RECORDATION NO. 9723-F Filed 1425

JUL 23 1987 -3 49 PM

INTERSTATE COMMERCE COMMISSION

LIDDELL, SAPP & ZIVLEY
ATTORNEYS
TEXAS COMMERCE TOWER
HOUSTON, TEXAS 77002
(713) 226-1200
TELEX 76-2616
TELECOPIER (713) 223-3717

AUSTIN OFFICE
301 CONGRESS AVENUE
SUITE 1400
AUSTIN, TEXAS 78701
(512) 320-4111
TELECOPIER (512) 320-4161

DALLAS OFFICE
1500 SAN JACINTO TOWER
DALLAS, TEXAS 75201
(214) 880-0100
TELECOPIER (214) 880-0025

July 22, 1987 7-204A094

BY FEDERAL EXPRESS

No.
Date JUL 23 1987
Fee $ 10.00
ICC Washington, D.C.

Ms. Norita R. McGee
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Fifth Amendment to Conditional Sale Agreement between General Motors Corporation (Electro-Motive Division) and Misouri-Kansas-Texas Railroad Company dated September 22, 1978; assigned to Texas Commerce Bank National Association

Dear Ms. McGee:

I have enclosed an original and three (3) counterparts of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Fifth Amendment to Conditional Sale Agreement ("Fifth Amendment"), a secondary document, dated effective as of May 1, 1987.

The primary document to which the Fifth Amendment is connected is a Conditional Sale Agreement recorded under Recordation No. 9723.

The names and addresses of the parties to the Fifth 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.

A description of the equipment covered by the Fifth Amendment follows:

four (4) Model SD40-2 diesel electric locomotives with 300 HP each, bearing MKT's railroad numbers 607, 608, 609 and 610.

A cashier's check is enclosed which covers the statutory recording fee. Please return the original Fifth Amendment and any extra copies stamped with the appropriate recording information which will not be needed by the Commission to the undersigned.

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

Fifth Amendment to Conditional Sale Agreement originally executed by and between Missouri-Kansas-Texas Railroad Company and General Motors Corporation (Electro-Motive Division) which assigned same to Texas Commerce Bank National Association, covering four (4) Model SD40-2 diesel electric locomotives with 300 HP each, bearing MKT's railroad numbers 607, 608, 609 and 610.

I certify that I have knowledge of the foregoing.

Very truly yours,

Rod E. Sands
For the Firm

RES:ll
Enclosures - a/s

xc: Ms. Kelly Enos-Blumberg
Texas Commerce Bank
National Association
712 Main Street
Houston, Texas 77002

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

7/24/87

MS. KELLY ENOS-BLUMBERG
TEXAS COMMERCE BANK
NATIONAL ASSOCIATION
812 MAIN STREET
HOUSTON, TEXAS 77002

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/23/87 at 3:40 PM, and assigned re-recordation number(s). 9723-F, I2248-E, I0662-E, I284I-D, I2772-D, I2868-D, I3603-D, 9628-F, I0797-F, I2076-F, I0030-D, I0399-E, I0207-F and 8380-C

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 9723-F Filed 1425

JUL 23 1987 -3 25 PM

INTERSTATE COMMERCE COMMISSION

(A)RES:MKT-303C

FIFTH AMENDMENT TO CONDITIONAL SALE AGREEMENT

THIS FIFTH AMENDMENT TO CONDITIONAL SALE AGREEMENT, hereinafter referred to as this "Fifth 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 General Motors Corporation (Electro-Motive Division) (the "Manufacturer"), a Delaware corporation, have entered into a Conditional Sale Agreement dated as of September 22, 1978 (which Conditional Sale Agreement, as same may have been amended prior to the hereinafter described First Amendment, is herein called the "Original Sale Agreement"), covering and affecting certain locomotives and other equipment (the "Rolling Stock") more fully described in the Original Sale Agreement. All of the Manufacturer's rights and interests, but none of its obligations, under the Original Sale Agreement have been assigned to the Bank pursuant to an Agreement and Assignment dated of even date with the Original Sale Agreement by and between the Manufacturer and the Bank.

2.

The Railroad and the Bank have amended the Original Sale Agreement pursuant to (a) an Amendment to Conditional Sale Agreement (the "First Amendment") dated effective as of September 10, 1984, (b) a Second Amendment to Conditional Sale Agreement (the "Second Amendment") dated effective as of April 24, 1985, (c) a Third Amendment to Conditional Sale Agreement (the "Third Amendment") dated effective as of October 23, 1985, and (d) a Fourth Amendment to Conditional Sale Agreement (the "Fourth Amendment") dated effective as of January 17, 1986 (the Original Sale Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment being hereinafter called the "Sale Agreement").

3.

Pursuant to a Loan Agreement (the "Original Loan Agreement") by and between the Railroad and the Bank, dated as of March 19, 1986, the Bank has established a revolving credit facility (the "Credit Facility") in favor of the Railroad, pursuant to which the Bank agreed, subject to certain terms and conditions, to make loans from time to time before March 1, 1987 (the "Maturity

Date") to the Railroad at the Railroad's request, and agreed to issue from time to time prior to March 1, 1988 (the "Letter of Credit Termination Date") standby letters of credit (collectively, the "Letters of Credit") for the account of the Railroad, the aggregate of said loans, the outstanding face amount of all of the Letters of Credit and the amount of all of the Letters of Credit which have been drawn on for which the Bank has not been reimbursed not to exceed at any one time the sum of $4,000,000.00, the indebtedness arising pursuant to the Credit Facility being evidenced by that certain promissory note (the "Revolving Note") executed by the Railroad, payable to the order of the Bank, dated of even date with the Original Loan Agreement, in the original principal sum of $4,000,000.00, with a final stated maturity of the Maturity Date. Under date of March 25, 1987, the Bank and the Railroad entered into that certain letter agreement amending the Original Loan Agreement so as to extend the Maturity Date to May 1, 1987 and to extend the Letter of Credit Termination Date to May 1, 1988. The Original Loan Agreement, as amended pursuant to said letter agreement is hereinafter called the "Loan Agreement."

4.

The Railroad has requested the Bank to (a) enter with the Railroad into an Agreement and Second Amendment to the Loan Agreement (the "Amendment") so as (i) to increase the amount which can be borrowed, repaid and reborrowed by the Railroad under the Credit Facility to $5,000,000.00 upon receipt by the Bank of written approval for such increase of all parties which may be deemed necessary by the Bank, including, without limitation, Manufacturers Hanover Trust Company as Corporate Trustee under that certain Prior Lien Mortgage of Missouri-Kansas-Texas Railroad Company, dated as of January 1, 1922, as amended and supplemented from time to time, (ii) to further extend the Maturity Date to May 1, 1988, (iii) to further extend the Letter of Credit Termination Date to May 1, 1989, and (iv) to make certain other changes to the Loan Agreement as more fully described therein, the Amendment to be dated as of May 1, 1987, and (b) to accept from the Railroad a new promissory note (the "New Note") to be of even date with the Amendment, executed by the Railroad, payable to the order of the Bank, in the original principal sum of $5,000,000.00, with a final stated maturity of May 1, 1988, to evidence the indebtedness arising pursuant to the Loan Agreement as amended by the Amendment, the New Note to be in part in renewal, extension (and not in extinguishment) of the Revolving Note.

5.

The Bank is unwilling to enter into the Amendment and/or accept the New Note, or otherwise increase the amount of the Credit Facility to $5,000,000.00 or extend the Maturity Date to May 1, 1988, to further extend the Letter of Credit Termination Date to May 1, 1989, unless, among other things, the Railroad agrees to amend the Sale Agreement so as to provide that the Rolling Stock shall secure, in addition to the purchase price of Rolling Stock (if not fully paid and satisfied) and such other indebtedness (if any) described in the Sale Agreement and the indebtedness arising pursuant to each of the Other Conditional Sale Agreements, as any of the same may have been or may be amended, renewed, extended or otherwise modified from time to time, the indebtedness arising pursuant to the Loan Agreement (as amended by the Amendment) and the New Note, and any and all future renewals, extensions, modifications, restatements, rearrangements and increases thereof and substitutions therefor; and the Railroad is willing to do so.

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 first sentence of Article 5 of the Sale Agreement is hereby amended in its entirety to be and read as follows:

> "1. The Manufacturer, or its successors and assigns (including, without limitation, the Bank), shall and hereby does retain the full legal title to and property in the Locomotives until (a) the Railroad shall have made all of the payments and shall have kept and performed all of the covenants contained in this Agreement to be made, kept or performed by the Railroad, (b) the Railroad shall have made all of the payments and shall have kept and performed all of the covenants contained in each those certain other Conditional Sale Agreements described on Exhibit A attached hereto and incorporated herein by reference for all purposes as the same may have been or may be amended, modified or supplemented from time to time, therein provided to be made, kept or performed by the Railroad; and (c) the Railroad shall have made all of

the payments and shall have kept and performed all of the covenants provided to be made, kept and performed by the Railroad in or pursuant to (i) that certain Loan Agreement (the "Original Loan Agreement") dated as of March 19, 1986, by and between the Railroad and the Bank, as amended pursuant to that certain letter agreement dated as of March 25, 1987 and as further amended pursuant to that certain Agreement and Second Amendment to Loan Agreement dated as of May 1, 1987, each by and between the Railroad and the Bank, and as the same may be further amended, supplemented, modified or restated from time to time (the Original Loan Agreement as so amended, modified, supplemented and restated being referred to hereinafter as the "Loan Agreement"), (ii) that certain promissory note (the "Revolving Note") dated as of May 1, 1987, in the original principal sum of $5,000,000.00, executed by the Railroad and payable to the order of the Bank with a final stated maturity of the Maturity Date (as that term is defined in the Loan Agreement), and any and all renewals, extensions, modifications, rearrangements, replacements and increases thereof and substitutions therefor, (iii) any and all applications for the Letters of Credit (collectively, the 'Applications') executed or issued in connection with the Loan Agreement, and (iv) any and all writings (collectively, the "Writings") executed in connection with or pursuant to any and all other indebtedness and obligations of the Railroad from time to time owing to the Bank, but only to the extent it is expressly provided in such Writings that full legal title to and property in the Locomotives shall not pass until the indebtedness and obligations evidenced by or arising pursuant to or in connection with such Writings has been fully paid and/or satisfied; notwithstanding the delivery of the Locomotives to and the possession and use thereof by the Railroad as herein provided."

2.

Article 18 of the Sale Agreement is hereby amended by deleting therefrom subsections (f) and (g), and substituting therefor a new subsection (f) which shall be and read as follows:

"(f) The failure by the Railroad to make any payment as and when due under any promissory note (collectively, the 'Notes') or any of the Applications or the occurrence of any event of default or default or the occurrence of any Event of Default or Default (as those capitalized terms may be defined in and) under the Loan Agreement or any of the Writings;."

3.

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.

4.

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.

5.

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" or "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.

6.

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 Fifth Amendment and any other instruments or documents related to the execution of this Fifth 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 Rolling Stock, or otherwise, as the Bank may reasonably require.

7.

This Fifth 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 Fifth Amendment to be signed by their respective duly authorized officers, effective as of May 1, 1987.

MISSOURI-KANSAS-TEXAS
RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: H. L. GASTLER
Title: PRESIDENT

ATTEST:

_____
Name: A. M. ALBIN
Title: ASSISTANT SECRETARY

TEXAS COMMERCE BANK
NATIONAL ASSOCIATION,
a national banking association

By: _____
Name: Nicholas Mark DeCuna
Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared H. L. GASTLER, PRESIDENT of Missouri-Kansas-Texas Railroad Company, a Delaware 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 7th day of July, 1987.

(SEAL)

Virginia A. Schoeneberger
Notary Public in and for
the State of TEXAS
Printed Name: Virginia A. Schoeneberger
My Commission Expires: 3-24-90

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared NICHOLAS MARK DILUZIO, 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 14 day of July, 1987.

(SEAL)

Lisa Bourg
Notary Public in and for
the State of TEXAS
Printed Name: Lisa Bourg
My Commission Expires: 8-10-88