

Michael C. Bynane  
Assistant General Attorney



Law Department  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101

December 26, 1979

RECORDATION NO. 11251 Filed 1425

DEC 27 1979 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Attention: Mrs. M. R. Lee, Room 1227  
Recordation Unit

No. 9-361A012

Date DEC 27 1979

Fee \$ 50.00

ICC Washington, D. C.

Dear Ms. Mergenovich:

Enclosed are executed counterparts Nos. 4, 5, and 6 (of 6) of an Agreement dated as of January 1, 1980, between General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525 (Bailor) and The Chesapeake and Ohio Railway Company, P.O. Box 6419, Cleveland, Ohio 44101 (Bailee).

The equipment will be lettered "Chessie System", "C&O", or in some other appropriate manner and will also be marked:

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

Also enclosed is a draft of The Chesapeake and Ohio Railway Company in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC §11303, as currently administered, you are hereby requested to duly file one of the enclosed counterparts for record in your office and to return the remaining two to me at my above address.

Very truly yours,

Michael C. Bynane

MCB:aj  
Enclosures



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

*Counterpart*

DEC 27 1979  
216 623 2472

# Interstate Commerce Commission

Washington, D.C. 20423

## OFFICE OF THE SECRETARY

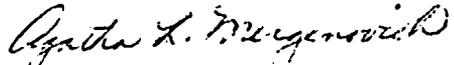
Michael C. Bynane  
Chessie System  
Law Department  
Terminal Tower P.O. Box 6419  
Cleveland, Ohio 44101

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 12/27/79 at 10:50AM, and assigned re-  
recording number(s).

11251

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

11251  
RECORDED INDEXED FILED 1979

DEC 27 1979 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

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**AGREEMENT**

Dated as of January 1, 1980

between

**GENERAL MOTORS CORPORATION**  
(Electro-Motive Division)

and

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

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Covering

50 3000 H.P. Model GP 40-2 Locomotives

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THIS AGREEMENT, dated as of January 1, 1980, by and between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation ("Manufacturer"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation ("C&O"):

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated March 14, 1979 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed (among other things) to construct at its McCook, Illinois plant and deliver to C&O at Barr Yard, Chicago, Illinois, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for:

50 3000 H. P. Model GP 40-2 locomotives ("Locomotives"),  
to bear C&O road numbers  
4372 - 4421, inclusive.

Delivery of the Locomotives by the Manufacturer to C&O is scheduled to begin on or about January 4, 1980. However, inasmuch as C&O has not as yet consummated financing arrangements (pursuant to Equipment Trust Agreement, Conditional Sale Agreement or otherwise), it is not in position to accept delivery of and pay for the Locomotives under the terms of the said letter Agreement at this time. C&O represents that such financing arrangements will be consummated, however, on or before April 1, 1980. C&O (in order that it may use the Locomotives pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Locomotives on their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so 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 Locomotives as of the date each of them is delivered to C&O at Barr Yard, Chicago, Illinois, or such other place as may be specified by C&O, for the period ending on the earlier of April 1, 1980, or the date of consummation of the above financing arrangements. At such time 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 C&O's right and interest therein is 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 the bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC §11303. 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 Locomotives.

C&O agrees that it will 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 its ownership or because of the use, operation, management, or handling of the Locomotives by C&O during the term of this Agreement.

C&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

C&O will, at its own expense, keep and maintain the Locomotives in good order and running condition and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to C&O under this Agreement, it will 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 heretofore referred to, the following legend in letters not less than one inch in height:

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

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 Locomotives.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Locomotive, 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 Locomotives as provided in the Manufacturing Agreement, 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 in the Manufacturing Agreement relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives 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 under this Agreement 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 assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Manufacturing Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counter-claim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, 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 as such of 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 Locomotives, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take, and pay for the Locomotives in accordance with the terms of the Manufacturing Agreement, or impair any of the Manufacturer's rights under the Manufacturing Agreement.

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By   
Vice President

[Corporate Seal]

Attest:



Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY  
COMPANY

By L.C. Fajt  
Assistant Vice-President  
and Treasurer

[Corporate Seal]

Attest:

APPROVED AS TO FORM  
M. C. Byrnes  
ASSISTANT GENERAL ATTORNEY

Patricia J. Hurady  
Assistant Secretary

STATE OF ILLINOIS            )  
  ) SS:  
COUNTY OF COOK            )

On this 21<sup>st</sup> day of December, 1979, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice-President of GENERAL MOTORS CORPORATION (Electro-Motive 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.

J. K. Prosecki  
Notary Public

My Commission Expires September 18, 1983

[Notarial Seal]

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA         )

On this 19<sup>TH</sup> day of December, 1979, before me personally appeared L.C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is the 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.



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CLARA MASUGA  
Notary Public, State of Ohio, Cuyahoga County  
My Commission Expires April 21, 1984

[Notarial Seal]