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**HOSIE, WES, McLAUGHLIN & SACKS**

ATTORNEYS AT LAW

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RECORDATION NO. 8064-F FILED 1425

RECORDATION NO. 8064-E FILED 1425

NOV 13 1990 -3 02 PM

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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8064-B FILED 1425

NOV 13 1990 -3 00 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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- (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.

c.MEM\EJW(HNRM1001.Ltr)

Interstate Commerce Commission  
Washington, D.C. 20423

11/16/90

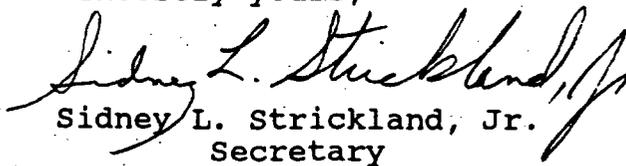
OFFICE OF THE SECRETARY

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

NOV 13 1990 3:30 PM

INTERSTATE COMMERCE COMMISSION

(Cleveland Electric)

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT dated December 27, 1988 between The Fifth Third Bank ("Assignor") and GATX Leasing Corporation ("Assignee") executed and delivered pursuant to that certain Purchase Agreement dated as of December 15, 1988 between Assignor as Seller and Assignee as Buyer (the "Purchase Agreement").

1. All capitalized terms used herein, unless specifically defined herein or the context requires otherwise, shall have the meanings given to them in the Purchase Agreement.

2. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Operative Documents listed on Exhibit A attached hereto, original executed counterparts of which have been delivered to Buyer. Assignee shall have all rights of Assignor in and to the Operative Documents, including, but not limited to, the CSA and the Lease

3. Assignee hereby assumes all of Assignor's obligations under the Operative Documents, including, but not limited to, all of Assignor's obligations under the CSA. Assignee covenants to be bound by all duties and obligations thereunder, and acknowledges that it takes subject to the rights of the respective parties in and to the Operative Documents.

4. Assignor hereby represents and warrants that:

(a) It owns and has full power to sell its interest in the Operative Documents.

(b) The Lease is in full force and effect and Assignor is not aware of any default by the lessee of any of the lessee's obligations under the Lease, nor is Assignor aware of any claim, defense, or setoff asserted by the lessee under the Lease.

(c) With the exception of any manufacturer's warranties, which are hereby assigned to Buyer, and the warranty of title set forth hereinabove, Assignor's interest in the Equipment subject to the Lease is being assigned "AS-IS" AND "WHERE-IS" AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY, SUITABILITY, OR LOCATION OF THE EQUIPMENT ARE HEREBY EXPRESSLY DISCLAIMED.

5. Assignor agrees that any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute and deliver or cause to be executed and delivered on its behalf any and all such further instruments and documents and will take such further action as Assignee may reasonably request in order to obtain the full benefit of this Assignment and to the rights and powers herein granted. Assignor shall not be responsible for damages in strict liability or for incidental or consequential damages however arising from events occurring after the date of this Agreement.

6. This Assignment and Assumption shall be governed by, and for all purposes construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed as of the day and year first above written.

Attest:

Michael E. Keating  
Assistant Secretary

THE FIFTH THIRD BANK

By: Tom Bobenread  
Title: SR. VICE PRESIDENT

Attest:

R. H. [Signature]  
Assistant Secretary

GATX LEASING CORPORATION

By: Thomas C. Neel  
Title: VICE PRESIDENT

STATE OF OHIO

COUNTY OF HAMILTON

} ss

On this 27th day of December 1988, before me personally appeared Tom Bobenread, to me personally known, and being duly sworn says that he is Sr. Vice President of The Fifth Third Bank, that this instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the instrument was the free act and deed of said corporation and acknowledged that he executed the same.

Barbara Hood  
Notary Public



BARBARA HOOD  
Notary Public, State of Ohio  
My Commission Expires Aug. 2, 1993

## EXHIBIT A

### (Cleveland Electric) List of Operative Documents

1. Participation Agreement, dated as of September 1, 1975, among The Cleveland Electric Illuminating Company, Lessee, The Fifth Third Leasing Company, Owner, First Security Bank of Utah, National Association, Agent, and [The Parties Named in Schedule B Hereof, Investors] Berkshire Life Insurance Company, Gulf Life Insurance Company, [Sun Life Insurance Company of America - now Provident Mutual Life Insurance Company], [and Princeton Bank and Trust Company (whose commitment has expired)].
2. Conditional Sale Agreement, dated as of September 1, 1975, between General Motors Corporation (Electro-Motive Division), Vendor or Builder, and The Fifth Third Leasing Company, Vendee.
3. Lease of Railroad Equipment, dated as of September 1, 1975, between The Cleveland Electric Illuminating Company, Lessee, and The Fifth Third Leasing Company, Lessor.
4. Assignment of Lease and Agreement, dated as of September 1, 1975, by and between The Fifth Third Leasing Company, Lessor or Vendee, and First Security Bank of Utah, National Association [not in its individual capacity, but solely as Agent], Vendor.
5. Consent and Agreement, dated as of September 1, 1975, The Cleveland Electric Illuminating Company acknowledges receipt of a copy of the Lease Assignment and consents to all the terms and conditions.
6. Agreement and Assignment, 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.
7. Supplemental Agreement, dated as of December 1, 1975, among Gulf Life Insurance Company, Transferee, Princeton Bank and Trust Company, Transferor, and First Security Bank of Utah, National Association, Agent.
8. Amendment Agreement Number One to Lease, dated as of September 1, 1975, by and between The Cleveland Electric Illuminating Company and The Fifth Third Leasing Company.
9. Memorandum to all Participants from ITEL Leasing Corporation, dated October 21, 1975, regarding the Equipment Closing.
10. Amendment to Commitment and Compensation Agreement, dated January 15, 1980 by and between The Fifth Third Leasing Company and ITEL Corporation, Lease Finance Division.
11. Commitment and Compensation Agreement, dated August 12, 1975, between The Fifth Third Leasing Company and ITEL Leasing Corporation.
12. Letter agreement, dated September 1, 1975, by and between The Fifth Third Leasing Company and First Security Bank of Utah, N.A.

13. Assignment of Lease and Interest in Lease, dated June 23, 1988, by and between The Fifth Third Leasing Company, Assignor, and The Fifth Third Bank, Assignee.
14. Instrument of Assignment and Bill of Sale dated as of December 1, 1988, by and between The Fifth Third Leasing Company, Assignor, and The Fifth Third Bank, Assignee.

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO } ss

On this 16<sup>th</sup> day of December 1988, before me, the undersigned, a notary public in and for said state, personally appeared Thomas C. Reed, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President of GATX Leasing Corporation and acknowledged that he executed the same.

WITNESS my hand and official seal.

Julia A. Cross  
Notary Public

[seal]

*jac\tcn\ex5-3purch*

