

**OSTER**

2-287A004

**Researching Services**

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301-253-6040

17976

RECORDATION UNIT

OCT 9 1992-10 00 AM

INTERSTATE COMMERCE COMMISSION

October 13, 1992

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Locomotive Lease dated April 1, 1992, between the following parties:

Lessor: General Motors Corporation,  
Electro-Motive Division  
LaGrange, IL 60525

Lessee: Norfolk Southern Railway Co.  
8 North Jefferson Avenue  
Roanoke, VA 24042

The equipment involved in this transaction is as follows:

Equipment: 6, SD70 Locomotives  
#2501-2506

Please record this agreement as a primary document. The filing fee of \$16 is enclosed. Thank you for your assistance.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

OCT 13 9 53 AM '92  
MOTOR OPERATING UNIT

*Mary Ann Oster*

OCT 9 1992-10 00 AM

## LOCOMOTIVE LEASE

INTERSTATE COMMERCE COMMISSION

This LEASE, dated as of April, 1, 1992, is between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (the "Lessor"), and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Railroad").

LESSOR AND THE RAILROAD AGREE AS FOLLOWS:

1. Delivery. Lessor will deliver the locomotives described in Schedule A hereto (the "Locomotives") to Railroad F.O.B. Bellevue, Ohio or Calumet, Illinois in accordance with the specification and delivery schedule set forth in Schedule A. The Locomotives are subject to Railroad's inspection at delivery. Within three (3) days of delivery of any Locomotive to Railroad, an authorized representative of Railroad shall inspect and accept or reject the same. If a Locomotive is accepted, the Railroad's authorized representative will execute and deliver to Lessor a certificate of inspection in the form of Schedule B hereto, whereupon Railroad shall assume the responsibility and risk of loss with respect to such Locomotive. A Locomotive will be deemed accepted if Railroad fails to give Lessor an affirmative notice of rejection within such period. Title to and ownership of the Locomotives during the term hereof shall remain in Lessor, and Railroad's right and interest therein shall be solely that of possession, custody, use and operation hereunder.

2. Rental and Term. (a) Except as otherwise provided herein, the Lease and the rental with respect to each Locomotive shall commence on the date of acceptance thereof hereunder and end one (1) year from the date of acceptance of the sixth Locomotive ("Initial Term"). However, Railroad shall have the right and option to extend the term of this Lease as to all of the Locomotives for an additional period of not more than two years ("Renewal Term") commencing immediately upon expiration of the Initial Term. If it elects to extend the term hereof, Railroad shall give Lessor notice of such election, which notice shall be given not less than ~~thirty~~ <sup>thirty</sup> days prior to the end of the Initial Term.

(b) During the Initial Term and the Renewal Term (if any), Railroad shall pay Lessor semi-annually in arrears, Four Hundred Ninety-Five Dollars (\$495) per day as rental for each Locomotive. Rental will be payable to the following account:

ELECTRO-MOTIVE DIVISION  
GENERAL MOTORS CORPORATION  
c/o First National Bank of Chicago  
Account No. 50-63191  
"Rental Income Account"  
Attn: Assistant Comptroller

Should Railroad fail to return a Locomotive as required hereunder, for reasons other than loss or destruction or the fault or breach of Lessor, Railroad shall pay Lessor \$495 per day until any such Locomotive is returned. Rental shall not accrue for any period that a Locomotive is out of service ("Down Time") in excess of fifteen (15) days per year as a result of failure of components, failure of a Locomotive to perform in accordance with the warranties hereunder or any reason other than normal maintenance, FRA inspections and repair. Down Time shall mean the time the Locomotive is awaiting EMD material, if any, plus the time the Locomotive is at the shop in excess of eight (8) hours to perform a repair.

(c) Railroad may terminate this Lease as to all Locomotives effective on or at any time after the expiration of the ninth month (270 days) of the Renewal Term by delivering to Lessor not less than ninety (90) days written notice of such termination.

3. Return of Locomotives. (a) Upon termination of this Lease as to all Locomotives (other than as a result of a Casualty Occurrence or purchase by Railroad), Railroad shall, as promptly as practicable, return such Locomotives to Lessor at mutually agreeable points on Railroad's lines. Upon request of the Lessor, Railroad will provide Lessor free storage of all Locomotives at points designated by Railroad on Railroad's premises for a period of up to sixty (60) days after the Lease is terminated as to such Locomotives.

(b) In consideration of Lessor's configuration of the Locomotive cabs to Railroad's specification, Railroad shall, upon termination of this Lease, pay Lessor with respect to all Locomotives returned to Lessor the sum of two hundred and ninety-five thousand dollars (\$295,000) per Locomotive. Such charge shall be paid, within thirty days after return of all Locomotives to the account stipulated in Section 2 hereof. If Railroad pays such charge with respect to all Locomotives, then at Railroad's option, either (i) the cabs of such Locomotives will be returned by Lessor to Railroad or (ii) Lessor will apply a credit of seventy-five thousand dollars (\$75,000) per locomotive returned toward the purchase by Railroad of each new locomotive designated by Railroad, such credit to be deducted from the final negotiated purchase price of such new locomotive.

4. Options to Purchase. (a) If, at any time during the Initial Term or Renewal Term (if elected), Railroad agrees in writing (the "Purchase Agreement") to purchase from Lessor and to pay for a minimum quantity of fifty (50) SD60, SD70 and/or GP60 series locomotives during calendar years 1992, 1993, or 1994, then Railroad will have the option to purchase from Lessor all of the Locomotives for a fixed price of one hundred fifty thousand (\$150,000) per Locomotive.

(b) At any time and from time to time during the Initial Term or the Renewal Term, Railroad shall have the right to purchase all of the Locomotives by giving Lessor not less than fifteen days' written notice of Railroad's election to purchase under this subsection 4(b). The purchase price for purposes of this subsection 4(b) shall depend on the month in which the purchase occurs as set forth in Schedule E attached hereto.

(c) If Railroad exercises its option to purchase under either of subsections 4(a) or 4(b) above, (i) rental under this Lease with respect to each Locomotive to be purchased will abate and cease to accrue from and after the date that Railroad gives Lessor notice of its exercise of the purchase option, (ii) Railroad will pay the applicable purchase price within five working days to the account specified by Lessor, and (iii) Lessor will deliver to Railroad a bill or bills of sale to the purchased Locomotives in customary form with full warranty of title free of all claims, liens and encumbrances. The warranties under Section 9 and the guarantees provided in Schedules F and G hereto will continue to apply to Locomotives purchased by Railroad pursuant to this Section 4.

5. Marking. Prior to delivery, Lessor will, at its expense, mark each side of the Locomotives with the following legend:

GENERAL MOTORS CORPORATION, ELECTRO-MOTIVE DIVISION, OWNER

Railroad will not permit such lettering to be removed or altered during the term hereof, and if such legend shall at any time during the term hereof be removed, defaced or destroyed, Railroad shall cause the same to be restored or replaced. Railroad may mark any Locomotive with the legend "Norfolk Southern Railway Company" or "Norfolk Southern" or in some other appropriate manner for convenience of identification of the interest of Railroad therein. Railroad may not change the road number of any Locomotive unless and until a statement of the number is filed with Lessor and deposited by Railroad in all public offices in which this Lease is then filed.

6. Maintenance and Repair. Railroad shall, at its own expense, but subject to Lessor's warranty obligations hereunder, keep the Locomotives in good running repair and operating condition. The respective responsibilities of the parties for maintenance of the Locomotives are set out in Schedule C hereto. During the term hereof, Railroad shall comply with applicable governmental laws, regulations and requirements to the extent that such laws, rules and regulations apply to Railroad's use and operation of the Locomotives.

7. Reports and Inspection. Railroad will keep and maintain, and make available to Lessor upon request and at reasonable times and places, a record of Railroad's use, operation, inspection, repairs and maintenance of the Locomotives during the term hereof. Railroad will furnish Lessor, upon reasonable request, a certificate signed by an authorized officer of Railroad setting forth any heavy repairs performed on the Locomotives and identifying all components replaced during the preceding calendar year or through termination of the Lease, as applicable, and such other information regarding the condition and state of repair of the Locomotives as Lessor may reasonably request. Lessor, at its sole expense and risk, shall have the right by its agents to inspect the Locomotives and Railroad's records with respect thereto at such reasonable times as Lessor may request during the term of this Lease.

8. Indemnification. (a) Railroad shall indemnify, defend and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever and any expenses related thereto, including reasonable counsel fees, arising out of the possession, custody, use and operation of the Locomotives by Railroad during the term hereof, except to the extent caused by the negligence or willful misconduct of Lessor or resulting from any defect in the Locomotives not reasonably discoverable by Railroad during the initial acceptance inspection or thereafter during normal operating inspections. This covenant of indemnity shall continue in full force and effect after any termination of this Lease.

(b) Except as to designs and components specified by Railroad and not manufactured by Lessor, Lessor shall indemnify, defend and hold harmless Railroad from and against all suits, proceedings, losses, damages, costs, expenses and liabilities based on or arising out of a claim that any Locomotive or part thereof constitutes an infringement of any patent.

9. Warranties. In the event the Locomotives are purchased hereunder, Lessor warrants the Locomotives (i) will be free from defects in materials and workmanship under normal use and service through a period ending three years after the commencement of the Initial Term of this Lease, in accordance with Lessor's standard form of warranty for sales of new locomotives, (ii) will comply, on the date of purchase, with applicable FRA requirements, and (iii) will perform in accordance with the provisions of Schedule G through a period ending three years after the commencement of the Initial Term of this Lease. In addition, Lessor warrants and guarantees to Railroad that the Locomotives shall perform in accordance with the provisions of Schedule F for a period ending three years after the commencement of the Initial Term whether or not the Locomotives are purchased hereunder. The foregoing warranties will survive the termination of this Lease.

10. Failure of Components. If Lessor is unable to correct failures of any Locomotive's major components within a reasonable and mutually acceptable time period, Railroad may terminate this Lease as to such Locomotive and return it to Lessor.

11. Damage and Casualty Occurrences. (a) In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged or, in the reasonable opinion of Railroad, damaged beyond economic repair, from any cause other than the negligence or willful misconduct of Lessor (but subject to Lessor's warranties hereunder), Railroad shall notify Lessor of such occurrence (each such occurrence being hereinafter called a "Casualty Occurrence"). Upon such notification, rental with respect to such Locomotive shall cease to accrue. Within thirty days of such notification, Railroad shall pay to Lessor any unpaid rental due with respect to such Locomotive through the date of notification and the casualty value of such Locomotive provided for on Schedule D ("Casualty Value"). Upon such payment to Lessor, Railroad shall retain any recoverable salvage or scrap from the damaged or destroyed Locomotive, unless Lessor desires the return of said recoverable salvage or scrap, in which event the salvage or scrap value shall be returned and the Casualty Value reduced by the value of such salvage or scrap as follows: Salvage shall be computed for items not requiring repair at fifty percent (50%) of replacement costs, items requiring repair shall be computed at twenty-five percent (25%) of replacement costs, and scrap shall be computed at the then current scrap value, except that in no event shall such reduction exceed the Casualty Value. If the recoverable salvage or scrap is retained by Railroad, Lessor will transfer title to the Locomotive to Railroad.

(b) In the event a Locomotive is partly damaged or destroyed, Railroad may elect to have the same repaired or consider it damaged beyond economic repair under subsection (a) above. Subject to Lessor's warranty obligations, Railroad may elect to repair or replace any component of a Locomotive damaged during the term hereof provided Railroad uses original equipment manufactured parts for this purpose.

12. Taxes. Railroad, or Lessor at Railroad's expense, shall report, pay and discharge when due all license and registration fees, sales, use and gross receipts taxes (other than income taxes) and any interest or penalties thereon imposed by any government entity in respect of this Lease or the use, payment or receipts contemplated hereunder whether assessed against or in the name of either party.

13. Failure to Perform. In the event that the Railroad shall fail duly and promptly to perform any of its obligations hereunder, Lessor may, at its option, perform the same for the account of Railroad without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by the Lessor in such performance shall be payable by the Railroad upon demand as additional rent hereunder.

14. Liens. Railroad will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment or claim against Railroad which if unpaid might become a lien or charge upon or against the title or interest of Lessor in the Locomotives in favor of anyone claiming through or under Railroad; but this provision shall not require Railroad to pay any such debt, tax, charge, assessment, or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings.

15. Additional Assurances. Railroad shall execute and deliver to Lessor, upon Lessor's request, such instruments and assurances, which shall be reasonably satisfactory to Railroad, as Lessor reasonably deems necessary for the confirmation or perfection of this Lease, Lessor's right hereunder, and Lessor's title to the Locomotives.

16. Possession and Use. Throughout the continuance of this Lease so long as Railroad is not in default hereunder, (a) Railroad shall be entitled to possession of each Locomotive from the date the Lease becomes effective as to such Locomotive, (b) Railroad may use the Locomotives on the property or lines owned or operated by Railroad (either alone or jointly with another) or by any affiliate of Railroad, or upon lines over which the Railroad or any such affiliate shall have trackage or other operating rights, and (c) the Railroad shall be entitled to permit the use of the Locomotives upon connecting and other railroads in the usual interchange of traffic or over which through service may be afforded, but subject to all the terms and provisions of this Lease.

17. Quiet Enjoyment. So long as Railroad makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Railroad shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party claiming by or through the Lessor.

18. Recording. Lessor may cause this Lease, any assignment hereof, and any amendments or supplements hereto or thereto affixed to be filed and recorded with the Interstate Commerce Commission and elsewhere as may be required by law or reasonably necessary for the purpose of protecting Lessor's title to the Locomotives and its rights under this Lease.

19. Notices. Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid in the following manner:

(a) Notices from Lessor to Railroad shall be sent to:

Chief Mechanical Officer  
Norfolk Southern Railway Company  
8 North Jefferson Avenue  
Roanoke, Virginia 24042

with copies to the Assistant Vice President -  
Purchasing and the Treasurer of Norfolk Southern  
Railway Company at the above address

or to such other person or address as Railroad may from time to time indicate by written notice to Lessor.

(b) Notices from Railroad to Lessor shall be sent to:

Electro Motive Division  
General Motors Corporation  
LaGrange, Illinois 60525  
Attention: Manager - Lease Operations

20. Representations. The undersigned signatories represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.

21. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

22. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument.

23. Additional Consideration. As additional consideration to Railroad for entering into and agreeing to perform this Lease, Lessor agrees that Railroad shall have the right, but shall not be obligated, to purchase locomotives from Lessor for delivery in 1993, 1994 and/or 1995 for prices not to exceed the maximum base prices set forth in Schedule H attached hereto. This covenant shall survive termination of this Lease.

IN WITNESS WHEREOF, Lessor and Railroad have caused this instrument to be signed and acknowledged by their proper officials as of the day and year first above written.

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By: *[Signature]*

ATTEST:

*Asst.* *[Signature]*  
Secretary

NORFOLK SOUTHERN RAILWAY COMPANY

By: *[Signature]*

ATTEST:

*Asst.* *[Signature]*  
Secretary

COMMONWEALTH OF VIRGINIA )  
 )  
CITY OF ~~NORFOLK~~ *Roanoke* ) ss.:

Asst.

On this *20th* day of *APRIL*, 1992, before me, a Notary Public, personally appeared *J.E. CARTER* to me personally known, who, being by me duly sworn, says he is a Vice President of NORFOLK SOUTHERN RAILWAY COMPANY, that the seal 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.

*[Signature]*  
\_\_\_\_\_  
Notary Public

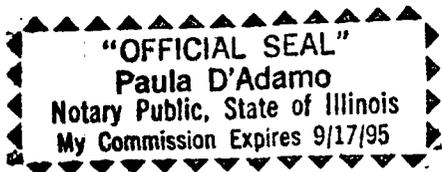
My commission expires: *12-31-95*

STATE OF )  
 )  
CITY OF ) ss.:

On this *30th* day of *March*, 1992, before me, a Notary Public, personally appeared *P. Michael Smith* to me personally known, who, being by me duly sworn, says he is a *Comptroller* ~~Vice President~~ of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that the seal 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.

*[Signature]*  
\_\_\_\_\_  
Notary Public

My commission expires:



SCHEDULE A

<u>Type of Equipment</u>	<u>Quantity</u>	<u>Road Numbers</u> <u>(both inclusive)</u>
SD70 Diesel-Electric Locomotives, EMD Specification 916218, dated November 26, 1991, including Micro Air Brakes and Integrated Cab Electronics	Six (6)	2501 - 2506 5

Manufacturing Plant: London, Ontario, Canada

Delivery: First Quarter, 1993