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December 10, 1985

RECORDATION NO. 13603-B  
FIVE 1428

DEC 13 1985 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

VIA FEDERAL EXPRESS

Mr. James Bayne  
Acting Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: First Amendment to Conditional Sale Agreement originally between Missouri-Kansas-Texas Railroad Company and Continental Assurance Company dated February 28, 1982; assigned to Texas Commerce Bank National Association

Dear Mr. Bayne:

I have enclosed an original and one (1) counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a First Amendment to Conditional Sale Agreement ("First Amendment"), a secondary document, dated the 24th day of October, 1985.

The primary document to which the First Amendment is connected is a Conditional Sale Agreement dated February 28, 1982 recorded March 22, 1982 under Recordation No. 13603.

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

Purchaser: Missouri-Kansas-Texas Railroad  
Company  
701 Commerce Street  
Dallas, Texas 75202

Seller (Assignee): Texas Commerce Bank National  
Association  
P. O. Box 2558  
Houston, Texas 77001

Mr. James Bayne  
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A description of the equipment covered by the First Amendment follows:

Twelve (12) 3,000 HP Model GP40 general purpose locomotives bearing MKT Road Numbers 170-181, both inclusive.

A cashier's check in the amount of \$10.00 is enclosed which covers the statutory recording fee. Please return an original First Amendment stamped with the appropriate recording information to the undersigned.

A short summary of the First Amendment to appear in the Index follows:

First Amendment to Conditional Sale Agreement originally executed by and between Missouri-Kansas-Texas Railroad Company and Continental Assurance Company which assigned same to Texas Commerce Bank National Association, covering twelve (12) 3,000 HP Model GP40 general purpose locomotives bearing MKT Road Numbers 170-181, both inclusive.

I certify that I have knowledge of the foregoing.

Very truly yours,



Cathleen S. Cox  
Paralegal

CSC:lgr  
Encls.

(B)CSC:MKT-02M

DEC 13 1985 - 10 05 AM

FIRST AMENDMENT TO CONDITIONAL SALE AGREEMENT STATE COMMERCE COMMISSION

THIS FIRST AMENDMENT TO CONDITIONAL SALE AGREEMENT, hereinafter referred to as this "First Amendment", is made and entered into by and between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (the "Railroad"), a Delaware corporation, and TEXAS COMMERCE BANK NATIONAL ASSOCIATION (the "Bank"), a national banking association domiciled in Houston, Harris County, Texas.

RECITALS:

1.

The Railroad and Continental Assurance Company (the "Original Lender"), an Illinois corporation, have entered into a Conditional Sale Agreement dated as of February 28, 1982 (which Conditional Sale Agreement, as same may have been amended prior to the date hereof, is herein called the "Sale Agreement").

2.

Pursuant to an Agreement and Assignment of Rights Under Conditional Sale Agreement dated as of even date herewith, executed by the Original Lender, as Assignor, the Bank, as Assignee, and the Railroad, the Original Lender has assigned all of its rights and interests in and to the Sale Agreement.

3.

The Railroad and the Bank now desire to amend the Sale Agreement so as to modify the rate or rates of interest provided for in the Sale Agreement, to modify the dates that the payments required under the Sale Agreement are due and payable, and to make certain other changes to the Sale Agreement as hereinafter described.

AGREEMENTS:

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Railroad and the Bank do hereby agree as follows:

1.

The unpaid principal balance owing by the Railroad to the Bank under the Conditional Sale Agreement as of the effective date hereof is \$1,223,319.68.

2.

The second and fifth paragraphs of Article 3 of the Sale Agreement are hereby amended by deleting the word "The" where it appears at the beginning of each of such paragraphs and substituting therefor the phrase "On or before the Original Rate Termination Date, the".

3.

Article 3 of the Sale Agreement is hereby amended by adding immediately after the fifth paragraph thereof the following new paragraphs thereto, which shall be and read as follows:

"Notwithstanding the provisions for the payments of the purchase price and accrued interest thereon set forth in the first paragraph of this Article 3, the Railroad shall pay on the Original Rate Termination Date any and all interest on the unpaid amount of the purchase price which has accrued through and is unpaid on the Original Rate Termination Date. On the Original Rate Termination Date, payment of the purchase price in the said monthly installments shall terminate and the payments of principal and interest set out on Schedule A attached hereto shall no longer have any applicability. The then unpaid amount of the purchase price shall thereafter be due and payable in (i) consecutive annual principal installments (each an "Annual Installment") in the amount of \$122,331.97 each, the first Annual Installment to be due and payable on October 10, 1986, and a like Annual Installment to be due and payable on the tenth day of each succeeding October thereafter through and including October 10, 1990, and (ii) a final principal installment of all of the purchase price then remaining unpaid which shall be due and payable on October 10, 1991 (when all of the purchase price then unpaid together with accrued and unpaid interest thereon shall be finally due and payable). Accrued and unpaid interest on the amount of the purchase price remaining unpaid from time to time after the Original Rate Termination Date shall be due and payable quarterly beginning January 10, 1986 and continuing to be due and payable on the tenth day of each succeeding April, July, October and January thereafter until the full amount of the purchase price together with all accrued and unpaid interest thereon shall have been fully paid and satisfied. All payments hereunder made after the Original Rate Termination Date shall be applied first to accrued interest, the balance to the purchase price.

"After the Original Rate Termination Date, interest on the amount of the purchase price remaining unpaid from time to time shall accrue at a rate per annum equal to the Stated Rate and interest on all past due amounts, both principal and accrued interest, shall accrue at a rate per annum equal to the New Past Due Rate; provided, that for the full term of this Agreement, the interest rate produced by the aggregate of all sums paid or agreed to be paid to the Manufacturer or its assignee for the use, forbearance or detention of the debt evidenced hereby shall not exceed the Ceiling Rate. After the Original Rate Termination Date, interest on the amount of the purchase price remaining unpaid from time to time shall be computed for the actual number of days elapsed in a year consisting of 360 days, unless the Ceiling Rate would thereby be exceeded, in which event, to the extent necessary to avoid exceeding the Ceiling Rate, interest shall be computed on the basis of the actual number of days elapsed in the applicable calendar year in which it accrued.

"As used herein, the 'Prime Rate' means, on any day occurring after the Original Rate Termination Date, the Prime Rate for that day as announced by Texas Commerce Bank National Association, a national banking association (the 'Bank') and entered into the minutes of its Loan and Discount Committee.

"As used herein, the 'New Past Due Rate' means, on any day occurring after the Original Rate Termination Date, a rate per annum equal to the Stated Rate for that day plus one and one-half percent (1-1/2%).

"As used herein, the 'Stated Rate' means, on any day occurring after the Original Rate Termination Date, a rate per annum equal to the Prime Rate for that day plus one-half of one percent (1/2%); provided, if on any day the Stated Rate shall exceed the Ceiling Rate for that day, then the Stated Rate shall be fixed at the Ceiling Rate on that day and on each day thereafter until the full amount of the interest accrued at the Stated Rate on the amount of the deferred purchase price then remaining unpaid equals the total amount of interest which would have accrued if there were no Ceiling Rate. However, neither the maturity of this Agreement nor the Railroad's privilege (if any) to prepay it shall be affected by this paragraph.

"As used herein, 'Original Rate Termination Date' means October 23, 1985.

"As used herein, the 'Ceiling Rate' means, on any day, the maximum nonusurious rate of interest permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that Chapter One ('Chapter One') of Title 79, Texas Revised Civil Statutes, 1925, as amended (the 'Texas Credit Code') establishes the Ceiling Rate, the Ceiling Rate shall be the 'indicated rate ceiling' (as defined in Chapter One) for that day. Payee may from time to time, as to current and future balances, implement any other ceiling under Chapter One by notice to Maker, if and to the extent permitted by, Chapter One.

"Without notice to the Railroad or any other person or entity, after the Original Rate Termination Date, the Prime Rate and the Ceiling Rate shall each automatically fluctuate upward and downward as and in the amount by which the Bank's said Prime Rate and such maximum nonusurious rate of interest permitted by applicable law, respectively, fluctuate.

"After the Original Rate Termination Date, the provisions for prepayments set forth in the fifth paragraph of this Article 3 shall no longer have any applicability and the Railroad shall have the right to prepay all or any part of the unpaid purchase price of all of the Locomotives delivered hereunder at any time without the payment of any premium or fee upon thirty (30) days' written notice delivered to the Bank or its assignee. All prepayments shall be applied first to accrued interest, the balance to the principal installments provided for herein in inverse order of their maturity."

4.

The Railroad represents and warrants to the Bank that the representations and warranties contained in the Sale Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of such date. The Railroad hereby certifies that no event has occurred and is continuing which constitutes an event of default under the Sale Agreement or which upon the giving of notice or the lapse of time or both would constitute such an event of default.

5.

Except as expressly further amended hereby, the Sale Agreement shall remain in full force and effect. The Sale Agreement, as hereby further amended, and all rights and powers created thereby or thereunder are in all respects ratified and confirmed and remain in full force and effect. Without limiting the generality of the foregoing, the Sale Agreement as amended hereby shall continue to secure all indebtedness secured thereby.

6.

Terms used herein which are defined in the Sale Agreement shall have the meanings therein ascribed to them. Except where the context otherwise requires, the term "Sale Agreement" as used in the Sale Agreement or any other instrument, document or writing furnished to the Bank by the Railroad shall mean the Sale Agreement as hereby amended.

7.

The Railroad agrees to pay to the Bank upon demand all expenses incurred by the Bank in connection with the preparation, negotiation, execution and recordation of this First Amendment and any other instruments or documents related to the execution of this First Amendment, and any other expenses incurred by the Bank in connection with the Sale Agreement and any and all related writings. The Railroad shall furnish to the Bank all such other documents, consents and information relating to the Railroad, the Locomotives (as that term is defined in the Sale Agreement), or otherwise, as the Bank may reasonably require.

8.

The Railroad hereby expressly agrees to (i) obtain all necessary approval, and proof of such approval in form satisfactory to the Bank in its sole discretion, from such parties as may be necessary to enable the Railroad to pledge all of the Locomotives to secure all of the indebtedness arising under each and all other conditional sale agreements (the "Other Sale Agreements") between the Railroad and the Bank in force and effect on the effective date hereof, and to further secure any and all other indebtedness now or hereafter owing by the Railroad to the Bank, and (ii) enter into such amendment or amendments to the Sale Agreement together with all related documents as the Bank shall require all in form satisfactory to the Bank in its sole discretion pursuant to which the Locomotives shall secure, in addition to the indebtedness arising under the Sale Agreement, any and all other indebtedness now or hereafter owing by the Railroad to the Bank, including the indebtedness arising pursuant

to each of the Other Sale Agreements. The Railroad and the Bank hereby expressly agree that the failure of the Railroad to comply with the terms and provisions contained in (i) and (ii) above on or before March 31, 1986, shall constitute an event of default under the Sale Agreement (which shall be in addition to the events of default provided for in Article 16 of the Sale Agreement), whereupon the Bank may <sup>upon giving seven day written notice</sup> exercise any and all of its rights under the Sale Agreement, including, without limitation, the right to accelerate the maturity of the indebtedness evidenced thereby and declare the purchase price of the Locomotives immediately due and payable without the need for the Bank or any other party to provide to the Railroad notice of any kind <sup>other than the seven day notice</sup> of the occurrence of such event of default, or a period of time <sup>of ten</sup> for the Railroad to cure such event of default, notwithstanding any requirement to provide notice or a period of cure for any other event of default under the Sale Agreement which may be contained in the Sale Agreement.

*[Handwritten signature]*  
*[Handwritten signature]*

9.

This First Amendment (a) shall be binding upon and inure to the benefit of the Railroad and the Bank and their respective successors and assigns (provided, however, that the Railroad shall not assign its rights hereunder without the prior written consent of the Bank); (b) may be modified or amended only by a writing signed by each party; (c) shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America; (d) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement; and (e), when read together with the Sale Agreement including all prior supplements, amendments and addenda thereto, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter.

IN WITNESS WHEREOF, the Railroad and the Bank have caused this First Amendment to be signed by their respective duly authorized officers, effective as of October 24, 1985.

MISSOURI-KANSAS-TEXAS  
RAILROAD COMPANY

By: *[Signature]*  
 Name: KARL R ZIEBARTH  
 Title: EXECUTIVE VICE-PRESIDENT



My Commission Expires: 3-24-86

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared R. A. Salcetti, Vice President of Texas Commerce Bank National Association, a national corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this 18<sup>th</sup> day of November, 1985.

(SEAL)

Janette Sexton  
Notary Public in and for  
the State of T E X A S  
Printed Name: Janette Sexton  
My Commission Expires: 11-16-88

JANETTE SEXTON  
Notary Public, State of Texas  
My Commission Expires 11-16-88