



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

CSX DISTRIBUTION SERVICES & CSX EQUIPMENT

June 18, 1990

Robert F. Hochwarth
Senior Counsel

0-171A045 RECDATION #5 16883-A FILED 1425

Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Washington, DC 20423

JUN 20 1990 3 25 PM

INTERSTATE COMMERCE COMMISSION

Attention: Recordation Unit

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 six executed counterparts of an agreement dated June 1, 1990, not previously recorded, between General Electric Company and The Baltimore and Ohio Chicago Terminal Railroad Company. This Agreement constitutes an Interim User Agreement which allows use of the following described locomotives pending establishment of permanent financing. Equipment covered by the above agreement consists of fifty-three (53) Dash 8-40C 4,000 H.P. Six Axle, Six Motor Diesel Electric Locomotives bearing road numbers CSXT 7594 to CSXT 7646, inclusive.

The names and addresses of the parties are as follows:

Bailor: General Electric Company
2901 East Lake Road
Erie, PA 16531

Bailee: The Baltimore and Ohio Chicago Terminal
Railroad Company
100 North Charles Street
Baltimore, MD 21201

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

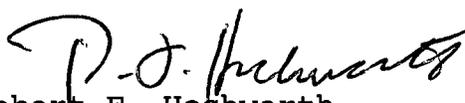
The Commission previously filed a related document entitled Interim User Agreement dated as of June 1, 1990 between The Baltimore and Ohio Chicago Terminal Railroad Company, Bailor and CSX Transportation, Inc., Bailee on June 4, 1990 at 11:10 a.m. under recordation No. 16883.

Interstate Commerce Commission
May 31, 1990
Page 2

Enclosed is a check in the amount of \$15.00 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,


Robert F. Hochwarth

RFH:jg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

6/28/90

OFFICE OF THE SECRETARY

Robert F Hochwarth
Senior Council
CSX Transportation Inc.
100 North Charles Street
Baltimore Maryland 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 6/20/90 at 3:25pm, and assigned recordation number(s). 16883-A

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

JUN 20 1990 -3 25 PM

INTERSTATE COMMERCE COMMISSION

**INTERIM USER AGREEMENT AND
AMENDMENT TO PURCHASE AGREEMENT**

THIS AGREEMENT, dated as of JUNE 1, 1990, between GENERAL ELECTRIC COMPANY, a New York corporation ("GE") and THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY, an Illinois corporation ("BOCT").

WITNESSETH:

WHEREAS, GE and CSX Transportation, Inc. ("CSXT") are parties to an agreement dated April 3, 1990 (GE's quotation) and April 23, 1990 (CSXT's order) (collectively, the "Purchase Agreement") calling for GE to manufacture and deliver to CSXT, and CSXT to accept and pay for, 53 Dash 8-40C locomotives to bear road numbers 7594-7646, inclusive (the "Locomotives"); and ✓

WHEREAS, CSXT assigned its rights under the Purchase Agreement to BOCT; and

WHEREAS, BOCT 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 BOCT will have completed said Financing; and

WHEREAS, BOCT 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 BOCT upon the terms and conditions hereinafter provided; and

WHEREAS, GE and BOCT 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 BOCT, and BOCT hereby agrees to accept from GE, the Locomotives as of the date each of them is delivered to BOCT at GE's plant, Erie, Pennsylvania, for the period ending on the earlier of September 28, 1990, or the date BOCT establishes the Financing, whichever is earlier. BOCT represents to GE that the Financing will be established not later than September 30, 1990. At the end of such period, 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, BOCT'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 BOCT'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 to BOCT of bills of sale.

4. BOCT shall do such acts as may be required by law or reasonably requested by GE, for the protection of GE's title to and interest in the Locomotives, including, but not limited to, filing this Agreement with the Interstate Commerce Commission.

5. BOCT shall make deposits (the "Advance Deposits") with GE in accordance with the following:

(a) On June 29, 1990, time being of the essence, BOCT shall make an Advance Deposit to GE by wire transfer of immediately available funds, in an amount equal to the number of Locomotives delivered as of the end of that day, multiplied by the price therefor agreed to be paid under the Purchase Agreement; and

(b) On such dates during July, August and September 1990 as may be designated by GE (not to exceed two dates in each of said months), BOCT shall make additional Advance Deposits to GE by wire transfer of immediately available funds in amounts equal to the number of Locomotives delivered as of the end of such date, multiplied by the price therefor agreed to be paid under the Purchase Agreement.

6. The Advance Deposits will be retained by GE as security for BOCT's payment to GE of the purchase price of the Locomotives as set forth in the Purchase Agreement. During the period it holds the Advance Deposits, GE

will have the full use thereof. Upon receipt of payment of the purchase price for such Locomotives after BOCT secures the Financing, which shall be not later than September 28, 1990, GE shall return to BOCT an amount equal to the sum of the Advance Deposits theretofore paid by BOCT, without interest. BOCT's having made the Advance Deposits shall give BOCT no right of ownership in the Locomotives, and shall in no way be considered a payment or partial payment therefor.

7. BOCT 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 BOCT; and

(b) Pay any and all taxes, 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, maintenance, repair or handling of the Locomotives during the term of this Agreement. The obligations of BOCT described in this Section 7 shall survive termination of this Agreement.

8. BOCT shall, at its own expense, keep and maintain the Locomotives in good order and running condition applying GE's recommended normal maintenance standards and procedures, 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.

9. BOCT acknowledges that it takes its possessory and/or ownership 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.

10. 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.**

BOCT 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, BOCT shall immediately cause the same to be restored or replaced.

11. In the event BOCT 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, retain permanently all Advance Deposits theretofore made with respect to the Locomotives, enter upon the premises of BOCT or such other premises where the Locomotives may be and take possession of all or any any Locomotives with respect to which an Advance Deposit has not been retained, and thenceforth hold, possess and enjoy the same free from any right of BOCT, 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 BOCT 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 BOCT 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 BOCT, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. BOCT shall pay from time to time upon demand by GE the foregoing amounts.

12. BOCT 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.

13. BOCT 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 BOCT of its obligations to accept, take and pay for the Locomotives at the end of the term hereof, in accordance with the terms of the Purchase Agreement.

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

[INTENTIONALLY BLANK]

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

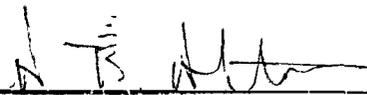
Attest:

[CORPORATE SEAL]



Assistant Secretary

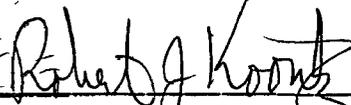
THE BALTIMORE AND OHIO
CHICAGO TERMINAL
RAILROAD COMPANY

By: 

Treasurer

Attest:

[CORPORATE SEAL]



Attesting Secretary

GENERAL ELECTRIC COMPANY

By: 

State of Maryland)
) ss:
City of Baltimore)

On this 12th day of June 1990, before me personally appeared A. B. Altora, to me personally known, who, being by me duly sworn, says that he is Treasurer, of The Baltimore and Ohio Chicago Terminal Railroad 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]

Blanda J. Green
Notary Public

My Commission expires:

Commonwealth of Pennsylvania)
) ss:
County of Erie)

On this 15th day of June, 1990, before me personally appeared ROYCE H. TONJES, to me personally known, who, being by me duly sworn, says that he is MANAGER - FINANCE OPER., 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]

Betty A. Manucci
Notary Public

My Commission expires:

NOTARIAL SEAL
BETTY A. MANUCCI, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE COUNTY
MY COMMISSION EXPIRES JAN 14, 1991

Member, Pennsylvania Association of Notaries