

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
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DALLAS, TEXAS 75202

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RECORDATION NO. 9628 Filed NOV 24 1978
ARTHUR M. ALBIN
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COMMERCE COUNSEL

8-328A 984

NOV 24 1978 - 1 40 PM

INTERSTATE COMMERCE COMMISSION
IN REPLY REFER TO: 410.043-24B

Date NOV 24 1978

November 22, 1978

Fee \$ 10.00

Mr. H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, DC 20423

ICC Washington, D. C.

Re: Conditional Sale Agreement dated as of July 28, 1978, between General Motors Corporation (Electro-Motive Division) and Missouri-Kansas-Texas Railroad Company, assigned to Texas Commerce Bank National Association covering Purchase of 3 Diesel Electric Locomotives; ICC RECORDATION NO. 9628.

Dear Mr. Homme:

In accordance with the provisions of Title 49 USC 11303 of the Interstate Commerce Act and the rules and regulations approved and prescribed by the Interstate Commerce Commission pursuant thereto, there are submitted herewith for filing and recordation five copies of an Amendment to the Conditional Sale Agreement dated as of July 28, 1978, between General Motors Corporation (Electro-Motive Division) as manufacturer, and Missouri-Kansas-Texas Railroad Company, as purchaser (hereinafter called "Railroad"), which Conditional Sale Agreement was assigned by Agreement and Assignment dated as of July 28, 1978 to Texas Commerce Bank National Association (hereinafter called "Bank"). Said Conditional Sale Agreement and Agreement and Assignment covered the purchase by the Railroad of three (3) locomotives bearing MKT Recording Numbers 604, 605, and 606. This Amendment amends the aforesaid agreements to grant to the Bank a security interest in and to said locomotives to secure any default by the Railroad under any irrevocable letter of credit issued to Exxon Company, U.S.A., Division of Exxon Corporation, for the account of Railroad. Said Amendment also permits the use of said locomotives in unit train service on the lines of other railroads within the continental United States.

The aforesaid Conditional Sale Agreement and Agreement and Assignment was filed with the ICC on August 7, 1978, and assigned Recordation No. 9628.

Please return three file-marked copies to me at the above address for distribution to the parties concerned. I am enclosing a cashier's check in the amount of \$10 payable to the Interstate Commerce Commission to cover the prescribed fee for filing and recording this Amendment.

I certify that I have knowledge of the matters set forth herein.

Very truly yours,

82.113 ON 1 62 ADN
Arthur M. Albin

AMA:vas
Enclosure

AMENDMENT TO CONDITIONAL SALE
AGREEMENT AND AGREEMENT AND ASSIGNMENT
DATED AS OF JULY 28, 1978

RECORDATION NO. 9628-A Filed 1425

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INTERSTATE COMMERCE COMMISSION

KNOW ALL MEN BY THESE PRESENTS:

THIS AMENDMENT TO CONDITIONAL SALE AGREEMENT AND AGREEMENT AND ASSIGNMENT entered into as of the 17th day of November, 1978, between TEXAS COMMERCE BANK NATIONAL ASSOCIATION (hereinafter called the "Bank") and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation (hereinafter called "Railroad");

W I T N E S S E T H that:

WHEREAS, Railroad entered into and executed a Conditional Sale Agreement with General Motors Corporation (Electro-Motive Division) dated as of July 28, 1978, for the purchase of three (3) diesel electric locomotives; and

WHEREAS, said Conditional Sale Agreement was assigned by Agreement and Assignment dated as of July 28, 1978, by General Motors Corporation (Electro-Motive Division), Manufacturer, to Texas Commerce Bank National Association; and

WHEREAS, it is the desire and intention of the parties to amend the Conditional Sale Agreement and the Agreement and Assignment in order that from and after the date hereof Railroad's equity interest in and to said locomotives, to the extent that it is increased as payments are made pursuant to the terms and provisions of the Agreement and Assignment, shall become collateral for the purpose of securing the Bank against any payments to be made by Bank which may result in connection with the issuance by Bank of any irrevocable letter of credit issued on or before September 1, 1986; and

WHEREAS, Railroad desires to use one or more of said locomotives in unit train operations traversing other lines of railroad within the United States and Bank is agreeable to same;

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived by the parties hereto, it is agreed between them as follows:

I.

That certain Conditional Sale Agreement between General Motors Corporation (Electro-Motive Division), manufacturer (hereinafter called "Manufacturer"), and Missouri-Kansas-Texas Railroad Company, railroad (hereinafter called "Railroad"), dated as of July 28, 1978, which was assigned by Agreement and Assignment dated as of July 28, 1978, to Texas Commerce Bank National Association (hereinafter called the "Bank") are both hereby amended and supplemented by adding thereto

the following provisions:

It is expressly understood and agreed that from and after the date hereof Railroad's right, title and interest in and to said locomotives and Railroad's equity interest in and to said locomotives, to the extent that it is increased as payments are made following this date pursuant to the terms and provisions of the Agreement and Assignment, shall become subject to a security interest created hereby in favor of Bank in order to secure any and all indebtedness of Railroad to Bank resulting in connection with any irrevocable letter of credit issued on or before September 1, 1986, by Bank for the account of Railroad to Exxon Company, U.S.A., Division of Exxon Corporation (hereinafter called "Exxon"), which irrevocable letter of credit may be issued to Exxon in order to secure timely and full payments of amounts due and owing by Railroad to Exxon arising from Railroad's purchases of diesel fuel or other petroleum products from Exxon. All rights and remedies granted to Manufacturer under the terms and provisions of said Conditional Sale Agreement or arising pursuant to the terms and provisions of said Agreement and Assignment shall also be available to Bank and inure to the benefit of Bank in the event it is necessary for Bank to make any payments whatsoever to Exxon pursuant to the terms and provisions of any such irrevocable letter of credit, unless Railroad, upon demand, immediately reimburses Bank for any such payments and related out of pocket expenses.

II.

Said Conditional Sale Agreement dated as of July 28, 1978, assigned by Agreement and Assignment dated as of July 28, 1978, to Bank, is further supplemented by adding the following provision at the end of Section 12 of said Conditional Sale Agreement, to wit:

In addition, so long as Railroad shall not be in default under the Conditional Sale Agreement or Agreement and Assignment, said locomotives, or any of them, may be operated on the trackage of any other railroad within the boundaries of the continental United States for and in connection with unit train operations or purposes, also subject however to all of the terms and conditions contained in said Conditional Sale Agreement and Agreement and Assignment.

III.

Except as amended and supplemented hereby, all other terms and provisions of said Conditional Sale Agreement and Agreement and Assignment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first stated above.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By Karl R. Ziebarth
Vice President

ATTEST:

[Signature]
Assistant Secretary

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

By Lee E. Straus
Vice President

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

On this 17th day of November, 1978, before me personally appeared Karl R. Ziebarth, to me personally known, who, being by me duly sworn, says that he is Vice President of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals affixed to the foregoing 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.

Ruth Murdoch
Notary Public in and for Dallas County,
Texas

My Commission expires 12-31-78.

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Lee E. Straus, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, and that he executed the same as the act of said association for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of November, 1978.

Ruth Murdoch
Notary Public in and for Dallas County,
Texas

My Commission expires 12-31-78.