

Law Department



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

February 8, 1984

RECORDATION NO. 14275 1428

FEB 9 1984 3 00 PM

INTERSTATE COMMERCE COMMISSION

4-0394100

Date FEB 9 - 1984

Fee \$ 50.00

ICC Washington, D.C.

Express Mail

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

Attention: Recordation Unit

Dear Ms. Mergenovich:



Enclosed are three executed counterparts of an Agreement dated February 1, 1984, between Portec, Inc. (Railcar 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: Portec, Inc.  
(Railcar Division)  
300 Windsor Drive  
Oakbrook, Illinois 60521

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

The equipment covered by the above documents consists of 70 fully-enclosed bi-level auto racks, to bear Bailee's Rack Nos. C1595-C1664, inclusive, and 101 fully-enclosed tri-level auto racks, to bear Bailee's Rack Nos. C1665-C1765. 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 MAY BE SUBJECT TO A SECURITY INTEREST."

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)



The Chessie System Railroads, a unit of CSX Corporation, are the Chesapeake and Ohio Railway, Baltimore and Ohio Railroad, Western Maryland Railway and affiliated lines.

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

2/9/84

Louis Recher  
Assist.Gen. Solicitor  
Chessie System RR.  
Terminal Tower  
P.O.Box 6419

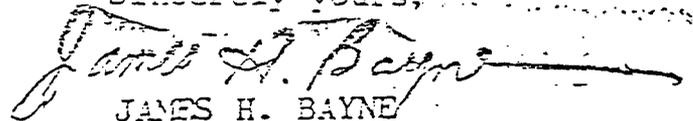
D Cleveland, Ohio 44101

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 2/9/84 at 3:00pm and assigned re-  
recording number (s).

14275

Sincerely yours,



JAMES H. BAYNE

Secretary

Enclosure (s)

EXECUTED IN 5 MONTHS  
OF WHICH THIS IS NO. 1

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RECORDATION NO. 14275 Filed 1425

FEB 9 1984 - 3 00 PM

INTERSTATE COMMERCE COMMISSION INTERIM USER AGREEMENT

Dated as of February 1, 1984

between

PORTEC, INC.  
(Railcar Division)

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

---

Covering

70 Fully-Enclosed Bi-Level Auto Racks  
and  
101 Fully-Enclosed Tri-Level Auto Racks

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THIS AGREEMENT, dated as of February 1, 1984, between PORTEC, INC. (Railcar Division), a Delaware corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O):

WITNESSETH:

Pursuant to two Letter Orders received from C&O dated October 19, 1983, which Letter Orders are made a part hereof by reference, the Manufacturer has agreed (among other things) to construct, at its Winder, Georgia plant, and to deliver to C&O at Winder, Georgia, and C&O has agreed to accept and pay for, 70 fully-enclosed bi-level auto racks, to bear C&O rack numbers C1595-C1664, inclusive, and 101 fully-enclosed tri-level auto racks, to bear C&O rack numbers C1665-C1765, inclusive (collectively, Auto Racks).

C&O intends to finance the purchase of the Auto Racks from the Manufacturer pursuant to some one or more permanent forms of financing, but deliveries of the Auto Racks are scheduled to begin on or about February 10, 1984, 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 April 30, 1984. C&O, in order that it may use the Auto Racks pending establishment of such financing arrangement(s), desires to have temporary custody and possession of the Auto Racks upon their completion, solely as a bailee of the Auto Racks, 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 Auto Racks as of the date each of them is delivered to C&O at Winder, Georgia, for the period ending on the earlier of

April 30, 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 Auto Rack, C&O's representative shall execute a certificate of acceptance acknowledging the receipt of delivery of each such Auto Rack under this Agreement. Title to the Auto Racks 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. 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 a Financing Statement to be filed in Ohio pursuant to the requirements of the Uniform Commercial Code as in effect in said State. 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 Auto Racks.

C&O agrees to permit no liens of any kind to attach to the Auto Racks; 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 Auto Racks or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Auto Racks 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 Auto Racks 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 Auto Racks which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Auto Rack to C&O under this Agreement, each such Auto Rack shall be numbered with a rack number as hereinbefore indicated. 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 Auto Racks. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Auto Rack, 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 Auto Racks, 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 implied by the Letter Orders. In the event the Manufacturer shall assign its rights to receive the payments for the Auto Racks, 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 for the Auto Racks or in connection therewith 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 such payments, 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 Auto Racks, 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 Auto Racks, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Auto Racks in accordance with the terms of the Letter Orders.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Attest:  
(CORPORATE SEAL)

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY

*E. E. ...*  
Assistant Secretary

By *R. C. ...*  
Assistant Vice President  
and Treasurer

App'd. as to Form

*A. G. S.*  
A. G. S.

Attest:  
(CORPORATE SEAL)

PORTEC, INC.  
(Railcar Division)

*J. ...*  
(Title) Secretary

By *R. ...*  
(Title) SR. Vice President

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

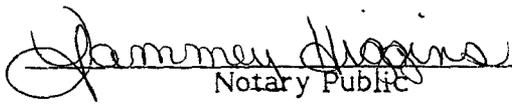
On this 6th day of February, 1984, before me personally appeared L. C. ROIG, JR., to me personally known who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate 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.

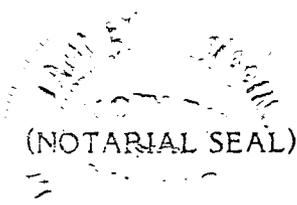
  
\_\_\_\_\_  
LOUIS RECHER, Attorney  
NOTARY PUBLIC-STATE OF OHIO  
My Commission has no expiration date.  
Section 147.03 R.C.

(NOTARIAL SEAL)

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF DuPAGE )

On this 7<sup>th</sup> day of February, 1984, before me personally appeared L. L. White, Jr, to me personally known who, being by me duly sworn, says that he is Senior Vice President of PORTEC, INC. (Railcar 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  
Sept 19, 1984

  
(NOTARIAL SEAL)