



No. 3-327A090  
Date NOV 23 1983  
Fee \$ 50.00  
ICC Washington, D.C.

Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 623 2200  
November 18, 1983

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
12th Street and Constitution Ave., N.W.  
Washington, D.C. 20423

RECORDATION NO. 14200 Filed 1426

RECEIVED  
NOV 23 3 46 PM '83  
I.C.C.  
FEE OPERATION BR.

Attention: Recordation Unit

NOV 23 1983 3 45 PM  
INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Enclosed are three executed counterparts of an Agreement dated November 1, 1983, between General Motors Corporation (Electro-Motive Division) and The Chesapeake and Ohio Railway Company. This Agreement constitutes an interim user agreement, allowing use of the equipment described below pending establishment of permanent financing. The names and addresses of the parties are as follows:

Bailor: General Motors Corporation  
(Electro-Motive Division)  
LaGrange, Illinois 60525

Bailee: The Chesapeake and Ohio Railway Company  
P. O. Box 6419  
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 23 3500 H.P. Model SD50 locomotives, to bear Bailee's Road Nos. 8553-8575, inclusive, AAR Mechanical Designation: BB. The equipment will be marked "The Chesapeake and Ohio Railway Company" or "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Also enclosed is a draft in the amount of \$50 representing the required recordation fee.

Pursuant to the Commission's rules and regulations for recordation of certain documents under 49 U.S.C. § 11303, you are hereby requested to file one of the enclosed counterparts for record in your office and to return the remaining copies to me.

Very truly yours,

*Louis Recher*  
Louis Recher  
Assistant General Solicitor

Enclosures (4)



**Interstate Commerce Commission**  
Washington, D.C. 20423

11/25/83

OFFICE OF THE SECRETARY

**Louis Recher**  
**Chessie System Railroads**  
**Terminal Tower**  
**P.O.Box 6419**  
**Cleveland, Ohio 44101**

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 **11/23/83** at **3:45pm** and assigned recordation number(s). **14200**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

*James H. Payne*  
*Acting*

Enclosure(s)

EXECUTED IN ✓ COUNTERPARTS  
OF WHICH THIS IS NO. ✓

14200  
RECORDATION NO. \_\_\_\_\_ Filed 1425

NOV 23 1983 5 45 PM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of November 1, 1983

between

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

\_\_\_\_\_

Covering

23 3500 H.P. Model SD50 Locomotives

\_\_\_\_\_

THIS AGREEMENT, dated as of November 1, 1983, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O):

WITNESSETH:

The Manufacturer and C&O heretofore entered into a Purchase Agreement (which Purchase Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been made or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed (among other things) to construct, at its LaGrange, Illinois plant in accordance with its specification 8115, and to deliver to C&O at Barr Yard, Illinois, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for, 23 3500 H.P. Model SD50 Locomotives (Locomotives), to bear C&O road numbers 8553-8575, inclusive.

As contemplated by said Purchase Agreement, C&O intends to finance the purchase of the Locomotives from the Manufacturer pursuant to some one or more permanent forms of financing, but deliveries of the Locomotives are scheduled to begin on or about December 1, 1983, and C&O will not have completed said financing arrangement(s) by that time. C&O represents that such financing arrangement(s) will be established, however, on or before March 1, 1984. C&O, in order that it may use the Locomotives pending establishment of such financing arrangement(s), desires to have temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to grant such temporary custody and possession to C&O upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to C&O at Barr Yard, Illinois, or such other point or points as may be directed by C&O for the period ending on the earlier of March 1, 1984, or the date of establishment of said financing arrangement(s). On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Locomotive, C&O's representative shall execute a certificate of acceptance acknowledging the receipt of delivery of each such Locomotive under this Agreement. Title to the Locomotives shall remain in the Manufacturer and C&O's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Notwithstanding anything to the contrary contained in the Purchase Agreement, transfer of title shall be effected only at the time of delivery of bills of sale. C&O shall, without expense to the Manufacturer, promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under 49 U.S.C. section 11303. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Locomotives.

C&O agrees to permit no liens of any kind to attach to the Locomotives; and that it shall:

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Locomotives by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O shall, at its own expense, keep and maintain the Locomotives in good order and running condition and shall, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to C&O under this Agreement, each such Locomotive shall be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of the financing arrangement(s), as hereinbefore mentioned, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives, as provided in the Purchase Agreement, may be assigned by the Manufacturer and reassigned by any

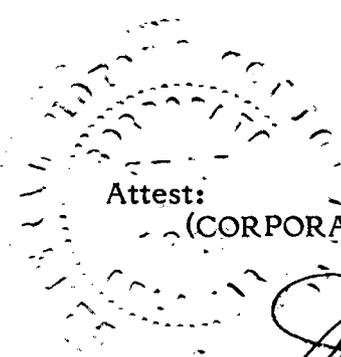
assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Agreement. In the event the Manufacturer shall assign its rights to receive the payments herein and/or under the Purchase Agreement, and C&O shall receive written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any such assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Locomotives, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase

Agreement, or impair any of the Manufacturer's rights under said Purchase Agreement.

Attest:  
(CORPORATE SEAL)

  
*E. W. [Signature]*  
Assistant Secretary

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY

By *A. C. [Signature]*  
Assistant Vice President  
and Treasurer

Approved as to Form

*[Signature]*  
Ass't. General Solicitor

Attest:  
(CORPORATE SEAL)

*[Signature]*  
(Title) ASSISTANT SECRETARY

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

By *P. K. [Signature]*  
(Title) VICE PRESIDENT

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

On this 7<sup>th</sup> day of November, 1983, before me personally appeared L. C. ROIG, JR., to me personally known who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, 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.

  
\_\_\_\_\_  
LOUIS RECHER, Attorney  
NOTARY PUBLIC-STATE OF OHIO  
My Commission has no expiration date.  
Section 147.03 R.C.

(NOTARIAL SEAL)

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

On this 14<sup>th</sup> day of November 1983, before me personally appeared P. K. HOGLUND, to me personally known who, being by me duly sworn, says that he is 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.

  
\_\_\_\_\_  
Notary Public

My Commission Expires March 25, 1985

(NOTARIAL SEAL)