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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref: 2044-898]

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1985

between

GENERAL ELECTRIC COMPANY

and

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent

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AGREEMENT AND ASSIGNMENT dated as of March 15, 1985, between GENERAL ELECTRIC COMPANY (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (together with its successors and assigns called the "Assignee") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Builder and The Connecticut Bank and Trust Company, National Association, acting as Trustee (the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Progress Leasing Corporation, have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") providing for the construction, conditional sale and delivery by the Builder and the conditional purchase by the Vendee of the railroad equipment described in Annex B to the CSA (the "Equipment"); and

WHEREAS the Vendee and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment.

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

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee;

(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 Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (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 CSA on account of the indebtedness in respect to the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, 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 CSA;

without any recourse thereunder, 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 CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being agreed that, notwithstanding this assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee, the Vendee, the Beneficiary and the Lessee that at the time of delivery of each unit of the Equipment

under the CSA 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 CSA 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 CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee 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 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 Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, 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 Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's 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 CSA, to indemnify, protect and hold harmless the

Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The indemnities contained in this Section 3 shall survive the expiration or termination of this Assignment with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, the Assignee. The Assignee will give prompt notice to the Builder of 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 CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to that portion of 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 of the CSA, is payable in installments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Cravath, Swaine & Moore, special counsel to the Assignee:

(a) a bill or bills of sale from the Builder to the Assignee dated the date of delivery thereof and transferring to the Assignee the Builder's security interest in such units, warranting to the Assignee, the Vendee, the Beneficiary and the Lessee that, at the time of delivery of such units under the CSA, 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 CSA 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 CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the CSA and Section 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 if the Purchase Price is other than the base price or prices set forth in Annex B to the CSA;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee, the Beneficiary, the Vendee and the Lessee, 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 Assignee the Builder's security interest in its units of Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

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

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

The Builder agrees that, in the event it does not receive payment by the Vendee of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 4 of

the CSA, its sole remedy shall be to bring suit therefor in respect thereof against the Vendee and the Builder shall have no right in respect thereof to exercise or to cause the Agent to exercise on behalf of the Builder any of the rights and remedies under Articles 15 and 16 of the CSA.

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

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and its successors and assigns, that the CSA 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 CSA is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms;

(b) agrees that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subject to the payment of the amounts referred to in Section 1(a) hereof, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Agreement 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

49 U.S.C. § 11303, such additional rights arising out of the filing of depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. It shall not be necessary that any counterpart be signed by both the Assignee and the Builder so long as each such party has executed and delivered to the other one counterpart hereof. Although for convenience this Assignment is dated as of the date first above written, 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.

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

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by



Attest:

  
Attesting Secretary

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 March 15, 1985.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not individually but solely  
as Trustee,

by 

Authorized Officer

COMMONWEALTH OF PENNSYLVANIA,) )  
 ) ss.:  
COUNTY OF ERIE, )

On this \_\_\_\_\_ day of March 1985, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF MARYLAND,) )  
 ) ss.:  
CITY OF BALTIMORE,)

On this \_\_\_\_\_ day of March 1985, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[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 March 15, 1985.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not individually but solely  
as Trustee,

by \_\_\_\_\_  
Authorized Officer



COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE, )

On this 26th day of March 1985, before me personally appeared W.S. Butler, to me personally known, who, being by me duly sworn, says that he is a Manager-Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara J. Nevin
Notary Public

BARBARA J. NEVIN, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE COUNTY
MY COMMISSION EXPIRES OCT. 7, 1985
Member, Pennsylvania Association of Notaries

[Notarial Seal]

My Commission expires:

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of March 1985, before me personally appeared, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires:

ASSIGNMENT OF LEASE AND AGREEMENT dated March 15, 1985 (this "Assignment"), between THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Progress Leasing Corporation (the "Beneficiary"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with General Electric Company (the "Builder") providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investors (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in the CSA), the Lessor has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Vendor.

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

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests, powers, privileges and other benefits in, to and under the Lease including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable by the Lessee to, or receivable from the Lessee by, the Lessor under or pursuant to the provisions of the Lease (other than payments by the Lessee to the Lessor (individually or in its trust capacity) or the Beneficiary under Sections 6, 9 and 16 of the Lease) whether as rent,

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

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA which are due and payable on the date such Payments were required to be made pursuant to the Lease, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be deemed to be held by the Vendor in trust for the Lessor and shall be paid immediately to the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of Section 3 of the Lease or Casualty Value payment under Section 7 of the Lease or any indemnity payment under the Lease when due, the Vendor shall notify the Lessee, the Lessor, the Beneficiary and the Guarantor at their addresses set forth in the Participation Agreement; provided, however, that the failure of the Vendor to so notify the Lessee, the Lessor, the Beneficiary and the Guarantor shall not affect the obligations of the Lessee hereunder, the Lessor hereunder or under the CSA or the Guarantor under the Guarantee Agreement; except that the Vendor may not declare an event of default under subparagraph (a) or (f) of Article 15 of the CSA arising solely by reason of the failure of the Lessee to make any such payment which, pursuant to subparagraph (f) of Article 15 of the CSA, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless

such event of default is not remedied by the Lessor within 10 business days after receipt of the aforesaid notification.

2. The assignment made by the Lessor hereunder is executed only as security and, therefore, the execution and delivery of this Assignment by the Lessor shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the reasonable request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendor or intended so to be.

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

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

6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

7. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the CSA) on the Lease or Payments due or to become due thereunder claimed by any party from, through or under the Lessor, not arising out of the transactions contemplated by the CSA or the Lease (but including income taxes arising out of the receipt of Payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such Payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

8. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.

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

10. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

11. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate in writing.

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under Article 15 of the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive Payments under Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of § 10(a) and § 10(b) of the Lease; provided, however, that the Lessor may, whether or not an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise and enforce, its or the Beneficiary's rights, powers, privileges and remedies arising out of § 10(a) of the Lease in respect of its or the Beneficiary's rights under §§ 6, 9 and 16 of the Lease; provided further, however, that, subject to Paragraph 16 of the Participation Agreement, the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising

out of § 10(b) of the Lease or take any other action which would cause any termination of the Lease.

13. It is expressly understood and agreed by and between the parties hereto, anything in this Assignment to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements in this Assignment made on the part of the financial institution acting as the Lessor are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by said financial institution or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon the said financial institution as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Beneficiary hereunder either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

14. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all others shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

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

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not individually but solely as  
Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY,  
as Agent

by

  
\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Corporate Trust Officer

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this \_\_\_\_\_ day of March 1985, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires:

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this *27th* day of March 1985, before me personally appeared R. E. Schreiber, to me personally known, who, being by me ~~me~~ duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



*M. Agnes Rosander*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: *7/1/86*

## CONSENT AND AGREEMENT

The undersigned, CONSOLIDATED RAIL CORPORATION (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, other than the unassigned amounts (which moneys, other than such unassigned amounts, are hereinafter called the "Payments"), due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Agent-Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to Mercantile-Safe Deposit and Trust Company for credit to the Agent-Vendor's Account No. 619478-8, with the notation that funds are "RE: Conrail 3/15/85" (or at such other address as may be furnished in writing to the Lessee by the Agent-Vendor);

(2) except as provided in Section 1 of the Lease, it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under the Lease or under the CSA or against the Builder (as defined in the Lease Assignment) or the Agent-Vendor or otherwise;

(3) the Agent-Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent-Vendor were named therein as the Lessor;

(4) the Agent-Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Agent-Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lease the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent-Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of the said Commonwealth.

[Corporate Seal]

CONSOLIDATED RAIL CORPORATION,  
as Lessee,

Attest:

by  
\_\_\_\_\_

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of March, 1985.

[Corporate Seal]

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY,  
as Agent,

Attest:

by

  
\_\_\_\_\_  
CORPORATE TRUST OFFICER

  
\_\_\_\_\_  
VICE PRESIDENT

(5) the Lease shall not, without the prior written consent of the Agent-Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lease the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent-Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of the said Commonwealth.

[Corporate Seal]

Attest:

John C. Keady

CONSOLIDATED RAIL CORPORATION,  
as Lessee,

by

JAW

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of March, 1985.

[Corporate Seal]

Attest:

\_\_\_\_\_

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY,  
as Agent,

by

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