



Michael J. Baughman
Counsel

General Electric Company
2901 East Lake Road, Erie, PA 16531
814 875-3044 Fx: 814 875-2724

0-276A006

October 1, 1990

VIA FEDERAL
EXPRESS

17046

RECORDATION NO. _____ FILED 1485

OCT 3 1990 - 10 00 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2302
Washington, D.C. 20423

Subject: Recordation of Locomotive Lease

Dear Ms. Lee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are duplicate originals of an Interim User Agreement, dated as of September 26, 1990, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document. The rent called for under this Lease has been redacted.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

LESSEE: The Atchison, Topeka and Santa
Fe Railway Company
80 East Jackson Blvd.
Chicago, Illinois 60604

OCT 3 9 55 AM '90
MOTOR OPERATING UNIT

A general description of the railroad locomotives covered by the enclosed documents is attached hereto as Schedule I. Also enclosed is a remittance in the amount of \$15.00 for the required recording fee.

The undersigned is Counsel and Attesting Secretary of General Electric Company. Please return one original of the enclosed document, stamped to evidence filing with the Commission, to Michael J. Baughman, General Electric Company, 2901 East Lake Road, Building 14-5, Erie, Pennsylvania 16531.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Interim User Agreement, dated as of September 26, 1990, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), relating to 60 General Electric Diesel Electric Locomotives, bearing identification marks "ATSF" and Road Nos. 500 through 599.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael J. Baughman", with a long horizontal flourish extending to the right.

Enclosures

SCHEDULE I

Description of Locomotives

| <u>Type of Equipment</u> | <u>Number</u> | <u>Identifying Marks</u> | <u>Road Numbers</u> |
|--|---------------|--|-------------------------|
| General Electric Diesel Electric Locomotives | Sixty | Marked "ATSF" on both sides of locomotives | 500 through 599 |

Interstate Commerce Commission
Washington, D.C. 20423

10/3/90

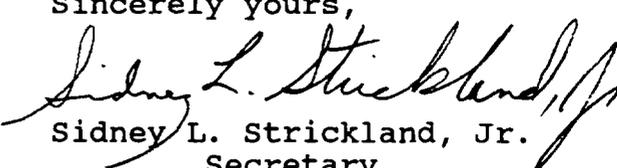
OFFICE OF THE SECRETARY

Michael J Baughman
General Electric Company
2901 East Lake Road
Erie, PA. 16531

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 10/3/90 at 10:00am , and assigned recordation number(s). 17046

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

**INTERIM USER AGREEMENT AND
AMENDMENT TO PURCHASE AGREEMENT**17046
REGISTRATION NO _____ FILED 125

OCT 3 1990 - 10 00 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of September 26, 1990, between **GENERAL ELECTRIC COMPANY**, a New York corporation ("GE") and **THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("ATSF").

WITNESSETH:

WHEREAS, GE and ATSF are parties to an agreement dated September 1, 1989 (the "Purchase Agreement") calling for GE to manufacture and deliver to ATSF, and ATSF to accept and pay for, 60 Dash 8-40B locomotives to bear road numbers 500-559, inclusive (the "Locomotives"); and

WHEREAS, ATSF intends to finance the purchase of the Locomotives from GE pursuant to one or more permanent forms of financing (the "Financing"), but deliveries of the Locomotives are scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Locomotives pending establishment of such Financing, solely as a bailee thereof, and GE is willing to grant such temporary custody and possession to ATSF upon the terms and conditions hereinafter provided; and

WHEREAS, GE and ATSF are desirous of amending the Purchase Agreement to reflect the foregoing;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. To the extent inconsistent herewith, the terms of the Purchase Agreement shall be superseded by the terms of this Agreement.

2. GE hereby agrees to deliver to ATSF, and ATSF hereby agrees to accept from GE, the Locomotives as of the date each of them is delivered to ATSF at GE's plant, Erie, Pennsylvania, for the period ending December 28, 1990 (the "Termination Date"), time being of the essence. ATSF represents

to GE that the Financing will be established and the purchase price for the Locomotives paid, not later than December 28, 1990, time being of the essence. At such date, this Agreement shall automatically terminate without further action by or notice to either party hereto, except for those provisions which, in order to be given effect, should survive termination.

3. Upon delivery of each Locomotive, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Locomotive under this Agreement. During the term hereof, title to the Locomotives shall remain in GE with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of GE's delivery of bills of sale.

4. Upon receipt of GE's invoice therefor, ATSF shall pay to GE the sum of \$200 as reimbursement for GE's costs of filing this Agreement with the Interstate Commerce Commission.

5. On or before the Termination Date, ATSF agrees to pay to GE, as rent for each of the Locomotives, the sum of _____ for each day that payment of the purchase price is not received according to the payment terms as defined in the Purchase Agreement.

6. ATSF shall permit no liens or encumbrances of any kind to attach to the Locomotives, and it agrees to:

(a) Indemnify and save GE harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise during the time any of the Locomotives are in the possession of ATSF; and

(b) Pay any and all taxes (excluding any tax measured by GE's net income), fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or GE, because of GE's ownership or because of the use, operation, management or handling of the Locomotives during the term of this Agreement. The obligations of ATSF described in this Section 6 shall survive termination of this Agreement.

7. ATSF shall cause the Locomotives to be covered by that certain Maintenance Agreement between GE and ATSF dated as of September 1, 1989, and shall, at its option, repair or promptly pay to GE the purchase price (as set forth in the Purchase Agreement) for any of the Locomotives

which may be damaged or destroyed by any cause during the term of this Agreement.

8. ATSF acknowledges that it takes its possessory interest in the Locomotives subject to those provisions of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.

9. Prior to delivery under this Agreement, each such Locomotive shall be numbered with a road number, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each such Locomotive, the following legend in letters not less than one inch in height:

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

ATSF hereby agrees to indemnify GE against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Locomotives. If during the term of this Agreement such markings shall at any time be removed, defaced or destroyed, ATSF shall immediately cause the same to be restored or replaced.

10. In the event ATSF shall, in violation of its obligations under the Purchase Agreement, fail to accept and pay for the Locomotives upon expiration of this Agreement, GE may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Locomotives may be and take possession of all or any any Locomotives, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, GE may use the Locomotives for any purposes whatsoever, and may sell and deliver the Locomotives to others upon such terms as GE may see fit in its sole discretion, it being understood and agreed that ATSF shall remain liable to GE under the Purchase Agreement for: (a) An amount equal to any difference in the price paid by such other parties and the purchase price due from ATSF under the Purchase Agreement, plus; (b) An amount equal to all expenses of GE incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the service of ATSF, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. ATSF shall pay from time to time upon demand by GE the foregoing amounts.

11. ATSF and GE each represent and warrant to the other that:

(a) It 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;

(b) 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 this 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;

(c) The rights of GE as herein set forth and the title of GE to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument; and

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

12. ATSF agrees that the execution by GE of this Agreement or the delivery by GE of the Locomotives as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Locomotives not later than the Termination Date, in accordance with the terms of the Purchase Agreement, as amended hereby.

13. If ATSF accepts delivery of any Locomotive under this Agreement prior to the time title thereto passes from GE, the execution of a Certificate of Acceptance in the form of Exhibit A hereto shall constitute acceptance of the Locomotive hereunder to which it relates, and any warranty or other time period set forth in the Purchase Agreement applicable to such Locomotive shall commence from such date of delivery.

14. The date of "October 16, 1990" which appears at Section 3.a. of the Purchase Agreement shall be changed to read "October 31, 1990".

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

Attest:

THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY
COMPANY

[CORPORATE SEAL]

Stuart E. Vaughn
Assistant Secretary

By: D.H. Shelton
VICE-PRESIDENT

Attest:

GENERAL ELECTRIC COMPANY

[CORPORATE SEAL]

W.S. Baugh
Attesting Secretary

By: J.H. Madell

State of Illinois)
) ss:
County of Cook)

On this 26th day of September 1990, before me personally appeared D. H. Skelton, to me personally known, who, being by me duly sworn, says that he is Vice President, of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was executed 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.

[NOTARIAL SEAL]



Patricia Daum
Notary Public

My Commission expires: June 21, 1992

Commonwealth of Pennsylvania)
) ss:
County of Erie)

On this 28th day of September, 1990, before me personally appeared T. P. Santolucchi, to me personally known, who, being by me duly sworn, says that he is _____, of GENERAL ELECTRIC COMPANY, that the foregoing instrument was executed 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.

[NOTARIAL SEAL]

Michael J. Baughman
Notary Public

My Commission expires:

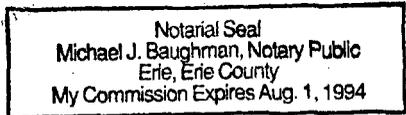


EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated September 1, 1989, as amended, has been accepted by The Atchison, Topeka and Santa Fe Railway Company this _____ day of _____, 1990.

Description of Equipment

| <u>Number of Units</u> | <u>Description</u> | <u>Road Numbers</u> |
|------------------------|--------------------|---------------------|
| | Model Dash 8-40B | |

**THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY
COMPANY**

By: _____

Title _____