

**KAVINOKY & COOK**

ATTORNEYS AT LAW

14833

NATHAN NISENBAUM

HOWARD R. COHEN  
JEFFREY M. MILLER

LISTED ATTORNEYS  
NOT ADMITTED  
TO PRACTICE IN NEW YORK

MORRIS PLAN BUILDING  
110 E. WASHINGTON STREET  
INDIANAPOLIS, INDIANA 46204  
(317) 632-8300

RECORDATION NO. .... Filed 1425

120 DELAWARE AVENUE  
BUFFALO, NEW YORK 14202  
(716) 856-9234

NOV 12 1985 - 4 15 PM

A FIRM INCLUDING  
PROFESSIONAL  
CORPORATIONS

INTERSTATE COMMERCE COMMISSION

November 8, 1985

CERTIFIED MAIL

Secretary,  
Interstate Commerce Commission  
Twelfth & Constitution Avenues, N.W.  
Washington, D.C. 20423

5-316A103

NOV 12 4 09 PM '85  
MOTOR OPERATING DIVISION  
TTC SECRETARIAT  
100 OFFICE OF  
CC Washington, D. C.

Dear Secretary:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease, a primary document, dated September 20, 1985.

The names and addresses of the parties to the document are as follows:

Lessor: Indianapolis Morris Plan Corporation  
110 East Washington Street  
Indianapolis, Indiana 46204

Lessee: Kyle Railroad Company  
Third and Railroad Avenue  
P.O. Box 566  
Phillipsburg, Kansas 67661

NOV 12 1985  
Fee \$ 10.00  
Washington, D. C.

A description of the equipment covered by the document follows:

General Motors (Electro Motive Division) GP40, 3000H.P. Diesel Electric Locomotives, current Unit Numbers 3517, 3518, 3525, 3520 and 3524.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Kavinsky & Cook, 110 East Washington Street, Indianapolis, Indiana 46204, Attention: Nathan Nisenbaum, Esquire.

**KAVINOKY & COOK**

Secretary,  
Interstate Commerce Commission  
November 8, 1985  
Page 2

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

Locomotive Lease Agreement between Indianapolis Morris Plan Corporation, 110 East Washington Street, Indianapolis, Indiana 46204, Lessor, and Kyle Railroad Company, Third and Railroad Avenue, P.O. Box 566, Phillipsburg, Kansas 67661, Lessee, dated September 20, 1985, and covering 5 General Motors (Electro Motive Division) GP40, 3000H.P. Diesel Electric Locomotives, Locomotives Numbers 3517, 3518, 3525, 3520 and 3524.

Very truly yours,



Nathan Nisenbaum, Attorney  
for Indianapolis Morris Plan  
Corporation, Lessor

krq  
0413Z-14Z  
Enclosure

NOV 12 1985 -4 15 PM

INTERSTATE COMMERCE COMMISSION LOCOMOTIVE LEASE AGREEMENT

THIS LEASE made and entered into as of this 20th day of September, 1985, by and between Indianapolis Morris Plan Corporation, hereinafter called "Lessor", and Kyle Railroad Company, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessor hereby leases to Lessee and Lessee hereby leases from LESSOR the Locomotives described in Equipment Schedule Number One attached hereto, together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives"), upon the terms and conditions herein set forth. This Lease shall be applicable only on Locomotives described in Equipment Schedule Number One duly signed by both Lessor and Lessee. The Lessee may stencil its name on the units so long as it removes same upon expiration of this Lease.

2. Rental: Daily rental will be paid by Lessee to Lessor payable in respect of each of the Locomotives commencing on the date that Lessee places a particular Locomotive in service, or September 30, 1985, whichever is the earlier, which date is hereinafter referred to as the "Rental Commencement Date". Lessee shall use its best efforts to place the Locomotives in service as soon as possible. Lessee shall promptly notify Lessor in writing of the date on which each Locomotive is placed in service. The daily rental shall be \$132.50 (U.S.) per day per Locomotive. The rental for the period commencing on the Rental Commencement Date and continuing for fifty-six (56) days from and after the Rental Commencement Date shall be paid in advance on the Rental Commencement Date. Should Lessee exercise its option to extend the initial term of this Lease as to any Locomotives for thirty (30) days after the expiration of the initial term, the daily rental for such Locomotive for the entire lease term, initial and extended, shall be \$110.00 per Locomotive retroactive to the Rental Commencement Date and the daily rental for the entire extended term adjusted as required shall be paid on the first day of such extended period. Thereafter until terminated as provided in Section 3, the daily rental shall be \$110.00 (U.S.) per Locomotive per day and paid in advance for thirty (30) day periods on the first day of such period. If this Lease is terminated prior to the expiration of a thirty (30) day period, Lessor shall refund to the Lessee any daily rental received for any days beyond the termination date.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in



the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessee will settle all claims, defenses, set-offs and counterclaims it may have of any nature against the Locomotive manufacturer, including but not limited to defects in the Locomotives and like claims, directly with the Locomotive manufacturer and not set up any such claim, defense, set-off or counterclaim against Lessor or its assigns. Lessee acknowledges that: Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives; and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

3. Term: The initial term of this Lease for each Locomotive shall commence on the Rental Commencement Date for such Locomotive and expire fifty-six (56) days from and after such Rental Commencement Date, provided, however, the Lessee shall have the option to extend the term of this Lease as to any Locomotive for a period of thirty (30) days upon notice in writing to the Lessor at least 10 days prior to the expiration of the initial term for such Locomotive. Thereafter this Lease shall continue unless and until terminated by Lessor or Lessee by notice in writing to the other given at least five (5) days prior to the termination date to be specified in the notice which shall not be more than 15 days from the date of giving the notice.

4. Warranties and Representations: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE, RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim or defense whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

5. Place of Payment of Rent: Lessee shall direct payment of the daily rental at the following address:

Indianapolis Morris Plan Corporation  
110 East Washington Street  
Indianapolis, Indiana 46204  
Attention: Mr. Phillip M. Thoben,

or at such other place as Lessor shall designate by written notice to Lessee.

6. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

7. Loss or Destruction: Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased to it by Lessor after placing in service and while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum of \$90,000 (U.S.) per Locomotive within thirty (30) days of the event.

8. Insurance: During the term of this Lease, Lessee shall assume liability for loss of, or damage to, the Locomotives and for injuries to persons or damage to property caused by the Locomotives. The Lessee shall insure the Locomotives for physical damage and against liability for injury to, or death of, persons or damage to or destruction of property arising out of the use and operation of the Locomotives to the same extent, in the same manner and according to the same policies and practices as is the Lessee's practice in respect of the Lessee's own Locomotives. Such insurance shall be for the benefit and protection of and payable to Lessor and Lessee as their interests shall appear.

Effecting or obtaining any insurance coverage required to be carried pursuant to the above does not excuse or relieve Lessee from the due performance and fulfillment of any of its obligations hereunder.

9. Indemnity: Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and save Lessor harmless from and against any and all liability, loss or damage (including but not limited to counsel fees and expenses, and patent liabilities, penalties and interest) Lessor may suffer as a result of claims, demands, costs, or judgments arising from or caused directly or indirectly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Sections 8 and 18 of this Lease, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) inadequacy of the Locomotives, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or

any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at Lessee's own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or actions, provided, however, that Lessor shall give Lessee written notice of any such claim or demand. This indemnity shall survive the expiration or termination of this Lease.

10. Storage: Upon expiration or termination of this Lease, the Lessee agrees to provide storage for up to six (6) months at no expense to Lessor. Lessee will be liable for any damages, destruction or casualty to any of the Locomotives while located on storage track or tracks. Either during or at expiration of this storage period, Lessee will transport the Locomotives at no expense or risk to Lessor to an interchange point on the Lessee's tracks designated by Lessor. The Locomotives shall be returned to Lessor in good operating condition, normal wear and tear excepted. The Lessor agrees to reimburse the Lessee at Lessee's cost for insurance while the Locomotives are being stored under this provision or Lessor will provide their own insurance.

11. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries of Lessee, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice of such sale, assignment or transfer is given to Lessee in accordance with Section 12.

12. Notice: 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 Lessee shall be sent to:

Kyle Railroad Company  
P.O. Box 566  
Phillipsburg, Kansas 67661  
Attention: Mr. Rick Cecil

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

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

Indianapolis Morris Plan Corporation  
110 East Washington Street  
Indianapolis, Indiana 46204  
Attention: Mr. Phillip M. Thoben

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

13. Compliance with Law; Repair and Maintenance: Lessee shall comply with Federal Railroad Administration and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor. In the event of a major failure of the engine, turbo charger or main generator during the first thirty (30) days after the Rental Commencement Date or the failure of any traction motor during the first ten (10) days after the Rental Commencement Date as to any Locomotive, this Lease shall not terminate as to such Locomotive but the daily rental applicable to such Locomotive shall abate until such failure is remedied. However, nothing herein shall obligate the Lessor to effect a remedy of such failure and Lessor shall not be liable in any way for failure to effect such remedy. However, nothing herein shall obligate the Lessor to effect a remedy of such failure and Lessor shall not be liable in any way for failure to effect such remedy.

14. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee 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 lawfully claiming by or through the Lessor.

15. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof. Lessor will pay all commissions and fees to Helm Financial Corporation, who has been retained in connection with this transaction, and will hold Lessee harmless for any such fees or commissions.

16. Late Charges: Delinquent installments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.

17. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission of the United States for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

18. Taxes/Duty: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Sections 2, 7 and 10 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives, this lease or the proceeds of this lease, and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

19. Default: If the Lessee after five (5) business days notice shall fail to carry out and perform any of the obligations on its part to be performed under this Lease, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Lease, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Lease pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

20. Miscellaneous: All transportation charges for delivery of the Locomotives to the Lessee shall be borne by Lessor. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee admits the receipt of a true copy of this Lease.

Lessee shall pay to Lessor the amount of fuel in each Locomotive at Lessee's prevailing fuel rate with the first daily rent payment. Lessor shall pay Lessee the amount of fuel in each Locomotive at Lessee's prevailing fuel rate at Lease expiration.

INDIANAPOLIS MORRIS PLAN  
CORPORATION, LESSOR

ATTEST:

Nathan N. Nisbani  
Secretary

By

Phillip M. Hob

Title Senior Vice President

KYLE RAILROAD COMPANY, LESSEE

ATTEST:

W. H. Schenawerk

By

[Signature]  
Title Vice President - Operations  
Kyle Railroad Company

EQUIPMENT SCHEDULE NUMBER ONE

Locomotive Description: General Motors (Electro Motive Division)  
GP40, 3000 H.P. Diesel Electric Locomotives.

The current locomotives numbers are as follows:

Unit Numbers

3517  
3518  
3525  
3520  
3524

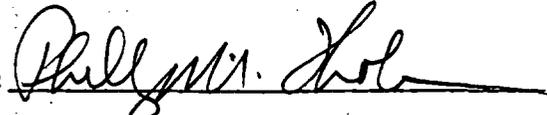
KYLE RAILROAD COMPANY, LESSEE

By: 

Title: Vice President - Operations

Date: Kyle Railroad Company  
September 20, 1985

INDIANAPOLIS MORRIS PLAN  
CORPORATION, LESSOR

By: 

Title: Senior Vice President

Date: September 20, 1985

KYLE RAILROAD COMPANY, LESSEE

ATTEST: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF MARION )

On this 20<sup>th</sup> day of SEPTEMBER, 1985, before me personally appeared PHILLIP M. THOBEN, to me personally known, who, being by me duly sworn, says that he is the SENIOR VICE PRESIDENT of Indianapolis Morris Plan Corporation, 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 in accordance with its by-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kimberly R. Garner  
Notary Public

Residing in MARION County,  
State of Indiana

KIMBERLY R. GARNER  
Printed Name

My commission expires:  
7/00/87

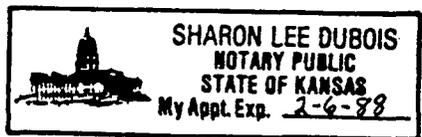
STATE OF Kansas )  
                                  ) SS:  
COUNTY OF Phillips )

On this 20<sup>th</sup> day of September, 1985, before me personally appeared Rick Cecil, to me personally known, who, being by me duly sworn, says that he is the Vice-President of Operations of Kyle Railroad 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.

Sharon Lee DuBois  
Notary Public

Residing in Phillips County,  
State of Kansas

Sharon Lee DuBois  
Printed Name



My commission expires: 2-6-88

I, Debra E. McCall, a Notary Public, do hereby certify that I have compared the within and foregoing copy of a Locomotive Lease Agreement dated September 20, 1985 by and between Indianapolis Morris Plan Corporation and Kyle Railroad Company with the original and have found the copy to be complete and identical in all respects to the original Locomotive Lease Agreement.

Dated: November 7, 1985

Debra E. McCall  
Notary Public

My commission expires:

July 18, 1988

My county of residence:

Marion