

RECORDATION NO. 18990 - C FILED 1425

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INTERSTATE COMMERCE COMMISSION

ANNEX D
to Conditional
Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of September 1, 1994

Between

FIRST BANK NATIONAL ASSOCIATION,

as Owner,

And

NATIONSBANK OF GEORGIA, NATIONAL ASSOCIATION,

as Agent.

Filed with the Interstate Commerce Commission pursuant to 49
U.S.C. § 11303 on September __, 1994, at ____ .m., recordation
number _____.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 1, 1994 ("Assignment") between FIRST BANK NATIONAL ASSOCIATION, a national banking association ("Owner"), and NATIONS BANK OF GEORGIA, NATIONAL ASSOCIATION, a national banking association ("Agent"), as Agent for an institutional investor ("Investor") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

WHEREAS the Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC., a Delaware corporation ("Builder"), providing for the sale to the Owner of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Owner thereunder;

WHEREAS the Owner and GEORGIA POWER COMPANY, a Georgia corporation ("Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner to the Lessee of the Units;

WHEREAS the Builder has assigned to the Agent its rights in, to and under the CSA pursuant to an Agreement and Assignment dated as of the date hereof; and

WHEREAS in order to provide security to the Agent for the obligations of the Owner under the CSA and as an inducement to the Investor to invest in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA), the Owner agrees to assign for security purposes its rights in, to and under the Lease to the Agent for the express benefit of the Investor;

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

1. The Owner hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the obligations of the Owner under the CSA, all the Owner's right, title and interest, powers, privileges and other benefits under the Lease (including those inuring to the benefit of the Owner), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise

(such moneys, other than the payments included in Excluded Payments and Rights defined below, being hereinafter called "Payments"), and the right to make all waivers 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 Owner is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the payments and rights assigned by the Owner to the Agent herein do not include any of the following which are expressly reserved to the Owner: (a) all payments of any indemnity under Sections 6 and 12 of the Lease or under the Indemnity Agreement (as defined in the Participation Agreement) which by the terms thereof are payable to the Owner for its own account; (b) any insurance proceeds payable under public liability policies maintained by the Lessee pursuant to Section 7.6(1)(ii) of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Owner for its own account and any proceeds of insurance maintained with respect to the Units by the Owner and not required to be maintained by the Lessee under the Lease; (c) all rights of the Owner under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Owner on account of any such indemnities or payments referred to in clauses (a) and (b) above and to seek legal or equitable remedies to require the Lessee to maintain the insurance coverage referred to in clause (b) above, provided that the rights referred to in this clause (c) shall not be deemed to include the exercise of any remedies provided for in Section 13 of the Lease other than the right to proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of such indemnities or insurance covenants or to recover damages for the breach thereof; (d) if any Event of Default under the Lease based solely on a breach of any covenant of the Lessee to pay any indemnity referred to in clause (a) above or to maintain any insurance referred to in clause (b) above shall occur and be continuing, the right of the Owner to exercise the remedies, but only those remedies provided for in Section 13 of the Lease, to enforce, by appropriate court action, either at law or in equity, performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Owner or to maintain such insurance or recover damages for the breach of any such covenant; (e) the right of the Owner, but not to the exclusion of the Agent, as provided in the Lease (i) to receive from the Lessee certificates, notices, opinions, financial information and other documents and information which the Lessee is required to give or furnish to the Owner pursuant to the Lease, (ii) to inspect the Units and all records relating thereto, (iii) to exercise its rights to perform for the Lessee under Section 20 of the Lease and (iv) to cause the Lessee to take such acts as may be reasonably requested by the Owner

pursuant to Section 18 of the Lease; (f) so long as no event of default under the CSA has occurred and is continuing, the right, to the exclusion of the Agent, to accept delivery of the Units under and pursuant to the Participation Agreement and the CSA, subject to the satisfaction of the conditions set forth in the Participation Agreement and the CSA; and (g) whether or not an event of default under the CSA has been declared and is continuing, all rights of the Owner, to the exclusion of the Agent, (i) to adjust the basic lease rates and Casualty and Termination Values as provided in Section 3.1(2) of the Lease, (ii) to exercise the rights of the Owner under Section 16 of the Lease with respect to the Lessee's renewal options and purchase options, and (iii) to determine Fair Market Sale Value and Fair Market Rental Value under the Lease, for all purposes of this clause (g)(iii) except following an Event of Default under the Lease (such payments and rights reserved to the Owner being herein called "Excluded Payments and Rights"). In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled to under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the then due obligations of the Owner under the CSA, and, 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 paid to the Owner (the Agent hereby agreeing, subject to its timely receipt of available funds, to make such payment for receipt by the Owner not later than 1:00 p.m., New York time, on the same date such Payment is applied to satisfy such obligations of the Owner, and the Lessee by its consent hereto hereby agreeing, if the Agent shall fail to make such payment by such time on such date, to pay to the Owner interest on the amount thereof from and including such date to but excluding the date on which such amount is received by the Owner by such time at a rate equal to the Overdue Rate (as defined in Section 4.6 of the CSA)) by bank wire to the Owner at such address as may be specified to the Agent in writing at least one day in advance, and such balance shall be retained by the Owner. If an event of default under Section 16.1 of the CSA shall have occurred and be continuing, the Agent, after application of such Payments to satisfy the obligations of the Owner under the CSA, may hold the balance remaining of such Payments until the earlier to occur of (i) the date on which such event of default shall

have been cured or waived to the extent permitted under the provisions of the CSA, or (ii) the 180th day following the date on which such funds were received by the Agent, in which event, unless a Declaration of Default (as defined in Section 16.1 of the CSA) has been made, such Payments shall be distributed to the Owner. If the Agent shall not receive any rental payment under Section 3 of the Lease or Casualty Value payment under Section 7.1 of the Lease when due, the Agent shall use its best efforts to notify the Lessee and the Owner by telephone, confirmed in writing, at their addresses set forth in the Lease within one business day after the due date thereof; provided, however, that the failure of the Agent so to notify the Owner shall not impose any liability on the Agent and shall not affect the obligations of the Owner hereunder or under the CSA, except that the Agent may not make a Declaration of Default (as defined in Section 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said Section 16.1 arising solely by reason of the failure of the Lessee to make any such rental or Casualty Value payment which would not constitute an event of default under subparagraph (e) of said Section 16.1 if the Owner complies with the provisions thereof, unless such event of default is not remedied within ten business days after notification is given as aforesaid.

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

3. The Owner will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner; without the written consent of the Agent, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, 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 Owner agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner does hereby constitute the Agent the Owner's true and lawful attorney, irrevocably, with full power (in the

name of the Owner, 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 Owner 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 claim or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums and other obligations due from the Owner under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Owner. Promptly following such full discharge and satisfaction, the Agent agrees that, upon the request of the Owner or the Lessee, it will advise the Lessee in writing that all sums and other obligations due from the Owner under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Agent.

6. The Owner will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

7. Subject to the provisions of the Participation Agreement and the CSA, the Agent 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 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 Agent hereunder.

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

9. The Owner shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Agent unless the same are delivered directly to the Agent pursuant to the provisions of any other document.

10. The Agent hereby agrees with the Owner that the Agent will not, so long as no Event of Default under the Lease or event of default under 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 Owner to the Agent by paragraph 1 of this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and upon the occurrence of an Event of Default under the Lease or an event of default under the CSA, the Agent shall be entitled to exercise remedies in respect of such assigned rights, powers, privileges, authorizations and benefits pursuant to and subject to the provisions and limitations set forth in the Lease, the CSA and this Assignment; provided, however, that if the Agent shall proceed to exercise any of the remedies set forth in the CSA, it shall, to the extent it is then entitled to do so under the CSA and the Lease and is not then stayed or otherwise prevented from doing so by operation of law or otherwise, prior thereto or concurrently proceed to exercise one or more similar remedies set forth in the Lease and the Agent shall not proceed to foreclose the lien of the CSA or hereunder or otherwise proceed to divest the Owner of its interest in the Units, the Lease or any other collateral unless the Agent shall have terminated the Lease and be exercising remedies thereunder for the purpose of taking possession and control of the Units (except that in the event such exercise of remedies under the Lease is stayed by Section 362 or 363 of the Bankruptcy Code, the Agent shall refrain from exercising any remedy under the CSA until the earlier to occur of relief from such stay or 180 days); and provided further, however, that the Agent may not amend, modify or supplement or waive any provision of the Documents without the consent of the Owner unless an Event of Default under the Lease or an event of default under the CSA has occurred and is continuing and the Agent has given at least 10 days' prior written notice to the Owner of such amendment, modification, supplement or waiver, provided that Agent shall not, without the consent of the Owner, amend, modify or supplement any provision of the Documents, or waive any performance of Lessee thereunder, if the effect of such amendment, modification, supplement or waiver is to (a) decrease or defer the payment of any amounts due from Lessee, (b) relax any obligations of the Lessee in respect of indemnities, maintenance of Units, modifications to and return condition of the Units, insurance, possession, use, subleasing and assignment, or lien lifting or (c) increase any obligation of the Owner to Lessee. In addition, (a) if an event of default under Section 16.1 of the CSA shall have occurred and be continuing as the result of an Event of Default under the Lease having occurred and continuing uncured (and unwaived by both the Agent and the Owner), and if the Agent shall not have made a Declaration of Default or otherwise proceeded to exercise one or more of the

remedies set forth in the Lease within 180 days following the date on which such event of default shall have occurred, (b) if the maturity of the CSA Indebtedness has been accelerated, or (c) if a bankruptcy Event of Default under the Lease has occurred, the Owner shall have the option, upon at least five days' prior written notice to the Agent, to pay or cause to be paid the total unpaid balance of the CSA Indebtedness (without premium), together with interest thereon accrued and unpaid and all other payments due under the CSA, and upon receipt of such payment the Agent shall have no further interest in any of the Documents (other than rights expressly surviving thereunder) or the Units. Subject to the terms of the Lease and the CSA, the Owner may, so long as no Event of Default under the Lease or 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 Section 13.1(a) of the Lease; provided, however, that the Owner may, whether or not an Event of Default under the Lease or an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of Section 13.1(a) of the Lease in respect of the Excluded Payments and Rights; provided further, however, that the Owner shall not, without the prior written consent of the Agent, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of Section 13.1(b) of the Lease or take any action which would cause any termination of the Lease.

11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Agent shall be deemed to be the sole original counterpart. 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.

12. In carrying out its duties hereunder and under the other Documents (as defined in the Participation Agreement), the Agent is acting solely as agent for the Investor and not in its corporate capacity (except as expressly provided in the Documents) or as a principal. Nothing contained herein shall impair or limit the normal banking or other financial relationships of NationsBank of Georgia, National Association, or its affiliates with any other party to the Documents.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, as of the date first above written.

FIRST BANK NATIONAL
ASSOCIATION

By: 
Title: AVP

NATIONSBANK OF GEORGIA,
NATIONAL ASSOCIATION, as Agent

By: _____
Title: _____

[Corporate Seal]

Attest:

Title: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

On this 21st day of September, 1994, before me personally appeared James Koski, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of FIRST BANK NATIONAL ASSOCIATION, and that said instrument was signed 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.



Cheryl Van Brunt
Notary Public

My Commission expires 8/19/98

STATE OF GEORGIA)
) ss.:
COUNTY OF FULTON)

On this ___ day of September, 1994, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of NATIONSBANK OF GEORGIA, NATIONAL ASSOCIATION, and that said instrument was signed and sealed on behalf of said company 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 company.

Notary Public

(Notarial Seal)

My Commission expires

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, as of the date first above written.

FIRST BANK NATIONAL
ASSOCIATION

By: _____
Title: _____

NATIONSBANK OF GEORGIA,
NATIONAL ASSOCIATION, as Agent

By: Stefan Victory
Title: Stefan Victory Trust Officer

[Corporate Seal]

Attest:


Title: HOWARD L. SHELLKOPF
VICE PRESIDENT

STATE OF MINNESOTA)
) ss.:
COUNTY OF _____)

On this ___ day of September, 1994, before me personally appeared _____ to me personally known, who, being by me duly sworn, says that he is _____ of FIRST BANK NATIONAL ASSOCIATION, and that said instrument was signed 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.

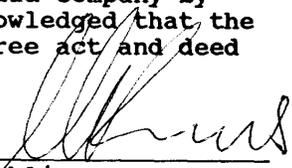
Notary Public

[Notarial Seal]

My Commission expires

STATE OF GEORGIA)
) ss.:
COUNTY OF FULTON)

On this 23 day of September, 1994, before me personally appeared Stefan Victory, to me personally known, who, being by me duly sworn, says that he is a Trust Officer of NATIONSBANK OF GEORGIA, NATIONAL ASSOCIATION, and that said instrument was signed and sealed on behalf of said company 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 company.



Notary Public

[Notarial Seal]

My Commission expires May 19, 1998

Consent and Agreement

The undersigned, the lessee ("Lessee") named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("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 so long as the Lease Assignment is effective:

(1) it will pay all Payments (as defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease or otherwise in respect of the railroad equipment leased thereunder directly to NationsBank of Georgia, National Association, as Agent ("Agent"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds not later than 11:00 a.m., Atlanta, Georgia time, to NationsBank of Georgia, National Association, ABA # 061000052, Reference Account 3060, Attention: D. Dawes (or at such other address as may be furnished in writing to the Lessee by the Agent), and will give the Agent prior or concurrent notice of its calculation of the amount (if any) thereof to be paid to the Owner pursuant to the Lease Assignment;

(2) the Agent 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 (except in respect of Excluded Payments and Rights) as though the Agent were named therein as the Lessor;

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

(4) the Lease shall not, without the prior written consent of the Agent, be terminated (except in accordance with its terms) or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration, impairment or waiver 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 by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Georgia and, for all purposes, shall be construed in accordance with the laws of said state.

GEORGIA POWER COMPANY

By: Judy M. Anderson
Judy M. Anderson,
Vice President and
Corporate Secretary

The foregoing Consent and Agreement is hereby accepted, as
of September 1, 1994.

NATIONSBANK OF GEORGIA,
NATIONAL ASSOCIATION, as Agent

By: STEFAN Victory
Stefan Victory
Title: Trust Officer