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May 25, 1989

9-145A056

The Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

16354  
RECORDATION NO \_\_\_\_\_ FILED 1423

MAY 25 1989 - 2 53 PM

INTERSTATE COMMERCE COMMISSION

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and five counterparts of a Demonstration Lease Agreement, dated as of May 18, 1989, between General Electric Company ("Lessor"), and Consolidated Rail Corporation ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Demonstration Lease Agreement are as follows:

LESSOR: General Electric Company  
2901 East Lake Road  
Erie, PA 16531

LESSEE: Consolidated Rail Corporation  
6 Penn Center Plaza  
Philadelphia, PA 19103

MAY 25 2 46 PM '89  
MOTOR OPERATING UNIT

A general description of the railroad locomotives covered by the enclosed document is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

*Counterpart - J.K. Maser*

Letter to Secretary McGee  
Page Two  
May 25, 1989

Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.

A short summary of the document to appear in the index follows:

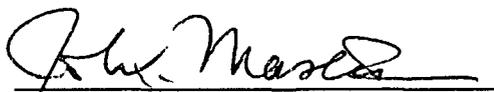
PRIMARY DOCUMENT

Demonstration Lease Agreement, dated as of May 18, 1989, between General Electric Company ("Lessor") and Consolidated Rail Corporation ("Lessee"), relating to three (3) General Electric Super 7 B-23 Diesel Electric Locomotives, bearing identification marks "GECX" and Road Nos. 2000, 2001 and 2002.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

BY:



John K. Maser III  
Attorney-In-Fact

004/207  
Enclosures

Schedule I

Description of Locomotives

<u>Type of Equipment</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric, Super 7 B-23 Diesel Electric Locomotives	3 locomotives	Marked "GECX" on both sides of locomotives	2000, 2001 and 2002

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

5/25/89

John K. Maser III  
Donelan, Cleary, Wood, & Maser  
Suite 850  
1275 K Street, N.W.  
Washington, D.C. 20005

Dear Sir;

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/25/89 at 2:50PM, and assigned recordation number(s). 16354

Sincerely yours,



Secretary

Enclosure(s)

Demonstration Lease Agreement

MAY 25 1989 -2 50 PM

INTERSTATE COMMERCE COMMISSION

This Agreement, made and entered into as of this 18<sup>th</sup> day of May, 1989, by and between General Electric Company (hereinafter called "GE") and the Consolidated Railway Corporation (hereinafter called "Lessee").

Now, therefore, intending to be legally bound, GE and Lessee agree as follows:

1. Locomotives to be Leased and Period of Lease - GE will furnish and Lessee will use the following locomotives from the listed "Beginning of Lease" date to the "End of Lease" date:

<u>Model</u>	<u>Road Number</u>	<u>Casualty Value</u>	<u>Beginning of Lease</u>	<u>End of Lease</u>
"Super 7" B23	GECX 2000	\$850,000	May 20, 1989	June 13, 1989
"Super 7" B23	GECX 2001	\$850,000	May 20, 1989	June 13, 1989
"Super 7" B23	GECX 2002	\$850,000	May 20, 1989	June 13, 1989

2. Rental Payments - Lessee will pay to GE, as rent for each of the locomotives, the sum of \$1.00, during the term of the lease.

3. Delivery and Return Points - Lessee will accept delivery of locomotives at any interchange point on Lessee's railroad system. Upon end of the lease, Lessee will deliver the locomotives to GE's Erie, Pennsylvania factory, at no charge to GE.

4. Registration of Lease - Lessee will assist General Electric in duly filing, registering or recording lease in conformity with Section 11303 of the Interstate Commerce Act for the protection of General Electric's title to the Locomotives.

5. Other Terms and Conditions - This agreement is governed by terms and conditions listed in "Appendix 1. Demonstration Lease Terms and Conditions" (attached).

This Lease contains the entire and only agreement between the parties concerning the subject matter hereof, and any representation, promise or condition not incorporated herein shall not be binding on either party. Not modification, renewal, extension, termination or waiver of this Lease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party.

Lessee:

GE:

J. T. Whately

Michael D. Spahr

Title: Vice President Materials & Purchasing

Title: Vice President - GE Transportation Systems

Date: 5.14.89

Date: 5/15/89

## Appendix 1. DEMONSTRATION LEASE TERMS AND CONDITIONS

### 1. Warranties and Liabilities:

- a. GE makes NO WARRANTIES, WHETHER EXPRESS, IMPLIED, ORAL, WRITTEN OR STATUTORY, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, concerning Locomotives supplied to Lessee. LESSEE SHALL ACCEPT EACH LOCOMOTIVE AS IS AND WITH ALL FAULTS.
- b. Whether liability is based on contract, warranty, tort (including negligence) or otherwise, (i) GE shall have no liability to Lessee arising out of furnishing or use of any Locomotive under this Lease, or their use; (ii) in no case, shall GE's liability include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages.
- c. Lessee shall indemnify, reimburse, and hold GE harmless from any and all losses, damages, costs, injuries, claims, demands, suits, judgements or causes of action whatsoever arising on account of, or caused in any way by the Locomotives or the use or operation thereof, except to the extent directly caused by the negligence of GE.

### 2. Title, Assignment, Taxes and Liens

- a. At all times during this Lease, title to the Locomotives shall remain with GE. Delivery of the Locomotives to Lessee shall constitute a lending or bailment for hire. No right, title or interest in the Locomotives will vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Lease. Lessee will take all actions necessary to protect GE's rights, interest and title in the Locomotives. Locomotives shall be marked on each side: "General Electric Company, Owner, Lessor, Lease Filed with ICC". Lessee shall maintain this marking, and immediately replace it if such marking is destroyed. Lessee shall not make any markings on the locomotives that might be interpreted as a claim of ownership.
- b. Lessee agrees to use the Locomotives exclusively within its own service and within the boundaries of the United States. Lessee shall not assign, transfer or encumber this Lease or any interest therein or any right granted hereunder without prior written consent of GE.
- c. Lessee shall pay and discharge any debt, tax, charge, assessment, obligation or claim against the Lessee or Locomotive(s) which, if unpaid, might become a lien or charge upon or against the title of GE to the Locomotives or which might have the effect of altering in any way the rights of GE in such Locomotives under this Lease.
- d. Lessee shall be responsible for any taxes and fees arising from the use or operation of the Locomotives.

### 3. Risk of Loss and Damage

- a. Lessee shall bear the risk of loss or damage to any Locomotive from the date of delivery through return of the Locomotive by Lessee to GE, regardless of the cause of such loss or damage (including any damages caused by improper use, operation or maintenance of the Locomotives), except to the extent such loss or damage is caused directly by the negligence of GE.
- b. In the event of any loss or damage to any Locomotive, Lessee shall immediately notify GE. In the event that Locomotives are lost or damaged beyond repair, Lessee shall pay to GE the casualty value of such Locomotive within thirty days. If Locomotives are partly damaged, GE will, at its sole discretion, determine how repairs are to be made. In such cases, the Lessee will be responsible for the reasonable cost of such repairs, and shall reimburse GE promptly upon submission of invoices (total of invoices shall not exceed casualty value of Locomotive). In the event that damage is limited to a component of the Locomotive costing less than \$500, Lessee may replace such component with a component of equivalent quality and value, without notifying GE.
- c. Lessee shall, at all times, at its own expense, cause to be carried and maintained with respect to liabilities assumed by Lessee under this Lease (i) all risk insurance on Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts and against such risks and with such insurance companies as is consistent with prudent railroad industry practices; provided, however, that if Lessee customarily self-insures against such risks, Lessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices.
- d. Lessee shall continue to be responsible for any amounts due under this section notwithstanding any termination of this lease.

### 4. Use, Alterations and Maintenance

- a. Lessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations. Lessee shall keep the Locomotives in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended maintenance standards and procedures.
- b. During the term of the Lease, Lessee assumes all operating and maintenance expenses of the Locomotives including the costs of fuel, lubricating oils, greases and other supplies necessary for the proper operation of the Locomotives. These supplies must conform with GE's specifications. Lessee shall not be responsible for any costs of repairing any components of the Locomotives which may fail due to no fault of the Lessee.
- c. Lessee shall not make change the design, construction or specifications of the Locomotives, body or electrical equipment, components thereof, or markings without the prior authority and approval of GE.
- d. Lessee shall allow GE to inspect and observe the operation of the Locomotives at any reasonable time and location on Lessee's property.

### 5. Default and Remedies

- a. If Lessee breaches or is in default of any material provision of this Lease, GE, at its option, may, without prejudice to any other rights or remedies it may have under this Lease, at law or in equity, (a) terminate this Lease and take immediate possession of the Locomotives, and (b) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable terms and conditions of this Lease or to recover damages for breach thereof.
- b. The remedies and powers in this Lease provided in favor of GE shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by GE.

6. **Applicable Law** - Except insofar as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania (including but not limited to the Uniform Obligations Act), but GE shall be entitled to such additional rights arising out of the filing or recording hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any such assignment shall be filed or recorded.



COMMONWEALTH OF PENNSYLVANIA )  
 )  
 ) SS.  
COUNTY OF PHILADELPHIA )

On this 18<sup>TH</sup> day of May, 1989, before me personally appeared J. T. WHATMOUGH,  
to me personally known, who, being by me duly sworn, did say that he is VP - M + P  
\_\_\_\_\_ of The Consolidated Railway Corporation, that the instrument was  
signed on behalf of such 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 such corporation.

Joseph L. Keeley  
Notary Public

My commission expires:

NOTARIAL SEAL  
JOSEPH L. KEELEY, NOTARY PUBLIC  
PHILADELPHIA, PHILADELPHIA COUNTY  
MY COMMISSION EXPIRES FEB. 3, 1990  
Member, Pennsylvania Association of Notaries