyer will perform all acts necessary to perfect and assure retention of title to the equipment in Seller.

Although legal title in and to the delivered equipment is retained by Seller until receipt of the full purchase price, Buyer will assume and not be released from its obligation to pay such purchase price in the event of any damage, loss or destruction of the equipment after delivery to the F.O.B. point.

PATENTS

The Seller shall defend any suit or proceeding brought against the Buyer so far as based on a claim that equip-

ment of Seller's specification, or any part thereof, furnished under this contract constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and the Seller shall pay all damages and costs awarded therein against the Buyer.

In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall at his option and at his own expense, either procure for the Buyer the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing, or remove the entire equipment and refund the purchase price and the transportation and installation costs thereof.

The Seller will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Seller for patent infringement by said equipment or any part thereof.

DELAYS

Should delivery of the equipment covered by this proposal be delayed due to causes beyond the control of Seller, including but not limited to, late design changes or other actions taken by Buyer; acts of God; acts of the Government of the United States or of any State or political subdivision thereof; fires, floods, explosions or other catastrophes; epidemics and quarantine restrictions; acts of a public enemy; any strikes, slowdowns or labor shortages of any kind; any material, transportation or utility shortage or curtailment; delays of a supplier due to any of the foregoing causes, and the Seller promptly notifies the Buyer thereof in writing, the time allowed for performance will be extended by a period of time equal to the period of delay.

SERVICING

Seller will, when required, provide a service representative to assist Buyer, in a consulting capacity, in placing the equipment into operating condition.

TRANSPORTATION

For the purpose of enabling Seller's service representative(s) to fulfill Seller's obligation under this contract, Buyer will supply such representative(s) with transportation over its lines.

WARRANTY

Seller warrants to the original user that the locomotive is of the kind and quality described in the specification referred to herein and is suitable for the ordinary purposes for which such equipment is used.

Seller further warrants the locomotive to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before the locomotive has been operated 250,000 miles whichever event shall first occur. Seller agrees to correct such defects, which examination shall disclose to Seller's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Seller's obligation with respect to such defect under this warranty.

Seller warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Seller.

There are no warranties, expressed or implied, made by Seller except the warranties set out above.