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RECORDATION NO. 16396 FILED 1425

JUN 20 1989 -10 10 PM

INTERSTATE COMMERCE COMMISSION

9-172A001

June 21, 1989

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Locomotive Operating Lease Agreement dated as of May 23, 1989, between the following parties:

Lessor: Electro-Motive Division,
General Motors Corp.
LaGrange, IL

Lessee: Southern Pacific Transportation Co.
San Francisco, CA

The equipment involved in this transaction is listed on Schedule A.

Please record this document as a primary agreement. The filing fee of $13 is enclosed. Thank you for your kind assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

Contact Mary Ann Oster

16396
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INTERSTATE COMMERCE COMMISSION

SOUTHERN PACIFIC TRANSPORTATION COMPANY

LOCOMOTIVE OPERATING LEASE AGREEMENT

THIS LEASE, made and entered into as of this 23rd day of May, 1989, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Lessor", and the Southern Pacific Transportation Company, a Delaware Corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Lease: Lessee agrees to lease from Lessor the locomotives described in Schedule A, together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotive(s)"). All Locomotives presently bear General Motors reporting marks.

   The Lessee will cause the Locomotives to be kept numbered with the identification numbers set forth in Schedule A as General Motors Markings hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotive, in letters not less than one inch in height, the words "General Motors Corporation, Electro-Motive Division, Owner", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Lessor, in order to protect the Lessor's title to and interest in the Locomotive and the rights of the Lessor under this Lease. The Lessee will not place the Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee

will not change the identification number of the Locomotive(s) unless and until a statement of the new number to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited. The Lessee will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership.

2. Rent: This Lease shall commence with respect to each Locomotive subject to satisfactory joint inspection of each locomotive to determine said locomotive complies with all applicable laws and regulations and is suitable for immediate use by a line haul railroad when said Locomotive is delivered with a full tank of fuel and all fluids topped off to a location on Lessee's lines designated by Lessee, and shall continue according to the schedule as provided in Schedule B, and rent will commence with respect to each Locomotive on date of acceptance by the Lessee, which date is herein called the "Rent Commencement Date" and shall continue according to the terms on Schedule B. The Daily Rental shall be $300 per day payable on a quarterly basis. Lessee shall be entitled to an abatement in rent of $300 per day for each day a Locomotive is out of service during the repairs which are the responsibility of the Lessor (see Exhibit A).

   Lessee agrees to provide to Lessor free storage of the Locomotives on Lessee's premises for 30 days after termination of this Lease.

   Lessee shall not be entitled to any reduction of rent or setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to,

reductions, setoffs, 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 the Locomotive or damage to or loss of possession or use or destruction of such Locomotive from whatever cause and of whatever duration, except as otherwise provided herein.

3. Warranties and Representations: Lessee acknowledges that 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. LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL 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 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.

4. Place of Payment of Rent: Lessee shall wire transfer in immediately available funds in payment of the daily/weekly/monthly rent to the following account:

Electro-Motive Division
General Motors Corporation
c/o 1st National Bank of Chicago
Account No. 50-63191
"Rental Income Account"
Attn: Assistant Comptroller

5. 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 the Locomotives 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 the Locomotives while in the possession of Lessee.

Upon request, the Lessee will furnish to the Lessor repair information as available under the Lessee's normal operating practice on repairs performed on the Locomotives during the preceding calendar year, or through end of lease term. Upon request, the Lessee shall certify that the numbers and markings required by Section 1 hereof have been preserved or replaced. The Lessor, at its sole expense, shall have the right by its agents to inspect the Locomotives and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

6. Loss or Destruction: In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of the Lessee, damaged beyond the economic limit of repair, from any cause whatsoever, other than acts or omissions of Lessor (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall notify Lessor of such Casualty Occurrence. On the payment date next following the date of such Casualty Occurrence, Lessee shall pay to Lessor any unpaid rent due on or prior to such date. Lessor recognizes that the Lessee is self-insured. Upon a Casualty Occurrence and in addition to any other sums payable under the terms of the Lease, the Lessee shall cause to be paid to the Lessor the fair market value of such Locomotives at the time of execution of this lease as if such Locomotives had not been subjected to such Casualty Occurrence and were in such condition as originally delivered and warranted. Upon making such payment of the Casualty Value in respect of any Locomotive(s), rentals on such Locomotive(s) shall cease as of the date of such payment or the decision of the Casualty, the term of this Lease as to such Locomotive(s) shall terminate, and title to and rights in such Locomotive(s) shall there upon vest in the Lessee; provided, however, that Lessor has the option, to be exercised within fifteen (15) days after payment by Lessee of the Casualty Value, to retain any Locomotive the subject of a Casualty Occurrence, upon payment to Lessee of the scrap or salvage value of such Locomotive, to be determined as agreed by Lessor and Lessee, or failing

such agreement by the average of the bids placed upon the whole of such scrap or salvage by three independent parties; and provided, further that, in no event shall Lessor be required to pay more than $400,000 for each locomotive. Lessee shall furnish Lessor with certificates or other evidence of compliance with this Section 6 as may be reasonably required. In the event that a Locomotive is taken or requisitioned by condemnation or otherwise by the United States Government for a period of which shall exceed the remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by the Lessee for a period of sixty (60) consecutive days, Lessor shall relieve Lessee from rental payments for the Locomotive effective with the date Locomotive was first requisitioned or condemned by said governmental agency and settle with that governmental agency for any proceeds that Lessor is entitled and Lessee shall immediately pay over to Lessor any proceeds received by Lessee that is compensation for Lessor's loss of its ownership interest in the Locomotives. For any periods of condemnation of less than sixty days the Lessee will continue to pay rental and handle with and retain any proceeds collected from the governmental agency.

7. Indemnity: The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties, and interest, to the extent, arising from or caused directly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Sections 2, 6, 8 and 16 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, except where resulting from the breach of any repair obligation of Lessor; and shall, at its 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 (i) Lessor shall give Lessee written notice of any such claim or demand, and (ii) Lessee shall not be required to indemnify Lessor for any loss, liability or expense resulting from the gross negligence or willful misconduct of Lessor. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or to the extent permissible, file on behalf of the Lessor) any and all reports, requested by Lessor, (other than tax returns) to be filed by the Lessor with any federal, state of other regulatory authority by reason of the ownership by the Lessor of the Locomotives, or the Leasing thereof to the Lessee where the information for the reports is in the sole possession of Lessee.

8. Compliance with Law; Repair and Maintenance: Lessee shall comply with FRA, the interchange rules of the Association of American Railroads and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during this lease. 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 and Lessor agree that responsibility for maintenance of the Locomotives shall be as set out in Exhibit A. Nothing on Exhibit A shall be construed as limiting the obligation of Lessee at its own cost and expense, to maintain and service the Locomotive in accordance with prudent industry practice including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate use by a line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall the locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. 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; provided, however, Lessee may remove from the Locomotives any (a) communications equipment,

(b) train control, (c) end of train telemetry, and (d) recording devices, (e) or other specialized equipment, which Lessee paid for and installed but only if such removal may be accomplished without damage to the Locomotives.

9. No Purchase Option; Delivery of Locomotives to Lessor: The Lessee has no option to purchase the Locomotives which are the subject of the Lease. At the end of the term of this Lease or upon earlier termination or at such time after the end of the term of this Lease as designated by Lessor should Lessor have requested free storage of the Locomotives on Lessee's premises as provided in Paragraph 2 of this Lease, Lessee shall deliver the Locomotives to a destination on Lessee's property as specified by Lessor. At completion of delivery, Lessee shall ensure that each Locomotive has a full tank of fuel and that its fluids are topped off.

10. Assignment by Lessee: Lessee shall not assign or sublet its interest, or any parts thereof, under this Lease, or permit the use or operation of the Locomotives subject to this Lease by any other person, firm or corporation, other than subsidiaries or affiliates operated as part of the Southern Pacific System, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other the Lessee's under standard run through arrangements and horsepower hour exchanges; provided, however, that a Locomotive may not be so operated or used outside the 48 contiguous states of the United States. Notwithstanding any assignment or sublet as provided in this paragraph, Lessee shall not be relieved of its obligations under this Lease without the written consent of the Lessor.

11. Assignment by Lessor: Lessor may at any time assign its rights and obligations under this Lease without notice to or prior consent of Lessee and in such event Lessor's transferee as assignee shall have to the extent provided in the assignment the rights, powers, privileges and remedies of Lessor hereunder; provided, however, that no assignment shall relieve Lessor of its obligations under Exhibit A.

12. Notices: 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:

R. H. Berry, Chief Mechanical Officer
Southern Pacific Transportation Company
1 Market Plaza
San Francisco, California 94105

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:

Electro-Motive Division
General Motors Corporation
LaGrange, Illinois 60525
Attention: Manager of Lease Locomotive Operations
Phone number for failures: (312) 387-6225 Richard Marchese

13. 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.

14. 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.

15. 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.

16. Failure to Return: Should Lessee fail to return a Locomotive as required by this Lease Agreement, other than a failure to return caused by lose or destruction as described in Paragraph 6, Lessee shall pay Lessor $600/day/Locomotive until any such Locomotive is returned.

17. Protection of Lessor's Title: Lessor may, at its option, cause this lease to be duly filed, registered or recorded in conformity with the Interstate Commerce Commission, 49 USC Section 11303, or other places within or without the United States as Lessor may reasonably request for the protection of its title. Lessee will, from time to time, execute, acknowledge and deliver to Lessor any and all further instruments

reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotive to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease.

18. Taxes:

(a) Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor and its successors ("Indemnified Persons") harmless on an after-tax basis from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Lessee, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Locomotive or any part thereof; the ownership, delivery, leasing, possession, use, operation, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Lease, any payment made pursuant to this Lease, or the property, the income or other proceeds received with respect to the property held by the Lessor (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however, with respect to each Indemnified Person: (i) Taxes imposed on the net income of such Indemnified Person (or franchise taxes, gross receipts taxes or revenue ton mile taxes or single business taxes imposed on such

Indemnified Person to the extent that they are taxes in lieu of net income taxes that are imposed on such Indemnified Person) by the United States or by any state or political subdivision thereof; provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income tax; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Lessor; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 18 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Locomotive; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if (i) in the reasonable opinion of the Lessor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder or (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor.

(b) Claims; Contests; Refunds. If claim is made against the Lessor for any Taxes indemnified against under this Section 18, such Indemnified Person shall promptly notify the Lessee. Lessee may, upon assumption by Lessee of all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, addition to tax and interest, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both; provided, however, Lessee shall use legal counsel reasonably acceptable to Lessor, such approval not to be unreasonably withheld. Notwithstanding the foregoing, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed) unless (i) in the reasonable opinion of the Lessor such contest or the nonpayment of the Taxes would not adversely affect the title, property or rights of the Lessor hereunder or (ii) the Lessee provides a bond or other security reasonably satisfactory to the Lessor. The Lessor agrees to give the Lessee reasonable notice of such contest prior to the commencement thereof. If the Lessor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor shall pay the Lessee the amount of such refund or interest net of expenses; pro-

vided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

(c) Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 18 (except obligations resulting from the last sentence of Section 18(a), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns including exemption certificates or affidavits with respect to any sales or use tax in such manner as to show the interest of the Lessor in the Locomotives as shall be satisfactory to the Lessor or, where not so permitted, will notify the Lessor of such requirement and will prepare and deliver such reports to the Lessor within a reasonable time prior to the time such reports are to be filed.

(d) Survival. All the obligations of the Lessee under this Section 18 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under this Lease or the termination of this Lease. Payments due from the Lessee to the Lessor under this Section 18 shall be made directly to the Lessor.

19. Performance Obligations of Lessee by Lessor: In the event that the Lessee shall fail duly and promptly to perform any of its obligations under the provisions of this Lease, the Lessor may, at its option, perform the same for the account of Lessee without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by the Lessor in such performance, together with interest at the lesser of 1-1/2% per month or the highest amount allowed by law thereon until paid by the Lessee to the Lessor, shall be payable by the Lessee upon demand as additional rent hereunder.

20. Default: An event of default shall occur if: (a) Lessee fails to pay when due any installment of rent and such failure continues for a period of 30 days; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for 15 days after written notice thereof to Lessee by Lessor, provided that Lessee shall not be considered to be in default if Lessee complies in all material respects with Section 8; (c) Lessee ceases doing business as a going concern, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present of future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part

of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation; (d) within 60 days after the commencement of any proceedings against Lessee seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 60 days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or (e) Lessee attempts to remove, sell, transfer, encumber, part with possession or sublet the Locomotives or any item thereof in a manner prohibited hereunder.

Upon the occurrence of an event of default, Lessor, at its option, may: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or action or other proceedings either at law or equity to enforce performance by the Lessee of any and all covenants of this Lease and to recover damages for the breach thereof; (c) demand that Lessee deliver the Locomotive forthwith to Lessor at Lessee's expense at such place as Lessor may designate; and (d) Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the locomotive may be or by Lessor is believed to be, and retake all or any item thereof, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law so to do, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for damages suffered through or loss caused by such retaking. If

any statute governing any proceeding hereunder specifies the amount of Lessor's deficiency or other damages for breach of this Lease by the Lessee, Lessor shall be entitled to provide as and for damages for the breach an amount equal to that allowed under such statute. The provisions of this paragraph shall be without prejudice to any rights given to the Lessor by such statute to prove for any amounts allowed thereby. Should any proceedings be instituted by or against Lessor for monies due to Lessor hereunder and/or for possession of the Locomotive or for any other relief, Lessee shall pay a reasonable sum as attorneys' fees.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in the Bankruptcy Code or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Locomotive upon any event of default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waive thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

21. Choice of Law: This Lease shall be governed in all respect by the Law of the State of Illinois.

22. Miscellaneous: All transportation charges for delivery of the Locomotives to Lessee and the return of the Locomotives to a point on the Lessee's lines specified by Lessor shall be borne by Lessee. 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. This Lease is irrevocable for the full term hereof and for the aggregate rental herein received. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

Electro-Motive Division

General Motors Corporation

Attest: _____ By: _____

Title: Asst. Div. Comptroller

Southern Pacific Transportation Company

Attest: _____ By: _____
Secretary

Title: C.M.O.

State of Illinois }
County of Cook } ss.

On this 30th day of May, 1989, before me personally appeared P. M. SMITH, to me personally known, who, being by me duly sworn, did say that he is a ASST. DIV. COMPTROLLER of Electro-Motive Division, General Motors Corporation, that the instrument was signed on behalf of such 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 such corporation.

Juanita Acantilado
Notary Public

"OFFICIAL SEAL"
Juanita Acantilado
Notary Public, State of Illinois
My Commission Expires 4/17/92

My commission expires:

April 17, 1992

State of California }
County of San Francisco } ss.

On this 9th day of June, 1989, before me personally appeared Ronald H. Berry, to me personally known, who, being by me duly sworn, did say that he is the Chief Mechanical Officer of the Southern Pacific Transportation Company, that the instrument was signed on behalf of such 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 such corporation.

Deanna K. Ciesielski
Notary Public

My commission expires:

Dec. 1, 1989

OFFICIAL SEAL
DEANNA K. CIESIELSKI
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Commission Expires Dec. 1, 1989

SCHEDULE A

Road Numbers of SD40-2's

6040

6041

6042

6043

6044

6045

6046

6047

6048

6049