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OF COUNSEL  
URBAN A. LESTER

RECORDATION NO. 14639-F

MAY 13 1996 - 4:15 PM

DEPARTMENT OF TRANSPORTATION

May 13, 1996

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of an Assignment and Assumption Agreement, dated ~~as of~~ May 13, 1996, a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to the Conditional Sale Agreement, Lease of Railroad Equipment and related documents which were previously filed with the Commission under Recordation Number 14639.

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

Assignor: BNY Capital Resources Corporation  
8400 E. Prentice Avenue, Suite 715  
Englewood, Colorado 80111

Assignee: FINOVA Capital Corporation  
1850 North Central Avenue  
Phoenix, Arizona 85002

A description of the railroad equipment covered by the enclosed document is:

Twenty-five (25) SD50 diesel electric locomotives CR 6780 - CR 6804,  
inclusive

*Counterparts -*

Mr. Vernon A. Williams  
May 13, 1996  
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", written in a cursive style.

Robert W. Alvord

RWA/bg  
Enclosures

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423-0001

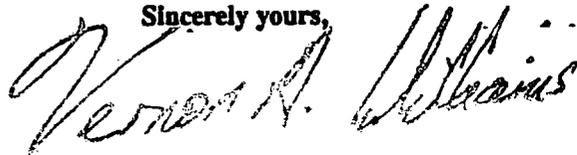
5/13/96

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth Street, NW, Ste. 200  
Washington, DC., 20006-2973

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 5/13/96 at 4:15PM, and assigned recordation number(s) 14639-F and 14891-F.

Sincerely yours,

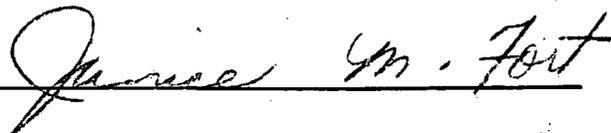


Vernon A. Williams  
Secretary

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



REGISTRATION NO. 14639-F FILED 1996

MAY 13 1996 - 4 15 PM

REGISTRY OF DEEDS

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT dated May 13 1996 (this "Assignment"), made among BNY Capital Resources Corporation ("Assignor"), FINOVA Capital Corporation ("Assignee") and State Street Bank and Trust Company of Connecticut, National Association (successor to The Connecticut National Bank and Trust Company, National Association), as trustee under the Trust Agreement (as defined in the Participation Agreement referred to herein), as Vendee ("Vendee" or "Owner Trustee", as the case may be).

**WITNESSETH**

WHEREAS, Assignor and the Assignee have entered into a Sale Agreement, dated as of May 10, 1996 (the "Sale Agreement").

WHEREAS, pursuant to the terms and conditions hereof and of the Sale Agreement, Assignor desires to sell and transfer, and Assignee desires to purchase and assume among other things, all of Assignor's interest in and obligations under the following (the "Transferred Rights"): (i) the Trust Documents, (ii) Assignor's 100% beneficial interest in the Trust Estate, and (iii) Assignor's interest in the transactions (the

"Transaction") contemplated by the Trust Documents.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. The following terms, when capitalized, shall have the following meanings for all purposes of this Agreement, except where the context otherwise requires:

"Agent" means The Bank of New York (successor to Mercantile-Safe Deposit and Trust Company).

"Builder" means General Motors Corporation (Electric-Motor Division), a Delaware corporation.

"Investor" means Chemical Bank, a New York corporation.

"Lease" means the Lease of Railroad Equipment dated April 15, 1985 between the Owner Trustee and Lessee, as more fully described on Schedule I attached hereto.

"Lessee" means Consolidated Rail Corporation.

"Participation Agreement" shall mean the Participation Agreement dated as of April 15, 1985, among the Lessee, the Agent, the Builder, the Investor, the Owner

Trustee and Assignor (as successor to Irving Leasing Corporation ) as more fully described on Schedule I attached hereto.

"Trust Agreement" shall mean the Trust Agreement, dated as of April 15, 1985, between Owner Trustee and and Assignor, as more fully described on Schedule I attached hereto, pursuant to which Owner Trustee holds legal title for the benefit of the Assignor to 25 units of railroad equipment described in Schedule II attached hereto.

"Trust Documents" shall mean the Lease, the Participation Agreement and the Trust Agreement and the other documents and agreements listed on Schedule I hereto.

Other capitalized terms used but not defined in this Assignment shall have the meanings ascribed to such terms in the Trust Agreement and the Lease.

Section 2. Assignment. As of the date hereof, the Assignor hereby sells, assigns, transfers and conveys to the Assignee all of the Assignor's right, title and interest in and to Transferred Rights; provided, that the Assignor hereby reserves and does not transfer its right, title and interest in any indemnities or liability insurance proceeds under or contemplated by the Trust Documents in favor of the Assignor to the extent that such indemnities or liability insurance proceeds were paid, accrued in favor of, relate to events occurring, or become payable to Assignor, prior to the date hereof.

Section 3. Assumption by Assignee. The Assignee hereby accepts the

foregoing assignment and, with respect to all periods from (and including) and after the date hereof assumes and agrees to be bound by all the terms of, and to assume and undertake all of the obligations of the Assignor contained in, the Trust Agreement and the other Trust Documents, including, without limitation, as the "Beneficiary" thereunder.

**Section 4. Representations, Warranties and Covenants.**

(a) Assignee represents and warrants that it: (i) is organized and doing business in the United States; (ii) is a financial corporation with a combined capital and surplus of at least \$50,000,000.00; and (iii) has securities listed on a national securities exchange.

(b) Each party by its signature agrees and accepts that the transfer requirements of Article VI of the Trust Agreement have been satisfied or waived and that the Assignor is relieved from all obligations, responsibilities and liabilities in respect of the Transferred Rights in respect of the period from and after the date hereof.

(c) Other than the express representations and warranties of Assignor set forth above in Section 5 of the Sale Agreement, the Transferred Rights are being sold and assigned hereunder, "AS IS, WHERE IS" and ASSIGNEE ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSIGNOR NOR ANY OF ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES HAS MADE OR WILL BE DEEMED TO HAVE MADE ANY TERM, CONDITION,

REPRESENTATION, WARRANTY OR COVENANT EXPRESS OR IMPLIED (WHETHER STATUTORY OR OTHERWISE) AS TO (a) THE CAPACITY, AGE, VALUE, QUALITY, DURABILITY, DESCRIPTION, CONDITION (WHETHER OF THE EQUIPMENT OR ANY PART THEREOF), DESIGN, WORKMANSHIP, MATERIALS, MANUFACTURE, CONSTRUCTION, OPERATION, DESCRIPTION, STATE, MERCHANTABILITY, PERFORMANCE, FITNESS FOR ANY PARTICULAR USE OR PURPOSE (INCLUDING THE ABILITY TO OPERATE OR REGISTER THE EQUIPMENT OR USE THE EQUIPMENT IN ANY OR ALL JURISDICTIONS) OR SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF, (b) THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, KNOWN OR UNKNOWN, APPARENT OR CONCEALED, EXTERIOR OR INTERIOR, (c) THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS, (d) ANY IMPLIED WARRANTY ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE OR (e) ANY OTHER REPRESENTATIONS OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, THE TRANSFERRED RIGHTS OR ANY PART THEREOF, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED, IT BEING UNDERSTOOD THAT NOTHING HEREIN WILL BE DEEMED TO LIMIT THE ASSIGNEE FROM AVAILING ITSELF OF ANY

WARRANTIES, COVENANTS, AND REPRESENTATIONS OF ANY MANUFACTURER. ASSIGNOR WILL IN NO EVENT BE LIABLE TO THE ASSIGNEE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED, DIRECTLY OR INDIRECTLY, BY THE EQUIPMENT OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, OR ANY DEFICIENCY OR DEFECT THEREIN.

Section 5. Successors and Assigns. This Assignment shall be binding upon, and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, transferees and assigns.

Section 6. Applicable Law. THIS ASSIGNMENT SHALL BE DEEMED TO HAVE BEEN NEGOTIATED AND MADE IN, AND SHALL BE GOVERNED AND INTERPRETED UNDER THE LAWS OF, THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE BY RESIDENTS THEREOF TO BE ENTIRELY PERFORMED THEREIN.

Section 7. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be an original document and all of which together shall constitute but one and the same Assignment.

Section 8. Waiver of Trial by Jury. THE PARTIES HEREBY  
IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR  
PROCEEDING BROUGHT TO ENFORCE ANY PROVISION OF THIS  
ASSIGNMENT OR ANY AGREEMENT EXECUTED IN CONNECTION  
HEREWITH.

IN WITNESS WHEREOF, the parties hereto have executed this

Assignment and Assumption Agreement as of the date first above written.

BNY CAPITAL RESOURCES  
CORPORATION

By: *Thomas W. McFadden*

Name: THOMAS W. McFADDEN

Title: ASSISTANT VICE PRESIDENT

FINOVA CAPITAL CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE STREET BANK AND TRUST  
COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION, not in its  
individual capacity but solely as  
Owner Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this

Assignment and Assumption Agreement as of the date first above written.

BNY CAPITAL RESOURCES  
CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FINOVA CAPITAL CORPORATION

By: Kathy A. Gross

Name: Kathy A. Gross

Title: Vice President

STATE STREET BANK AND TRUST  
COMPANY, NATIONAL  
ASSOCIATION, not in its  
individual capacity but solely as  
Owner Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this

Assignment and Assumption Agreement as of the date first above written.

**BNY CAPITAL RESOURCES  
CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FINOVA CAPITAL CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE STREET BANK AND TRUST  
COMPANY, NATIONAL  
ASSOCIATION, not in its  
individual capacity but solely as  
Owner Trustee**

By: 

Name: ALISON DELLA BELLA

Title: Assistant Secretary







## **SCHEDULE I**

1. Participation Agreement, dated as of April 15, 1985, among Consolidated Rail Corporation ("Lessee"), BNY Capital Resources Corporation (successor by assignment to Irving Leasing Corporation, "Beneficiary"), State Street Bank and Trust Company of Connecticut, National Association (successor to The Connecticut Bank and Trust Company, National Association, in its individual capacity, "CBT" and in its capacity as Trustee, "Lessor"), The Bank of New York (successor to Mercantile-Safe Deposit and Trust Company, "Agent"), General Motors Corporation (Electric-Motive Division) ("Builder") and Chemical Bank ("Investor").
2. Conditional Sale Agreement, dated as of April 15, 1985, between Builder and Lessor, as recorded with the ICC on May 1, 1985 and assigned Recordation No. 14639 and deposited with the Registrar General of Canada on May 1, 1985.
3. Lease of Railroad Equipment, dated as of April 15, 1985, between Lessee and Lessor, as recorded with the ICC on May 1, 1985 and assigned Recordation No. 14639B and deposited with the Registrar General of Canada on May 1, 1985.
4. Assignment of Lease and Agreement, dated as of April 15, 1985, between Lessor and Agent as recorded with the ICC on May 1, 1985 and assigned Recordation No. 14639C and deposited with the Registrar General of Canada on May 1, 1985.
5. Agreement and Assignment, dated as of April 15, 1985, between Builder and Agent as recorded with the ICC on May 1, 1985 and assigned Recordation No. 14639A and deposited with the Registrar General of Canada on May 1, 1985.
6. Assignment Agreement, dated as of November 15, 1985 between Investor and The Mutual Life Insurance Company of New York as recorded with the ICC on January \_\_, 1986 and assigned Recordation No. 1439D and deposited with the Registrar General of Canada on \_\_\_\_\_.
7. Trust Agreement, dated as of April 15, 1985, between Beneficiary and CBT.