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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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FILED 1988

AUG 31 1988-3 02 PM

Date AUG 31 1988

Fee \$ 13.00

INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C. August 30, 1988

RECORDATION NO. 1 5798
FILED 1988

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INTERSTATE COMMERCE COMMISSION

Aug 31 2 55 PM '88
NOTOR OPERATING UNIT
ICC OFFICE OF
THE STENOGRAPHER

VIA FEDERAL EXPRESS

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one original executed copy and four copies of a Conditional Sale Agreement, dated as of July 7, 1988 (a primary document as defined in the Commission's Rules for the Recordation of Documents).

The names and addresses of the parties to the enclosed document are:

Vendee Kiamichi Railroad Company, Inc.
109 E. Jackson Street
Hugo, Oklahoma 74743

Vendor MLB Consulting Corp.
99 Cambridge Street
Burlington, Massachusetts 01803

A description of the railroad equipment covered by the enclosed document is set forth on Schedule A to the Conditional Sale Agreement.

Following is a short summary of the enclosed primary document:

Ms. Noreta R. McGee
August 30, 1988
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Conditional Sale Agreement between Kiamichi Railroad Company, Inc. (Vendee) and MLB Consulting Corp. (Vendor) dated as of July 7, 1988 and covering six locomotives owned by MLB Consulting Corp.

I also enclose for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) one original executed copy and four copies of an Agreement and Assignment, dated as of July 7, 1988, relating to the Conditional Sale Agreement described above.

The names and addresses of the parties to the enclosed Agreement and Assignment are:

<u>Vendee</u>	Kiamichi Railroad Company, Inc. 109 E. Jackson Street Hugo, Oklahoma 74743
<u>Vendor</u>	MLB Consulting Corp. 99 Cambridge Street Burlington, Massachusetts 01803
<u>Assignee</u>	Irving Trust Company One Wall Street New York, New York 10015

Following is a short summary of the enclosed Agreement and Assignment:

Agreement and Assignment among MLB Consulting Corp. (Vendor), Irving Trust Company (Assignee), and Kiamichi Railroad Company, Inc. (Vendee) relating to the assignment of rights under the Conditional Sale Agreement described below.

The primary document to which the Agreement and Assignment relates is the Conditional Sale Agreement described above. The equipment and identifying numbers are set forth on Schedule A to the Conditional Sale Agreement.

Kindly return four stamped copies of each of the enclosed Conditional Sale Agreement and Agreement and Assignment in the envelope provided to T. Stephen Dyer, Esq., Ross & Hardies, 150 North Michigan Avenue, Chicago, Illinois 60601.

Ms. Noreta R. McGee
August 30, 1988
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Enclosed is a check in the amount of \$13.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee for the Conditional Sale Agreement and the Agreement and Assignment.

Very truly yours,


T. Stephen Dyer

TSD/lf
Encl.

orig. exec. doc.

1 5798A
RECORDATION NO. _____ FILE NO.

AUG 31 1988-3 05 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND AGREEMENT

Dated as of July 7, 1988

Among

MLB CONSULTING CORP.,

KIAMICHI RAILROAD COMPANY, INC.

and

IRVING TRUST COMPANY

ASSIGNMENT AND AGREEMENT

ASSIGNMENT AND AGREEMENT, dated as of July 7, 1988 among MLB Consulting Corp., a Delaware corporation ("MLB"), Kiamichi Railroad Company, Inc., a Delaware corporation ("Kiamichi"), and Irving Trust Company ("Lender").

WHEREAS, MLB and Kiamichi have entered into a Conditional Sale Agreement, dated as of the date hereof (the "Conditional Sale Agreement"), covering the sale and delivery by MLB and the purchase by Kiamichi of certain locomotives, (individually a "Locomotive" and collectively the "Locomotives") described on Schedule A to the Conditional Sale Agreement, on the terms and conditions set forth therein;

WHEREAS, MLB previously financed its purchase of the Locomotives pursuant to a Loan and Security Agreement, dated as of July 13, 1987, between MLB and Lender; and Lender secured its loan to MLB by taking a security interest in the Locomotives (and one other locomotive) and a Locomotive Lease Agreement (the "Lease") with respect thereto entered into as of June 19, 1987 between MLB and Kiamichi;

WHEREAS, Lender is willing to release its security interest in the Locomotives and to permit the termination of the Lease, in consideration of an assignment by MLB of its rights under the Conditional Sale Agreement; and MLB is willing to assign such rights to Lender; and

WHEREAS, Lender, as assignee of the rights of the MLB under the Conditional Sale Agreement, is willing to release all of its rights, title and interest in and to the Locomotives upon satisfaction of performance by Kiamichi of all of its obligations hereunder and under the Conditional Sale Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and conditions herein contained;

1. MLB hereby assigns, transfers and sets over unto Lender, its successors and assigns, all of MLB's right, title and interest in, to and under the Conditional Sale Agreement, including but not limited to:

- (a) the security interest of MLB in and to the Locomotives being purchased by Kiamichi pursuant to the terms of the Conditional Sale Agreement and any other collateral security

now or hereafter provided under the Conditional Sale Agreement;

- (b) the immediate right to receive and collect any and all installment payments of the CSA Indebtedness (as defined in the Conditional Sale Agreement) which may be or become due or owing under the Conditional Sale Agreement and any other sums payable to or receivable by MLB under the Conditional Sale Agreement; and
- (c) all of MLB's rights, powers, privileges and remedies under the Conditional Sale Agreement, including but not limited to the right to consent or fail to consent pursuant to the terms of the Conditional Sale Agreement.

In furtherance of the foregoing assignment and transfer, MLB hereby authorizes and empowers Lender, its successors and assigns, in Lender's own name or in the name of the Lender's nominee, or in the name of or as attorney hereby irrevocably constituted for MLB, to ask, demand, sue for, collect, receive and enforce any and all sums to which Lender is or may become entitled under this Assignment and Agreement and to ask, demand, sue for and enforce compliance by Kiamichi with the terms and agreements on its part to be performed under the Conditional Sale Agreement. Kiamichi further agrees that, except as provided in this Assignment and Agreement and Articles 7, 14(b), 15 and 19 of the Conditional Sale Agreement, Lender shall not, by virtue of this Assignment and Agreement, be or become subject to any liability or obligation of MLB to Kiamichi, whether arising under the Conditional Sale Agreement or otherwise.

2. Until written notice to the contrary from Lender, Kiamichi agrees to make all payments required to be made by Kiamichi to Lender pursuant to the Conditional Sale Agreement Lender by wire transfer of immediately available funds to:

Irving Trust Company
One Wall Street
New York, New York 10015

Att'n: Transportation Department
ABA No. _____

Re: MLB Conditional Sale Agreement dated
as of July 7, 1988

3. Promptly upon completion of performance by Kiamichi of all of its obligations under the Conditional Sale Agreement and under this Assignment and Agreement, Lender agrees that it will execute and deliver a bill or bills of sale and releases, in

forms reasonably acceptable to MLB and Kiamichi, of its right, title and interest in and to the Locomotives.

4. Lender acknowledges that Kiamichi is entitled to quiet possession and enjoyment of the Locomotive as more fully described in the Conditional Sale Agreement. If MLB should default in any of its obligations to Lender, Lender agrees, so long as Kiamichi is not in default under the Conditional Sale Agreement or under this Assignment and Agreement, that (1) it will not attempt to obtain possession of the Locomotives or otherwise interfere with Kiamichi's full, complete and quiet possession and enjoyment of the Locomotives; (2) it will continue to accept all payments from Kiamichi, in accordance with Paragraph 2 of this Assignment and Agreement and, (3) upon completion of Kiamichi's obligations under the Conditional Sale Agreement and under this Assignment and Agreement, it will release all of its right, title and interest in and to the Locomotives, as provided in Paragraph 3 of this Assignment and Agreement.

5. Kiamichi shall file and record the Conditional Sale Agreement and this Assignment and Agreement with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303.

6. Lender may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from Kiamichi thereunder. 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 of Lender hereunder; provided, however, that no such assignment shall adversely affect the rights and privileges of Kiamichi set forth in Paragraphs 3 and 4 hereof.

7. Kiamichi and Lender agree that Lender's lien on the Locomotives, pursuant to a Security Agreement, dated as of July 13, 1987, from Kiamichi to Lender, does not violate Section 11 of the Conditional Sale Agreement.

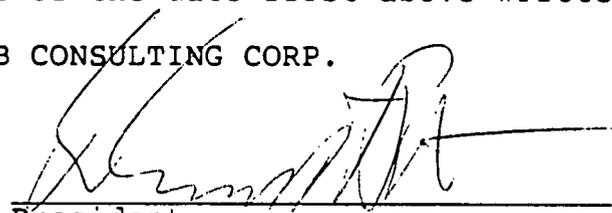
8. The terms of this Assignment and Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, without regard to its conflicts of law doctrine; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. This Assignment and Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, but the counterpart delivered to Lender shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By



President

KIAMICHI RAILROAD COMPANY, INC.

By

President

IRVING TRUST COMPANY

By

Assistant Vice President

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By _____
President

KIAMICHI RAILROAD COMPANY, INC.

By Jack Salley
President

IRVING TRUST COMPANY

By _____
Assistant Vice President

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By _____
President

KIAMICHI RAILROAD COMPANY, INC.

By _____
President

IRVING TRUST COMPANY

By *William J. ...*
Assistant Vice President

STATE NEW YORK
COMMONWEALTH OF MASSACHUSETTS)
CITY) SS
COUNTY OF NEW YORK)

On this 6 day of ~~June~~^{July}, 1988, before me, the subscriber, Nancy Ojeda, a Notary Public, duly commissioned, qualified and acting, within and for said County and Commonwealth appeared in person the within named Richard A. Peters, to me personally known, who stated and acknowledged that he is the President of MLB Consulting Corp., a Delaware corporation, and duly authorized by authority of the board of directors or the by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 6 day of ~~June~~^{July}, 1988.

Nancy Ojeda

NANCY OJEDA
Notary Public, State of New York
No. 24- 4924225
Qualified in Kings County
Commission Expires April 4, 1990

My commission expires: 4/4/90

STATE OF OKLAHOMA)
) SS
COUNTY OF Choctaw)

On this 6TH day of ~~June~~^{July}, 1988, before me, the subscriber, Delphine Kay Luna, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Jack Hadley, to me personally known, who stated and acknowledged that he is the President of Kiamichi Railroad Company, Inc., a Delaware corporation, and duly authorized by authority of the board of directors or the by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 6TH day of ~~June~~^{July}, 1988.

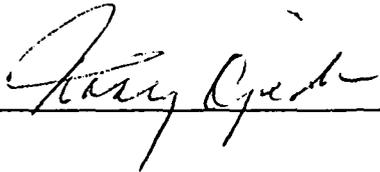
Delphine Kay Luna

My commission expires: July 27, 1988

STATE OF NEW YORK)
) SS
CITY OF NEW YORK)

On this 5 day of ^{July} ~~June~~, 1988, before me, the subscriber, NANCY OJEDA, a Notary Public, duly commissioned, qualified and acting, within and for said City and State, appeared in person the within named Jeffrey A. Foreman, to me personally known, who stated and acknowledged that he is an Assistant Vice President of Irving Trust Company, and duly authorized by authority of the board of directors or the by-laws of said bank in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said bank, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 5 day of ^{July} ~~June~~, 1988.



My commission expires: 4/4/1990

NANCY OJEDA
Notary Public, State of New York
No. 24-4924225
Qualified in Kings County
Commission Expires April 4, 1990