

9-097A007

DONELAN, CLEARY, WOOD & MASER, P. C.

ATTORNEYS AND COUNSELORS AT LAW

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4/7/89
13.00
MOTOR OPERATING UNIT
APR 7 10 25 AM '89

April 7, 1989

RECORDATION NO 16271 FILED 1425

APR 7 1989 - 10 30 AM
INTERSTATE COMMERCE COMMISSION

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and seven counterparts of a Conditional Sale And Security Agreement, entered into on April 6, 1989, by General Electric Company ("Builder-Vendor"), The Atchison, Topeka and Santa Fe Railway Company ("Railroad-Vendee"), and Harris Trust and Savings Bank, not in its individual capacity but as trustee pursuant to an equipment trust agreement dated as of March 1, 1989 ("Trustee-Vendee"), a primary document.

The names and addresses of the parties to the enclosed Conditional Sale And Security Agreement are as follows:

BUILDER-VENDOR: General Electric Company
Transportation Systems
Business Operations
2901 East Lake Road
Erie, PA 16531

RAILROAD-VENDEE: The Atchison, Topeka and Santa
Fe Railway Company
901 N.E. River Road
Topeka, KS 66601

TRUSTEE-VENDEE: Harris Trust and Savings Bank
111 West Monroe Street
Chicago, IL 60690

Phyllis M. Maser
Clearly Marked

DONELAN, CLEARY, WOOD & MASER, P. C.
The Honorable Noreta R. McGee
April 7, 1989
Page 2.

A general description of the railroad locomotives covered by the enclosed document is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

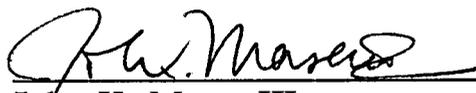
Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.

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

PRIMARY DOCUMENT

Conditional Sale And Security Agreement, entered into on April 6, 1989, by General Electric Company ("Builder-Vendor"), The Atchison, Topeka and Santa Fe Railway Company ("Railroad-Vendee"), and Harris Trust and Savings Bank, not in its individual capacity but as Trustee pursuant to an equipment trust agreement dated as of March 1, 1989 ("Trustee-Vendee"), relating to twenty (20) General Electric Dash 8-40B, 4000 horsepower, 4-axle road freight diesel electric locomotives, bearing identification marks "Santa Fe" and Road Nos. 7430 through and including 7449.

Respectfully submitted,

BY: 
John K. Maser III
Attorney-In-Fact

Encl.
286-8

Interstate Commerce Commission
Washington, D.C. 20423

4.7.89

OFFICE OF THE SECRETARY

John K. Maser III
Attorney -In-Fact
Donelan Cleary Wood & Maser P.C.
Suite 850
1275 K. Street N.W.
Washington, D.C. 20006-4006

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 4.7.89 at 10:30am, and assigned recordation number(s) 16271

Sincerely yours,

Nurita L. McEwen

Secretary

Enclosure(s)

Schedule I

Description of Locomotives

<u>Type of Equipment</u>	<u>AAR Mechanical Designation</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric Dash 8-40B, 4000 horsepower, 4-axle road freight diesel electric locomotives	B-B	20 locomotives	Marked "Santa Fe" in yellow on both sides of locomotives	7430 through and including 7449

RECORDATION NO. 16271
APR 7 1989 - 10:30 AM
FILED 1423
INTERSTATE COMMERCE COMMISSION

THIS CONDITIONAL SALE AND SECURITY AGREEMENT ("Agreement") is entered into on April 6, 1989 by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY a Delaware corporation having offices at 901 N.E. River Road, Topeka, Kansas 66601 ("Railroad"), HARRIS TRUST AND SAVINGS BANK, an Illinois corporation having offices at 111 West Monroe Street, Chicago, Illinois 60690 ("Trustee"), not in its individual capacity but as trustee pursuant to an equipment trust agreement dated as of March 1, 1989 ("Equipment Trust Agreement") entered into between Railroad and Trustee, and GENERAL ELECTRIC COMPANY, acting through its Transportation Systems Business Operations, having offices at 2901 East Lake Road, Erie, Pennsylvania 16531 ("Builder").

WHEREAS, pursuant to purchase contract 177759 dated September 16, 1988 and an amendment dated October 6, 1988 (collectively, "Purchase Agreement"), Builder has agreed to sell and Railroad has agreed to purchase twenty (20) diesel electric locomotives ("Equipment") described in the Purchase Agreement, which Equipment is, for convenience, also described in the attached Exhibit A, and

WHEREAS, Railroad has assigned its interest in the Purchase Agreement and the Equipment to Trustee pursuant to the Equipment Trust Agreement, and

WHEREAS, to secure the payment obligations to Builder in the Purchase Agreement, Railroad and Trustee provide Builder with a security interest as set forth herein, and

WHEREAS, the parties desire to set forth certain rights and obligations with regard to the foregoing, all as set forth herein,

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, and, intending to be legally bound, the parties hereto agree as follows:

1. It is understood that Railroad has assigned its right, title and interest in and to the Purchase Agreement and the Equipment to Trustee pursuant to the Equipment Trust Agreement. Builder hereby consents to the assignment. Notwithstanding such assignment, Railroad will remain liable to pay Builder for the Equipment pursuant to the Purchase Agreement should Trustee fail to do so for any reason whatsoever. Builder will sell and deliver the Equipment to Vendee (as defined below) in accordance with the Purchase Agreement and Vendee will purchase from Builder and accept delivery of the Equipment in accordance with the Purchase Agreement. As used in this Agreement, "Vendee" shall mean Trustee, except with regard to any Equipment that may for any reason be excluded from the equipment trust established pursuant to the Equipment Trust Agreement, as to which Equipment "Vendee" shall mean Railroad and as to which Equipment Railroad shall be obligated to Builder.

2. a. The units of Equipment shall be delivered in accordance with the Purchase Agreement as they are ready for delivery from Builder's plant in Erie,

Pennsylvania, after this Agreement has been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303.

b. Upon delivery of each unit of Equipment, possession and risk of loss shall pass to the Vendee, provided, however, that Builder shall and hereby does retain title to the Equipment and the Railroad and the Trustee hereby give and grant to Builder a security interest in all of the following ("Collateral"):

(1) all units of Equipment; and

(2) all proceeds of the foregoing, including, but not limited to any insurance payable as a result of damage to or loss or destruction of the Equipment.

c. When Builder has been paid in full the invoice purchase price for a unit of Equipment delivered to Vendee as set forth in the Purchase Agreement ("Purchase Price"), absolute title to and property in such unit of Equipment so paid for shall pass to and vest in Vendee without further transfer or action on the part of Builder. However, Builder, if requested by Vendee or Railroad at that time, (1) will execute a bill of sale for the Equipment, releasing Builder's security interest therein and conveying to the Vendee all of Builder's title therein, free of all liens, security interests and other encumbrances arising through Builder, and deliver such bill of sale to Vendee and (2) will execute and deliver to Vendee, for filing, such written instruments as may be necessary to make clear upon the public records Vendee's title to the Equipment.

d. Upon delivery of each unit and until actual physical repossession by Builder after Default and removal from Railroad's premises in connection with such repossession, Builder shall have no further responsibility for nor bear any risk of damage to or destruction or loss of such unit of Equipment, provided, however, that this shall not limit Builder's warranty as set forth in the Purchase Agreement.

e. Until payment in full as provided in 2c above, Vendee or Railroad will pay or discharge all sums claimed by any party from, through or under Vendee or Railroad which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of the Equipment or Builder's interest therein and will promptly discharge any lien, charge or security interest which arises, but will not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in a reasonable manner and the nonpayment thereof does not, in Builder's reasonable opinion, adversely affect the title or interest of Builder in or to the Equipment.

3. The Purchase Price as to any unit of Equipment shall be paid to Builder no later than thirty (30) business days after said unit of Equipment has been delivered or such other date as may be agreed to by Vendee and Builder in writing subsequent to the date of this Agreement. There will be multiple closings on dates specified by Railroad and Trustee upon at least ten (10) business days prior written notice to Builder but in no event shall the closing as to any unit of Equipment extend beyond thirty (30) business days after delivery unless otherwise agreed by Vendee and Builder in writing as aforesaid. At least five (5) business days prior to a closing, Builder will present invoices for the Equipment to be settled for to Railroad and Trustee. As used in this Agreement, "business day" means a calendar day, excluding Saturday, Sunday and any other day on which banking institutions in Chicago are authorized or obligated to remain closed. Payment shall be made by wiring the Purchase Price in lawful currency of the United States to such Builder bank account as shall be specified by Builder at the time Builder's invoice is provided. Upon

payment of the Purchase Price for a unit of Equipment, absolute title to and property in such unit of Equipment so paid for shall pass to and vest in Vendee without further transfer or action on the part of Builder, as set forth in 2c above, provided, however, that Builder will comply with the last sentence of 2c above upon request of Vendee or Railroad.

4. The following shall constitute a default hereunder ("Default"):

(a) Vendee shall fail to pay the Purchase Price for any unit of Equipment and such failure shall continue for ten (10) business days after the date the Purchase Price is due and payable; or

(b) Default shall be made in the performance of any other covenant, condition and agreement under the Purchase Agreement or this Agreement and such default shall continue for thirty (30) days after written notice from Builder specifying the default and demanding that the same be remedied; or

(c) Any proceeding shall be commenced by or against Railroad for any relief which includes, or might result in, any modification of the obligations of Railroad under the Purchase Agreement or this Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under the Purchase Agreement and this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Railroad or for its property in connection with any such proceedings, in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have commenced.

5. a. In the event of a Default, Builder shall have all of the rights and remedies of a secured party under Article 9 of the Uniform Commercial Code and under any other applicable law.

b. Without limiting the foregoing, in case Builder shall demand possession of the Equipment and shall designate a reasonable point or points for the delivery of the Equipment, Railroad shall, at its own expense and risk:

(1) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) cause the Equipment to be placed upon such storage tracks of Railroad or any of its affiliates as Builder reasonably may designate; and

(2) permit Builder to store the Equipment on such tracks at the risk of Railroad for a reasonable period (not to exceed forty-five (45) days) without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by Builder; and

(3) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by Railroad or any of its affiliates or to any connecting carrier for shipment, all as directed by Builder.

During any storage period, Railroad will permit the inspection of the Equipment by Builder, Builder's representatives and prospective purchasers, lessees and users.

6. Railroad and Trustee understand that Builder intends to file this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303. Vendee will from time to time do and perform any reasonable act and will execute and deliver all further instruments required by law or reasonably requested by Builder to properly protect, to the reasonable satisfaction of Builder's counsel, Builder's interest in the Equipment and its rights under this Agreement or the Purchase Agreement or for the purpose of carrying out the intention of such agreements. After the payment of the Purchase Price for a unit of Equipment and upon the request of Vendee or Railroad, Builder will execute and deliver instruments reasonably requested for filing pursuant to 49 U.S.C. Section 11303 to reflect the release of Builder's security interest in such unit granted by this Agreement, as set forth in 2c(2) above.

7. Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, courier, telex, telecopy or similar transmission, or by hand, addressed as follows:

- (a) to Railroad:
The Atchison, Topeka and Santa Fe Railway Company
901 N.E. River Road
Topeka, Kansas 66601
Attention: Mr. W. C. Meares
Vice President, Purchasing and Materials
With a copy to :
80 East Jackson Boulevard
Chicago, Illinois 60604
Attention: Mr. L. S. Volmer
- (b) to Trustee:
Harris Trust and Savings Bank
111 West Monroe Street
Chicago, Illinois 60690
Attention: Mr. Richard G. Mason
Vice President, Trust Department
- (c) to Builder:
General Electric Company
Transportation Systems Business Operations
2901 East Lake Road
Erie, PA 16531
Attention: General Manager
Transportation Systems Marketing
and Sales Department

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

8. All of the agreements herein made by Trustee are made and intended not as personal agreements by the financial institution acting as Trustee, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the trust estate as such term is used in the Trust Agreement and this Agreement is executed and delivered by Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement.

9. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its choice of law provisions, provided, however, that Builder shall be entitled to all rights conferred by 49 U.S.C. Section 11303.

10. Except as expressly modified by this Agreement, the Purchase Agreement shall continue to apply as written.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

[Seal]

GENERAL ELECTRIC COMPANY

Attest: Wadley
Title: ATTENDING SECRETARY

By: Royce H. Tonjes
Title: MANAGER - TRANSPORTATION SYSTEMS FINANCE OPERATION

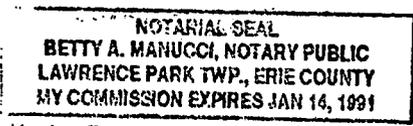
STATE OF PENNSYLVANIA)
 :
COUNTY OF ERIE)

ss.:

On this 6th day of April, 1989, before me personally appeared ROYCE H. TONJES, to me personally known, who being by me duly sworn, says that he is the MANAGER - TRANSPORTATION SYSTEMS FINANCE OPERATION of General Electric 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.

Betty A. Manucci
Notary Public

(Notarial Seal)
My Commission expires



Member, Pennsylvania Association of Notaries

[Seal]

HARRIS TRUST AND SAVINGS BANK

Attest: _____

By: _____

Title: _____

Title: Vice President

STATE OF ILLINOIS)

ss.:

COUNTY OF COOK)

On this ___ day of April, 1989, before me personally appeared _____
Richard G. Mason, to me personally known, who being by me duly sworn, says that he is the Vice President of Harris Trust and Savings Bank, 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.

Notary Public

(Notarial Seal)
My Commission expires

[Seal]

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Attest: *F. G. McGovern*

By: *W. Swartz*

Title: ASSISTANT SECRETARY

Title: President

STATE OF ILLINOIS)

ss.:

COUNTY OF COOK)

On this 6 day of April, 1989, before me personally appeared _____
W. John Swartz, to me personally known, who being by me duly sworn, says that he is the President of The Atchison, Topeka and Santa Fe 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.

John Thomas
Notary Public

(Notarial Seal)
My Commission expires

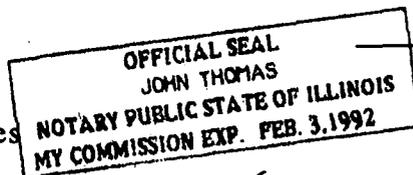


EXHIBIT A

DESCRIPTION OF LOCOMOTIVES

<u>Type of Equipment</u>	AAR Mechanical <u>Designation</u>	<u>Number</u>	Identifying <u>Marks</u>	Road <u>Numbers</u>
General Electric Dash 8-40B, 4000 horsepower, four-axle road freight diesel electric locomotives	B-B	20	"Santa Fe" marked in yellow	7430 through and including 7449