

\$75.00

HOSIE, WES, McLAUGHLIN & SACKS

ATTORNEYS AT LAW

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SAN FRANCISCO, CALIFORNIA 94104

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RECORDATION NO. 8064 F FILED 1425

RECORDATION NO. 8064 E FILED 1425

NOV 13 1990 -3 02 PM

NOV 13 1990 -3 05 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8064 M FILED 1425

NOV 13 1990 -3 02 PM

0-317A068

November 7, 1990

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8064 D FILED 1425

Via Federal Express

NOV 13 1990 -3 05 PM

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

RECORDATION NO. 8064 A FILED 1425

INTERSTATE COMMERCE COMMISSION

NOV 13 1990 -3 05 PM

Dear Ms. McGee:

INTERSTATE COMMERCE COMMISSION

On behalf of GATX/GLC Capital Corporation, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder the following documents, all of which have not previously been recorded:

- (a) one (1) executed counterpart and two (2) true copies of a document entitled "Assignment of Lease and Interest in Lease" dated June 23, 1988;
- (b) one (1) executed counterpart and two (2) true copies of a document entitled "Assignment and Assumption Agreement" dated December 27, 1988;
- (c) three (3) executed counterparts of a document entitled "Statement of Satisfaction, Conveyance and Release" dated as of September 30, 1990;
- (d) three (3) executed counterparts of a document entitled "Lease Termination Agreement" dated as of September 30, 1990; and

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Page 2

- (e) three (3) executed counterparts of a document entitled "Memorandum of Lease of Railroad Equipment" dated as of September 30, 1990.

Each of the above-described documents should be included as part of the filing recorded on September 29, 1975, Recordation No. 8064, as the next available numbers being 8064-D, 8064-E, 8064-F, 8064-G and 8064-H. Recordation No. 8064 relates to the Conditional Sale Agreement ("Conditional Sale Agreement") dated as of September 1, 1975 between General Motors Corporation (Electro-Motive Division) and The Fifth Third Leasing Company.

The executing parties to the Assignment of Lease and Interest in Lease ("Lease Assignment") are:

The Fifth Third Leasing Company - Assignor
Fifth Third Center
Cincinnati, Ohio 45263

The Fifth Third Bank - Assignee
Fifth Third Center
Cincinnati, Ohio 45263

The Lease Assignment, among other items, provides for the assignment by Assignor to Assignee of Assignor's right, title and interest in the Lease of Railroad Equipment dated as of September 1, 1975 between Assignor, as Lessor and The Cleveland Electric Illuminating Company as Lessee (Recordation No. 8064-B).

The Equipment covered by the Lease Assignment consists of nine (9) diesel electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive).

The Lease Assignment should be filed as a secondary document to the above-referenced Conditional Sale Agreement. A short summary of the Lease Assignment to appear in the ICC index is as follows:

Assigns the rights of The Fifth Third Leasing Company under Recordation No. 8064-B (Lease of Railroad Equipment). Covers nine (9) diesel-

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electric locomotives bearing the road numbers
of The Cleveland Electric Illuminating Company
100-108 (both inclusive).

The executing parties to the Assignment and Assumption
Agreement ("Assignment") are:

The Fifth Third Leasing Company - Assignor
Fifth Third Center
Cincinnati, Ohio 45263

GATX Leasing Corporation - Assignee
Four Embarcadero Center, Suite 2200
San Francisco, California 94111

The Assignment, among other items, provides for the assignment
by Assignor to Assignee of all of Assignor's right, title and
interest in:

(a) the above-referenced Conditional Sale Agreement (ICC
Recordation No. 8064);

(b) Assignment and Agreement dated as of September 1,
1975 between General Motors Corporation (Electro-Motive Division),
Builder and First Security Bank of Utah, National Association as
Agent, Assignee (ICC Recordation No. 8064-A);

(c) Lease of Railroad Equipment dated as of September 1,
1975 between The Cleveland Electric Illuminating Company, Lessee
and The Fifth Third Leasing Company, Lessor (ICC Recordation No.
8064-B);

(d) Assignment of Lease and Agreement dated as of
September 1, 1975 between The Fifth Third Leasing Company, Lessor
and First Security Bank of Utah (not in its individual capacity,
but solely as Agent), Vendor (ICC Recordation No. 8064-C); and

(e) Assignment of Lease and Interest in Lease, dated
June 23, 1988, by and between The Fifth Third Leasing Company (as
assignor) and The Fifth Third Bank (as assignee) (to be recorded as
one of the documents included with this letter).

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The Assignment, among other items, also transfers to Assignee all of Assignor's interest in the following unrecorded document:

Instrument of Assignment and Bill of Sale dated as of December 1, 1988 by and between The Fifth Third Leasing Company (as assignor) and The Fifth Third Bank (as assignee).

The Equipment covered by the Assignment consists of nine (9) diesel electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive):

The Assignment should be filed as a secondary document to the above-referenced Conditional Sale Agreement. A short summary of the Assignment to appear in the ICC index is as follows:

Assigns the rights of The Fifth Third Bank under Recordation No. 8064 (Conditional Sale Agreement), Recordation No. 8064-A (Assignment and Agreement), Recordation No. 8064-B (Lease of Railroad Equipment) and Recordation No. 8064-C (Assignment of Lease and Agreement). Also assigns the rights of Assignor in the unrecorded Instrument of Assignment and Bill of Sale dated as of December 1, 1988 by and between The Fifth Third Leasing Company (as assignor) and The Fifth Third Bank (as assignee). Covers nine (9) diesel-electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive).

The executing parties to the enclosed "Lease Termination Agreement" are:

Cleveland Electric & Illuminating Company - Lessee
55 Public Square
Cleveland, Ohio 44101

GATX Capital Corporation - Lessor
Four Embarcadero Center, Suite 2200
San Francisco, California 94111

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The Lease Termination Agreement terminates the Lease of Equipment between The Fifth Third Leasing Company and Cleveland Electric & Illuminating Company ("Lease") dated September 1, 1975 and recorded with the Interstate Commerce Commission on September 29, 1975 in Recordation No. 8064-B.

The Equipment covered by the Lease Termination Agreement is listed in Exhibit A thereto.

The Lease Termination Agreement should be filed as a secondary document to the above-referenced Conditional Sale Agreement. A short summary of the Lease Termination Agreement to appear in the ICC records as follows:

Terminates Lease of Railroad Equipment dated as of September 1, 1975 (ICC Recordation No. 8064-B). Covers nine (9) diesel-electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive).

The executing parties to the Memorandum of Lease of Railroad Equipment ("Memorandum of Lease") are:

Cleveland Electric & Illuminating Company - Lessee
55 Public Square
Cleveland, Ohio 44101

GATX Capital Corporation - Lessor
Four Embarcadero Center, Suite 2200
San Francisco, California 94111

The Memorandum of Lease provides record notice of a Lease Agreement dated as of September 30, 1990 between Lessor and Lessee.

The Equipment covered by the Memorandum of Lease consists of nine (9) diesel-electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive).

The Memorandum of Lease should be filed as a secondary document to the above-referenced Conditional Sale. A short summary

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of the Memorandum of Lease to appear in the ICC index is as follows:

"Covers nine (9) diesel-electric locomotives bearing the road numbers of The Cleveland Electric Illuminating Company 100-108 (both inclusive).

Once the filing has been made, please return the stamped copies of the documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

The undersigned certifies that he is acting as special counsel to GATX Capital Corporation for purposes of this filing and that he has knowledge of the matters set forth in the above-described documents.

Enclosed are five checks in the amount of fifteen dollars (\$15.00) each in payment of the filing fee. Once the filing has been made, please return to the undersigned the stamped counterparts of the Assignment of Lease and Interest in Lease, Assignment and Assumption Agreement, Statement of Satisfaction, Conveyance and Release, Lease Termination Agreement and Memorandum of Lease of Railroad Equipment, not needed for your files, together with the fee receipt, the letter from the ICC acknowledging filing and the two extra copies of this transmittal letter.

Sincerely,



Edward J. Wes, Jr.

EJW:mem
enclosures

cc: T. Nord Esq.

Interstate Commerce Commission
Washington, D.C. 20423

11/16/90

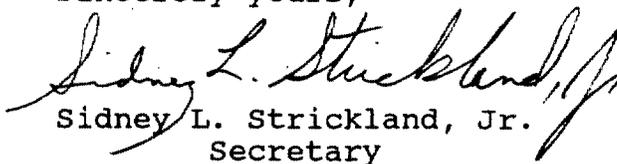
OFFICE OF THE SECRETARY

Edward J. Wes, Jr.
Hosie Wes, McLaughlin & Sacks
One Sansome Street 14th Fl.
San Francisco, California 94104 x

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 11/13/90 at 3:05pm, and assigned recordation number(s) 8064-D, 8064-E, 8064-F, 8064-G & 8064-H

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

8064-A
RECORDED NO. FILED 1925

ASSIGNMENT OF LEASE AND NOV 13 1990 3 22 PM
INTEREST IN LEASE
INTERSTATE COMMERCE COMMISSION

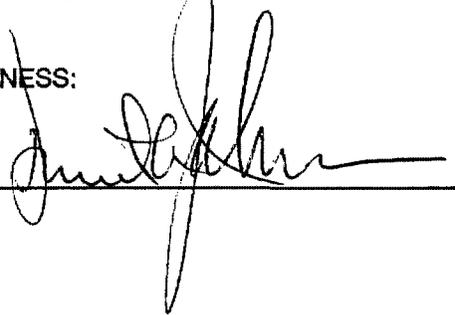
This Assignment is made as of the 23rd day of June, 1988, by and between THE FIFTH THIRD LEASING COMPANY (herein called the "Assignor") and THE FIFTH THIRD BANK (herein called the "Assignee").

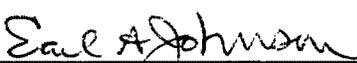
WITNESSETH:

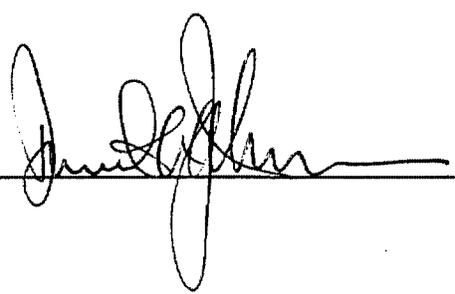
For value received, Assignor hereby grants, transfers and assigns to the Assignee, its successors and assigns effective June 23, 1988, all of its right, title and interest in and to a certain Lease of Railroad Equipment, including extensions or renewals thereof now in effect, together with the rents or payments received thereunder or any increases of said rents or payments, to wit: Lease of Railroad Equipment dated as of September 1, 1975 by and between The Cleveland Electric Illuminating Company as Lessee, and The Fifth Third Lease Company as Lessor and concerning 9 diesel-electric 2,000 hp. locomotives.

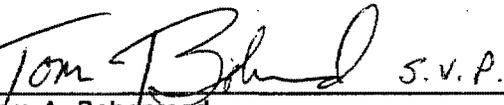
This Assignment shall inure to the benefit of the successors and assigns of the Assignee and shall bind the Assignor's legal representatives, successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment on the day and year first above written.

WITNESS:


THE FIFTH THIRD BANK
By: 
Earl A. Johnson
Senior Vice President

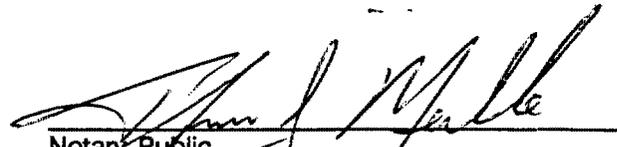


THE FIFTH THIRD LEASING COMPANY
By:  S.V.P.
Tom A. Bobenread
Senior Vice President

STATE OF OHIO
COUNTY OF HAMILTON, SS:

I hereby certify that before me, a Notary Public, in and for said State, personally appeared Earl A. Johnson, Senior Vice President of The Fifth Third Bank, an Ohio banking corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer and is the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunder set my hand and official seal this 23rd day of October, 1990.

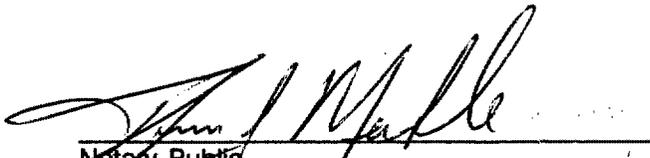


Notary Public
Expires 12-16-91

STATE OF OHIO
COUNTY OF HAMILTON, SS:

I hereby certify that before me, a Notary Public, in and for said State, personally appeared Tom A. Bobenread, Senior Vice President of The Fifth Third Leasing Company, an Ohio corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer and is the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunder set my hand and official seal this 23rd day of October, 1990.



Notary Public
Expires 12-16-91

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(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Mr. John W. Adams, Jr., who is acting as special counsel, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignees and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the Assignees are vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) the Assignee has a valid and perfected security interest in the Equipment at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (vii) registration of the Conditional Sale Agreement, this Assignment, and such opinion shall also cover such other matters as may reasonably be requested by the Assignees;

(e) an opinion of counsel for the Railroad, who may also be special counsel, dated as of such Closing Date, to the effect that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) there are no actions, suits or proceedings

(whether or not purportedly on behalf of the Railroad) pending or threatened against or affecting the Railroad or any property rights of the Railroad at law, in admiralty or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or otherwise, of the Railroad; and the Railroad is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iii) and (v) of subparagraph (d) above in respect of its Equipment and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

(g) a receipt from the Builder for any payment (other than the payment being made by the Assignees pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignees with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (e) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement.

The Assignees shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default,

or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignees shall not make payment for the Equipment, the Assignees shall reassign to the Builder, without recourse to the Assignees, all right, title and interest of the Assignees in and to the Equipment with respect to which payment has not been made by the Assignees.

SECTION 5. The Assignees may assign all or any of their rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to them from the Railroad 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 and be subject to all the obligations of the Assignees hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignees, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignees or their successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignees or intended so to be; and

(c) agrees that, upon request of the Assignees, their successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Mississippi; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignees agree to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

BY:

Harold F. Smith
Vice President

(Corporate Seal)

Attest:

John A. Nelson
Assistant Secretary

MERCHANTS AND MARINE BANK, ^{HL-Im 57.}
PASCAGOULA, MISSISSIPPI.

BY: *Wesley L. Humber*

(Corporate Seal)

Attest:

W. H. Alley

PASCAGOULA MOSS POINT BANK,
PASCAGOULA, MISSISSIPPI

BY: *W. O. Hultberg*
President

(Corporate Seal)

Attest:

James H. Johnson
Vice President Cashier

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MISSISSIPPI EXPORT RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of 23 SEPT., 1975.

MISSISSIPPI EXPORT RAILROAD COMPANY,

BY: J. M. von Sprecken Jr.
Vice President-General Manager

STATE OF ^{Michigan}ILLINOIS)
 ^{Wayne}) SS.:
COUNTY OF COOK)

On this 17th day of September 1975, before me personally appeared Harold L Smith, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed 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.

Eleanore E. Sienkiewicz
Notary Public

(Notarial Seal)

ELEANORE E. SIENKIEWICZ
Notary Public, Wayne County, Michigan
My Commission expires February 27, 1978

The Builder reserves the right to make changes in the design of, or add any improvements to, units of its Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of its Equipment previously delivered to the Railroad.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 3.

SCHEDULE A

Item 1: General Motors Corporation (Electro-Motive Division),
La Grange, Illinois 60525.

Item 2:

GENERAL MOTORS CORPORATION (Electro-Motive Division)

The Builder warrants that its Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter in this Schedule A called the Agreement) and is suitable for the ordinary purposes for which its Equipment is used and warrants each unit of its Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from the date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builders' satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this warranty.

The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder.

There are no warranties with respect to material and workmanship, expressed or implied, made by the Builder except the warranties set out above.

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit of the Builder's Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

SCHEDULE B

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
GP-38-2 2000 hp. diesel-elec- tric loco- motive		La Grange, Illinois	1	\$320,645	\$320,645	MSE-65	September 1975 at Builder's Plant

AGREEMENT AND ASSIGNMENT

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