

Law Department



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

Ms. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

13102  
RECORDATION NO. .... Filed 1425

Attention: Ms. M. R. Lee, Room 2303  
Recordation Unit

MAY 15 1981 -3 50 PM

May 14, 1981

Dear Ms. Lee:

INTERSTATE COMMERCE COMMISSION

Enclosed are four executed counterparts of an Agreement dated May 15, 1981, between General Motors Corporation (Electro-Motive Division) and The Baltimore and Ohio Railroad Company. This Agreement constitutes an interim user agreement, allowing use of the equipment described below pending completion 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 Baltimore and Ohio Railroad Company  
P. O. Box 6419  
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 26 3000 H.P. Model GP40-2 locomotives, to bear Bailee's Road Nos. 4422-4447, inclusive, AAR Mechanical Designation: BB. The equipment will be marked "Baltimore and Ohio Railroad," "Baltimore and Ohio," "B&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 return the remaining copies to me.

Very truly yours,

A handwritten signature in cursive script that reads "Louis Recher".  
Louis Recher  
Attorney

Enclosure  
LR:pm

cc: Mr. O. A. Kemp



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

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

5/15/81

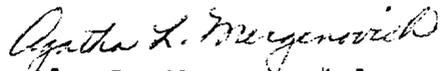
OFFICE OF THE SECRETARY

**Louis Recher, Atty**  
**Chessie System**  
**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 **5/15/81** at **3:50pm**, and assigned re-  
recording number(s). **13102**

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

EXECUTED IN 5 COUNTERPARTS  
OF WHICH THIS IS NO. 1

13102

RECORDATION NO. .... Filed 1425

MAY 15 1981 -3 50 PM

INTERSTATE COMMERCE COMMISSION  
INTERIM USER AGREEMENT

Dated as of May 15, 1981

between

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

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Covering

26 3000 H.P. Model GP40-2 Locomotives

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THIS AGREEMENT, dated as of May 15, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the "Builder"), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (hereinafter called the "Railroad"):

WITNESSETH:

The Builder and the Railroad heretofore entered into a Purchase Agreement dated as of May 1, 1981 (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 Builder and the Railroad, whereunder the Builder agreed (among other things) to construct, at its LaGrange, Illinois plant and to deliver to the Railroad at Barr Yard, Illinois, and the Railroad agreed to accept and to pay for, 26 3000 H.P. Model GP40-2 Locomotives (Locomotives), to bear the Railroad's road numbers 4422-4447, inclusive.

As contemplated by said Purchase Agreement, the Railroad intends to finance the purchase of the Locomotives from the Builder pursuant to an Equipment Trust Agreement to be dated as of May 15, 1981, but deliveries of the Locomotives are scheduled to begin on or about May 28, 1981, and the Railroad will not have completed said financing arrangement by that time. The Railroad represents that such financing arrangement will be established, however, on or before July 31, 1981. The Railroad, in order that it may use the Locomotives pending establishment of such financing arrangement, desires to have temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Builder is willing to grant such temporary custody and possession to the Railroad upon the terms and conditions hereinafter stated.

In consideration of the premises, the Builder hereby delivers to the Railroad and the Railroad hereby accepts from the Builder the Locomotives as of the date each of them is delivered to the Railroad at Barr Yard, Illinois, or such other point or points as

may be directed by the Railroad for the period ending on the earlier of July 31, 1981, or the date of establishment of said financing arrangement. 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, the Railroad'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 Builder and the Railroad's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. The Railroad shall, without expense to the Builder, promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under 49 U.S.C. section 11303 (Section 20c of the former Interstate Commerce Act). In addition, the Railroad shall do such other acts as may be required by law, or reasonably requested by the Builder, for the protection of the Builder's title to and interest in the Locomotives.

The Railroad agrees to permit no liens of any kind to attach to the Locomotives; and that it shall:

- (a) indemnify and save harmless the Builder 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 Builder,

because of the Builder's ownership or because of the use, operation, management or handling of the Locomotives by the Railroad during the term of this Agreement. The Railroad's obligations contained in this paragraph shall survive the termination of this Agreement.

The Railroad 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 Builder 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 the Railroad 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, 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**

The Railroad hereby agrees to indemnify the Builder 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, the Railroad shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Builder, including the right to receive the purchase price of the Locomotive, as provided in the Purchase Agreement, may be assigned by the Builder 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 Builder's warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Agreement. In the event the Builder shall assign its rights to receive the payments herein and/or under the Purchase Agreement, and the Railroad shall receive written notice thereof from the Builder, 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 the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Railroad.

In the event of any such assignment by the Builder 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 Builder 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 the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad, its successors and assigns, only against the Builder and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

The Railroad agrees with the Builder that the execution by the Builder of this Agreement or the delivery by the Builder to the Railroad of the Locomotives, as contemplated by this Agreement, shall not relieve the Railroad 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 Builder's rights under said Purchase Agreement.

Attest:  
(CORPORATE SEAL)

THE BALTIMORE AND OHIO  
RAILROAD COMPANY

  
Secretary

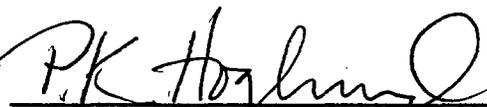
APPROVED AS TO FORM  
  
ATTORNEY

By   
Assistant Vice-President  
and Treasurer

Attest:  
(CORPORATE SEAL)

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

  
(Title) ASSISTANT SECRETARY

By   
(Title) VICE PRESIDENT

STATE OF OHIO ) SS:  
 )  
COUNTY OF CUYAHOGA )

On this 7<sup>TH</sup> day of May, 1981, 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 BALTIMORE AND OHIO RAILROAD 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.

*Clara Masuga*  
\_\_\_\_\_  
Notary Public

CLARA MASUGA, Notary Public  
State of Ohio - Cuyahoga County  
My Commission Expires April 21, 1984

[ NOTARIAL SEAL ]

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

On this 13<sup>th</sup> day of May, 1981, before me personally appeared P. K. HOGGLUND, 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.

*J. K. Paszcki*  
\_\_\_\_\_  
Notary Public

My Commission Expires September 18, 1983

[ NOTARIAL SEAL ]