



9-202A029

100 North Charles Street
Baltimore, MD 21201
(301) 237-4605

CSX DISTRIBUTION SERVICES & CSX EQUIPMENT

Robert F. Hochwarth
Senior Counsel

July 18, 1989

16441
RECORDATION NO. _____ FILED 1423

Secretary
Interstate Commerce Commission
Attention: Recordation Unit
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

JUL 21 1989 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

Mrs. Mildred Lee:

On behalf of CSX Transportation, Inc., enclosed for filing and recording under 49 U.S.C. §11303(a) and the regulations promulgated thereunder, are five executed counterparts of an agreement dated July 1, 1989, not previously recorded, between Raceland Car Corporation and CSX Transportation, Inc. This Agreement constitutes an Interim User Agreement dated as of July 1, 1989, which allows use of the following described locomotives pending establishment of permanent financing. Equipment covered by the above agreement consists of 60 SD40-2 diesel electric locomotives bearing road numbers in series CSXT8300 to CSXT8438, inclusive.

The names and addresses of the parties are as follows:

Bailor:

Raceland Car Corporation
100 North Charles Street
Baltimore, Maryland 21201

Bailee:

CSX Transportation, Inc.
100 North Charles Street
Baltimore, MD 21201

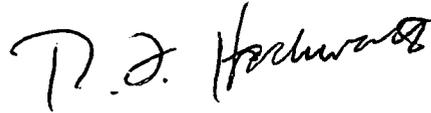
JUL 21 2 46 PM '89
RECORDATION UNIT

The equipment will be marked "CSX Transportation, Inc.", or CSXT, or in some other appropriate manner and will also be marked "OWNER-SHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Enclosed is a check in the amount of \$13 in payment of the filing fee.

Once the filing has been made, please return to the undersigned stamped copies of the Agreement not needed for your files, together with the fee receipt, a copy of the letter from the ICC acknowledging the filing, and an extra copy of this letter of transmittal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. J. Hochstadt".

RFH/mm
Enclosures

cc: Mr. M. J. Martino B6E

Interstate Commerce Commission
Washington, D.C. 20423

7/24/89

OFFICE OF THE SECRETARY

Robert F. Hochwarth
Senior Counsel
CSX Transportation Inc.
100 North Charles St
Baltimore, MD. 21201

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 7/21/89, at 2:50pm, and assigned recordation number(s). 16441

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

RECORDATION #10 **16441** FILED 1425

JUL 21 1989 -2 50 PM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of July 1, 1989

between

RACELAND CAR CORPORATION

and

CSX TRANSPORTATION, INC.

Covering

Sixty (60) SD-40-2
Diesel Electric Locomotives

THIS AGREEMENT, dated as of July 1, 1989, between RACELAND CAR CORPORATION, a Delaware corporation (Manufacturer), and CSX TRANSPORTATION, INC., a Virginia corporation (CSXT):

WITNESSETH:

Pursuant to a Letter Agreement dated January 1, 1989, between CSXT and the Manufacturer (the Purchase Agreement) the Manufacturer has agreed (among other things) to construct and to deliver to CSXT and CSXT agreed to accept and pay for, sixty (60) remanufactured SD-40-2 diesel electric locomotives, bearing road numbers in the series CSXT 8300 to CSXT 8438, inclusive, (the Locomotives).

CSXT intends to finance the purchase of the Locomotives from the Manufacturer pursuant to one or more permanent forms of financing but deliveries of the Locomotives are scheduled to begin on or about July 26, 1989, and CSXT will not have completed said financing arrangement(s) by that time. CSXT represents that such financing arrangement(s) will be established, however, on or before December 31, 1989. CSXT, 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 CSXT upon the terms and conditions hereinafter set forth.

In consideration of the premises, the Manufacturer hereby delivers to CSXT and CSXT accepts from the Manufacturer the Locomotives as of the date each of them is delivered to CSXT for the period ending on the earlier of December 31, 1989, 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.

Title to the Locomotives shall remain in the Manufacturer and CSXT'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 under the permanent financing arrangements for the Locomotives. CSXT shall do such 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, including, but not limited to filing with the Interstate Commerce Commission.

CSXT shall pay or cause to be paid to the Manufacturer the purchase price of the Locomotives (the Purchase Price) under the permanent financing arrangements by December 31, 1989 (the date of such payment being the Closing Date).

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

- (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 CSXT during the term of this Agreement. CSXT's obligations contained in this paragraph shall survive the termination of this Agreement.

CSXT will, 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 (as set forth in the Purchase Agreement) for each of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each such Locomotive 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

CSXT hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of 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, CSXT shall immediately cause the same to be restored or replaced.

In the event CSXT fails to purchase the Locomotives in accordance with the Purchase Agreement, Manufacturer may, by its agents, enter upon the premises of CSXT or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of CSXT, or its successors or assigns, to use the Locomotives for any purposes whatsoever; and to sell and deliver the Locomotives to others upon such terms as Manufacturer may see fit in its sole discretion, it being understood and agreed that CSXT shall be liable to Manufacturer for (i) an amount equal to any difference in the price paid by such other parties and the purchase price due under the aforementioned Purchase Agreement, plus (ii) an amount equal to all expenses incident to such sale, including but not limited to the expenses of withdrawing the Locomotives from the service of CSXT, providing for the care and custody of such Locomotives, preparing such Locomotives for sale, and selling such such Locomotives. CSXT shall pay from time to time upon demand by Manufacturer the foregoing amounts.

CSXT and Manufacturer represent and warrant that:

- Each is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this

Agreement; and has power and authority to own its properties and carry on its business as now conducted;

- The execution and delivery of this agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Agreement is a valid and binding obligation of each enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against each in accordance with its terms;

- No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability thereof or the bailment of the Locomotives hereunder on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained.

CSXT represents and warrants that:

The rights of Manufacturer as herein set forth and the title of Manufacturer to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon CSXT;

Any or all of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives, 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 warranty, indemnity or obligations contained in this Agreement or the Purchase Agreement. In the event the Manufacturer shall assign its rights to receive the payments for the Locomotives, and CSXT 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 CSXT for the Locomotives or in connection therewith shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to CSXT.

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 by reason of any other indebtedness or liability at any time owing to CSXT by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by CSXT, or 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).

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

THIS AGREEMENT shall be governed by and construed in accordance with the laws of the State of Maryland.

Attest:

CSX TRANSPORTATION, INC.

[CORPORATE SEAL]

By: *R. J. Hochmuth*
Assistant Secretary

By: *A. B. [Signature]*
Treasurer

Attest:

RACELAND CAR CORPORATION

[CORPORATE SEAL]

By: *R. J. Hochmuth*
Assistant Secretary

By: *[Signature]*
Assistant Treasurer

