GE Transportation Systems

Daniel A. Rowley
Counsel

General Electric Company
2901 East Lake Road, Erie, PA 16531
814 875 5040
Fx 814 875-2724

19018

OCT 14 1994 11:22 AM

October 14, 1994

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams, Acting Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Subject: Recordation of Locomotive Lease

Dear Mr. Williams:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303 and the regulations thereunder, is an original and three copies/counterparts of an Interim Lease, dated as of October 14, 1994, between Locomotive Management Services ("Lessor") and Consolidated Rail Corporation ("Lessee"), a primary document.

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

LESSOR: Locomotive Management Services
c/o General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

LESSEE: Consolidated Rail Corporation
2001 Market Street
Philadelphia, PA 19101

A general description of the locomotive(s) covered by the enclosed documents is attached hereto as Schedule I. Also enclosed is a remittance in the amount of $21.00 for the required recording fee.

The undersigned is General Counsel, GE Transportation Systems and an Attesting Secretary of General Electric Company, which is acting on behalf of Lessor. Please return the original and any extra copies not needed by the Commission for recordation to Daniel A. Rowley, Counsel, GE Transportation Systems, General Electric Company, 2901 East Lake Road, Building 14-5, Erie, Pennsylvania 16531.

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

PRIMARY DOCUMENT

Interim Lease, dated as of October 14, 1994 between Locomotive Management Services ("Lessor") and Consolidated Rail Corporation ("Lessee"), relating to twenty (20) General Electric Diesel Electric Locomotives, bearing Road Nos. 0740-0759.

Respectfully submitted,

Enclosures

SCHEDULE I

Description of Locomotive(s)

Type of Equipment	Number of Units	Road Number(s)
Dash 8-40CW General Electric Diesel Electric Locomotives	20	0740-0759

Interstate Commerce Commission

Washington, D.C. 20423 10/14/94

OFFICE OF THE SECRETARY

Daniel A. Rowley
General Electric Company
2901 East Lake Road
Erie, PA. 16531

Dear Sirt

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/14/94 at 11:25AM , and assigned recordation number(s). 19018 and 19019.

Sincerely yours,

Vernon A. Williams

Vernon A. Williams
Acting Secretary

Enclosure(s)

$ 42.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature Janice M. Fort

19018
OCT 14 1994 - 11 AM

INTERIM LEASE

THIS INTERIM LEASE, made and entered into as of the 14th day of October, 1994, by and between Locomotive Management Services, a Delaware general partnership, hereinafter called "LMS," and Consolidated Rail Corporation, a Pennsylvania corporation, hereinafter called "User."

LMS AND USER HEREBY AGREE AS FOLLOWS:

1. **Lease:** User agrees to lease from LMS on a daily basis for the period not to extend beyond the term specified in Section 2 below the locomotives described in Exhibit A, together with all additions and accessories incorporated therein and/or affixed thereto (the "Locomotives"). At the end of the term of this Agreement for each Locomotive, time being of the essence, User shall either return the Locomotives as instructed by LMS or, if LMS has obtained the financing for the Locomotives contemplated by the Purchase Agreement dated as of August 1, 1994, between General Electric Company ("GE") and LMS (as amended by Amendment Number 1 dated as of September 30, 1994, and as further amended from time to time, the "Purchase Agreement"), enter into a long-term lease with respect to the Locomotives in substantially the form attached hereto as Exhibit C (the "Lease"). Delivery of all Locomotives shall be made in Erie, Pennsylvania.

   User will cause the Locomotives to be kept numbered with the identification numbers thereon at the time of their delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotives, in letters not less than one inch in height, the words

   "Ownership subject to documents filed with
   the Interstate Commerce Commission."

   User will not place any Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. User will not change the identification number of any Locomotive unless and until a statement of the new number to be substituted therefor shall have been filed with LMS and GE and duly filed and deposited by User in all public offices where this Agreement shall have been filed and deposited.

User will not allow the addition of any name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership during the term of this Agreement.

2. **Term of Lease; Rent:** The term of this Agreement shall commence with respect to each Locomotive immediately upon execution of a Lease Acceptance Certificate in the form attached hereto as Exhibit B. The term of this Agreement shall end with respect to each Locomotive on the earlier of the following two dates: (a) the date the Lease becomes effective, or (b) December 31, 1994.

   The daily rental per Locomotive shall be an amount calculated as follows: the prime or reference rate of Citibank, N.A. in effect on the date hereof, multiplied by the purchase price of such Locomotive under the Purchase Agreement, divided by 365. All rent payable for a Locomotive shall be due at the time of termination of the lease period for such Locomotive, as set forth in this Section 2.

   User shall not be entitled to any reduction of rent, abatement, setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of User against LMS or GE or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate, or the obligations of User be otherwise affected, by reason of any defect in the condition, design, operation or fitness for use of any Locomotives or damage to or loss of possession or use or destruction of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. User acknowledges that: LMS has no knowledge or information as to the condition or suitability for User's purpose of the Locomotives and LMS's decision to enter into this Agreement is made in reliance on User's undertakings herein, including User's express agreement not to assert against LMS any claims, defenses, setoffs or counterclaims it may now or hereafter have against LMS.

3. **Warranties and Representations:** LMS warrants and incorporates by reference herein the GE obligations and warranties (including any limitations thereon) as described in Section 12 of the Purchase Agreement. There are no warranties, expressed or implied, made by LMS except the foregoing.

4. **Place of Payment or Rent:** User shall direct payment of the rent to LMS as instructed in writing by LMS.

5. **Recordkeeping; Inspection:** User agrees to keep and maintain and make available to LMS and GE such record of User's use, operation, inspection,

repairs and maintenance of the Locomotives while in its possession as shall be reasonably requested by LMS and GE.

If requested, within five (5) days of the end of the term of this Agreement, User will furnish to LMS and GE a certificate signed by the Chief Mechanical Officer of User setting forth the maintenance and repairs performed on the Locomotives during the term hereof, and such other information regarding the condition and state of repair of the Locomotives as LMS and GE may reasonably request. Each of LMS and GE, at its sole expense, shall have the right by its agents to enter upon the property of User to inspect the Locomotives and User's records with respect thereto at such reasonable times as LMS may request during the term of this Agreement.

User shall promptly notify LMS and GE of any occurrence of an event of default as defined in Section 18 hereof or default, specifying such event of default or default and the nature and status thereof.

6. **Loss or Destruction:** In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of User, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by User for a period of 30 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), User shall notify LMS and GE of such Casualty Occurrence. User shall provide all assistance reasonably requested by LMS in the investigation, defense, or prosecution of any Casualty Occurrence or any claim arising therefrom. In the event of a Casualty Occurrence, on the Agreement termination date User shall pay to LMS all daily rent due through the date of such Casualty Occurrence, plus the casualty value of each Locomotive which is the subject of a Casualty Occurrence. For purposes of this Agreement, the casualty value of each Locomotive shall equal the purchase price thereof as set forth in the Purchase Agreement.

7. **Indemnity:** User agrees to indemnify, protect and hold harmless LMS and GE from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties, and interest, arising from or caused directly by: (a) User's failure to promptly perform any of its obligations under the provisions of Sections 1, 2, 6, 7, and 17 of this Agreement, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any

Locomotive or its location or condition, or (c) inadequacy of any Locomotive, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against LMS or GE (as the case may be), either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against LMS or GE (as the case may be) in any such action or actions; provided, however, that (i) LMS or GE (as the case may be) shall give User written notice of any such claim or demand, and (ii) User shall not be required to indemnify, protect, hold harmless and defend LMS or GE (as the case may be) for any loss, damage, injury, liability, claim, demand or expense to the extent it results from the gross negligence or willful misconduct of LMS or GE (as the case may be), or to the extent such arises from LMS's or GE's failure to meet any of its problem correction, performance guarantee, or warranty obligations under Section 3 hereunder. The indemnities arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the expiration or termination of this Agreement.

Except as otherwise expressly provided in this Agreement and subject to the same types of limitations set forth in Clause (ii) of the first paragraph of this Section 7, User shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damages to or the destruction or loss of the Locomotives.

8. **Compliance with Law; Repair and Maintenance:** User shall comply with the requirements of the FRA, and all other applicable laws, regulations and requirements with respect to use, maintenance and operation of the Locomotives during the term of this Agreement. User shall use the Locomotives only in the manner for which they were designed so as to subject them only to ordinary wear and tear.

User shall at its own cost and expense, maintain and service the Locomotives in accordance with prudent industry practice, including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted) and (b) in compliance with any and all applicable laws and regulations. In no event shall the Locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by User for similar equipment. Any parts installed or replacements made by User upon the Locomotives shall be considered accessions to the Locomotives, and title thereto shall be immediately vested in GE, without cost or expense to LMS or GE; provided, however, User may remove from the Locomotives any (a)

communications equipment, (b) train control, (c) end of train telemetry, and (d) recording devices, which User paid for and installed, but only if such removal may be accomplished without damage to the Locomotives.

Except for alterations or changes required by law or regulations, User shall not effect any alteration or change in or to the design, construction, specifications or appearance of the Locomotives, or the body or electrical equipment or components thereof, without the prior written consent of LMS or GE.

9. **Assignment by User:** User shall not assign or sublet its interest, or any part thereof, under this Agreement, or permit the use or operation of the Locomotives subject to this Agreement by any other person, firm or corporation without the prior written consent of LMS. LMS expressly consents to incidental operation and use on railroads other than User's.

10. **Notices:** Unless otherwise specifically provided, any notices to be given under this Agreement or any other communications between the parties shall be given by certified mail, postage prepaid in the following manner:

    (a) Notices from LMS to User shall be sent to:

    c/o J. A. McKelvey
    Vice President, Materials & Purchasing
    Consolidated Rail Corporation
    2001 Market Street, Room 7-A
    Philadelphia, PA 19101

    and also to:

    T. J. McGraw
    Director-Financing
    Consolidated Rail Corporation
    2001 Market Street, Room 25-A
    Philadelphia, PA 19101

    or to such other address as User may from time to time indicate by written notice to LMS.

    (b) Notices from User to LMS shall be sent to such address or addresses as LMS may from time to time indicate by written notice to User.

11. **Quiet Enjoyment:** So long as User makes its aforesaid rental payment and otherwise complies with the terms and provisions hereof, User shall be entitled to the use and possession of the Locomotives according to the terms

hereof without interference by LMS or by any party lawfully claiming by or through LMS.

12. **Authority:** The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof.

13. **Protection of Title:** User shall cause this Agreement to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act. User will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments or reasonably requested by LMS, for the purpose of protecting GE's title to the Locomotives and LMS's interests in the Locomotives. User shall not cause to be created or suffer the creation of any lien, charge or encumbrance, including any lien for taxes, on the Locomotives. Should any such lien, change or encumbrance be created as to or impressed on the Locomotives, User shall cause such to be promptly discharged and terminated.

    User shall not cause to be created or suffer the creation of any lien, charge or encumbrance, including any lien for taxes, on the Locomotives. Should any such lien, charge or encumbrance be created as to or impressed on the Locomotives, User shall cause such to be promptly discharged and terminated.

14. **Taxes:** User, or LMS at User's expense, shall report, pay and discharge when due all license and registration fees, assessments, use and property taxes, and gross receipts taxes arising out of receipts from use or operation of the Locomotives, including without limitation amounts payable under Sections 2, 6 and 7, hereof, and other taxes (excluding any tax measured by LMS's or GE's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of LMS or GE or User.

15. **Performance Obligations of User by LMS:** In the event that User shall fail duly and promptly to perform any of its obligations under the provisions of this Agreement, LMS may, at its option, perform the same for the account of User without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by LMS in such performance, together with interest at the lesser of 1-1/2 percent per month or the highest amount allowed by law thereon, until paid by User to LMS, shall be payable by User upon demand as additional rent hereunder.

16. **Further Assurance:** User shall execute and deliver to LMS, upon LMS's request, such instruments and assurances as LMS deems necessary or

advisable for the confirmation or perfection of this Agreement and LMS's rights hereunder.

17. **User's Covenants:** User will: (a) defend at User's own cost any action, proceeding or claim affecting the Locomotives except as stated in Section 7; (b) do everything necessary or expedient to preserve or perfect LMS's and GE's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or, without the prior written consent of LMS and notwithstanding LMS's or GE's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that LMS may enter upon User's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable prior notice to inspect the Locomotives; and (e) except as provided in Section 9 of this Agreement, not permit the use of the Locomotives by any other party, without LMS's consent to be granted in its sole discretion.

18. **Default:** An event of default shall occur if User: (a) fails to pay when due any installment of rent and such failure continues for a period of 15 days; (b) fails to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and any such failure continues uncured for 15 days after written notice thereof to User by LMS; (c) ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, takes any action seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties; (d) fails to have dismissed within 60 days after the commencement thereof, any proceedings seeking the reorganization, arrangement, readjustment, liquidation or dissolution of User or any similar relief under any present or future statute, law or regulations; (e) fails to vacate the appointment of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties within 60 days; or (f) attempts to remove sell, transfer, encumber, part with possession or sublet any of the Locomotives in a manner prohibited hereunder without the consent of LMS.

Upon the occurrence of an event of default, LMS, at its option, may: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or action or other proceedings either at law or equity to enforce performance by User of any and all covenants of User under this Agreement and to recover damages for the breach thereof; and (c) demand that User deliver all or any of the

Locomotives forthwith to LMS at User's expense at such place as LMS may designate on User's Line. If any statute governing any proceedings hereunder specifies the amount of LMS's deficiency or other damages for breach of this Agreement by the User, LMS shall be entitled to recover as and for damages for the breach an amount equal to that allowed under such statute in lieu of any other damages for breach of this Lease. The provisions of this paragraph shall be without prejudice to any rights given to LMS by such statute to recover any amounts allowed thereby. Should any proceedings be instituted by or against LMS for moneys due to LMS hereunder and/or for possession of any Locomotive and/or for any other relief, User shall pay LMS a reasonable sum as attorneys' fees.

The remedies in this Agreement provided in favor of LMS shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. User 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 not, at the time in question, prohibited by law. User hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by User or on its behalf. LMS and User agree that LMS shall be entitled to all rights (such rights being fundamental to the willingness of LMS to enter into this Agreement) provided for in the United States Bankruptcy Code or any other bankruptcy act, so that LMS shall have the right to take possession of any or all of the Locomotives upon any event of default under this Agreement, regardless of whether User is in reorganization.

No failure by LMS to exercise, and no delay by LMS in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by LMS preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

19. **Choice of Law:** This Agreement shall be governed in all respect by the law of the Commonwealth of Pennsylvania.

20. **Miscellaneous:** All transportation charges incurred after acceptance by User shall be borne by User. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws of regulations of any jurisdiction, such provisions shall be inapplicable and deemed omitted but shall not invalidate the remaining provision hereof. This Agreement is irrevocable for the full term hereof and for the aggregate rental herein reserved. User admits the receipt of a true copy of this Agreement.

22. **Liability of LMS:** Except as provided in Section 3 hereof, LMS shall have no liability to User arising out of the furnishing of any Locomotives under this Agreement, or their use, whether the liability is based on contract, warranty, tort (including negligence) or otherwise., whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, will LMS'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 User's customers for such damages.

LOCOMOTIVE MANAGEMENT SERVICES

ATTEST: _____

BY:
Name:
[Signatory authorized by LMS Partnership Agreement]

CONSOLIDATED RAIL CORPORATION

ATTEST: _____

BY: _____
Name: John A. McKelvey
Title: Vice President - Materials & Purchasing

Commonwealth of Pennsylvania
County of Philadelphia

On this 12 day of October, 1994, before me personally appeared John A. McKelvey to me personally known, who, being by me duly sworn, did say that he is a Vice President of Consolidated Rail 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.

Suzanne J. Rossomando

Notary Public

My commission expires:

NOTARIAL SEAL
SUZANNE J. ROSSOMANDO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 29, 1995

Commonwealth of Pennsylvania
County of Erie

On this __ day of October, 1994, before me personally appeared_____ _____ to me personally known, who, being by me duly sworn, did say that he is the duly authorized representative of Locomotive Management Services, that the instrument was signed on behalf of such Partnership by authority of its Partnership Agreement, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such partnership.

_____

Notary Public

My commission expires:

22. **Liability of LMS:** Except as provided in Section 3 hereof, LMS shall have no liability to User arising out of the furnishing of any Locomotives under this Agreement, or their use, whether the liability is based on contract, warranty, tort (including negligence) or otherwise., whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, will LMS'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 User's customers for such damages.

LOCOMOTIVE MANAGEMENT SERVICES

ATTEST: D. J. Crowley

BY: D. B. Tucker

Name: David B. Tucker, Member, Partners Committee
[Signatory authorized by LMS Partnership Agreement]

CONSOLIDATED RAIL CORPORATION

ATTEST: _____

BY:
Name:
Title:

Commonwealth of Pennsylvania
County of Philadelphia

On this ___ day of October, 1994, before me personally appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is a _____ of Consolidated Rail 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.

_____

_____

Notary Public

My commission expires:

Commonwealth of Pennsylvania
County of Erie

On this 13th day of October, 1994, before me personally appeared D. B. Tucker to me personally known, who, being by me duly sworn, did say that he is the duly authorized representative of Locomotive Management Services, that the instrument was signed on behalf of such Partnership by authority of its Partnership Agreement, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such partnership.

Carol A. Walden

_____

Notary Public

My commission expires:

Notarial Seal
Carol A. Walden, Notary Public
Lawrence Park Twp., Erie County
My Commission Expires Dec. 12, 1994

EXHIBIT A

Type: DASH8-40CW Diesel Electric Locomotives

Delivery Point: Erie, PA

Quantity: 20

Conrail's Identification Nos.: 0740-0759 (inclusive)

EXHIBIT B

I, the duly authorized representative for Consolidated Rail Corporation ("User") under the Interim Lease dated as of October 14, 1994 (the "Lease"), do certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

Type of Locomotive: DASH8-40CW Diesel Electric
Place Accepted: Erie, Pennsylvania
Date Accepted:
Number of Units:
Marked:
Road Number(s):

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable therefore as provided in the Lease.

I do further certify that each of the foregoing Units has been marked upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to documents filed with
the Interstate Commerce Commission."

_____
Authorized Representative of User