

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

ATTORNEYS AND COUNSELORS AT LAW

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INTERSTATE COMMERCE COMMISSION

December 19, 1988

DEC 19 1988 11:15 AM  
1 6093

RECORDATION NO. \_\_\_\_\_ Filed 1425

No. 8-354A031

DEC 19 1988

Date \_\_\_\_\_

Fee \$ 13.00

ICC Washington, D.C.

DEC 19 11 06 AM '88  
NOTICE OF RECORDATION

100-41111-1  
FILED

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 one counterpart of a Locomotive Lease Agreement, dated as of December 14, 1988, between General Electric Company ("Lessor") and Union Pacific Railroad Company ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company  
2901 East Lake Road  
Erie, PA 16531

LESSEE: Union Pacific Railroad Company  
1414 Dodge Street  
Omaha, NE 68179

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.

*Counterpart - John Maser*

Letter to Secretary McGee  
Page Two  
December 19, 1988

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

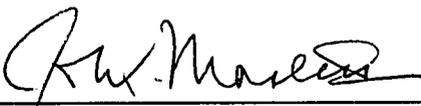
A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Locomotive Lease Agreement, dated as of December 14, 1988, between General Electric Company ("Lessor") and Union Pacific Railroad Company ("Lessee"), relating to three (3) General Electric Dash 8-40C, 4000 horsepower, 6-axle road freight locomotives, bearing identification marks "Union Pacific" and Road Nos. 9353 through and including 9355.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

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

004/207-B  
Enclosure  
286-8

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. Filed 1425

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[CS&M Ref. 4327-090]

AGREEMENT AND ASSIGNMENT

Dated as of November 1, 1988

AMONG

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

M-K INDUSTRIAL SERVICES COMPANY

AND

MERIDIAN TRUST COMPANY,

As Indenture Trustee

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AGREEMENT AND ASSIGNMENT dated as of November 1, 1988, among GENERAL MOTORS CORPORATION (Electro-Motive Division) and M-K INDUSTRIAL SERVICES COMPANY (severally, a "Builder" and collectively, "Builders") and MERIDIAN TRUST COMPANY, acting as Indenture Trustee under a Participation Agreement dated as of the date hereof ("Participation Agreement"), a copy of which has been delivered to each Builder, said Indenture Trustee, as so acting, together with its successors and assigns, being hereinafter called "Assignee".

WHEREAS each Builder and The Connecticut Bank and Trust Company, National Association, acting as Owner Trustee ("Owner Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with FIRST BANK NATIONAL ASSOCIATION ("Owner"), have entered into a Conditional Sale Agreement and Indenture dated as of the date hereof ("CSA") covering the remanufacture, sale and delivery, on the conditions therein set forth, by such Builders and the purchase by the Owner Trustee of the railroad equipment described in Annex B to the CSA ("Equipment"); and

WHEREAS the Owner Trustee and BURLINGTON NORTHERN RAILROAD COMPANY ("Lessee"), have entered into a Lease dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Owner Trustee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Owner Trustee to such Builder under the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in Section 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this Section, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Owner Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver its Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of such Builder to the Owner Trustee with respect to the Equipment shall be and remain enforceable by the Owner Trustee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the CSA and

will deliver the same upon completion to the Owner Trustee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Owner Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner Trustee under the CSA and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner Trustee thereunder. Each Builder will not deliver any Equipment to the Owner Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (such Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner Trustee or the Lessee arising out of a breach by such Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner Trustee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action as directed by such Builder, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner Trustee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action

denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Each Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to each Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Owner Trustee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price of the Units of its Equipment as shown on the invoice therefor then being settled for which, under the terms of Section 4.3(b) of said Article 4, is payable in installments; provided that the conditions specified in Sections 7 and 8 of the Participation Agreement have been satisfied, there shall not be any material adverse change in the Lessee's financial position from September 30, 1988 (excluding the announced changes relating to the scheduled reorganization and restructuring of the Lessee and/or any of its affiliates) that would impair the Lessee's ability to perform its obligations under the Lease or a material change in the law rendering the Owner's participation in the Lease illegal, and there shall have been delivered to the Assignee at the offices of Cravath, Swaine & Moore in New York, New York (with a copy to the Owner Trustee), on or prior to such Closing Date, the following documents, in form and substance

satisfactory to it and to Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A Certificate of an officer of the Lessee to the effect that (i) the Lessee is in full compliance with its obligations under its Documents, and no Event of Default set forth in Section 13 of the Lease and no event which with notice or lapse of time or both would constitute such an Event of Default has occurred or is continuing, and, to the best of the Lessee's knowledge, no event of default set forth in Article 16 of the CSA and no event which with notice or lapse of time or both would constitute such an event of default has occurred or is continuing; (ii) the representations and warranties of the Lessee in Section 3 of the Participation Agreement are true and correct as of such Closing Date as if made on and as of such date; and (iii) there has been no material adverse change in the business or financial condition of the Lessee from that shown in the financial statement dated as of September 30, 1988.

(b) a bill or bills of sale from such Builder to the Owner Trustee and the Assignee transferring to the Owner Trustee all right, title and interest of such Builder in and to such units, subject to the security interest in such units created by the CSA, and transferring to the Assignee such security interest, warranting to the Assignee and to the Owner Trustee that, at the time of delivery of such units under the CSA, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner Trustee under the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under such CSA;

(c) a Certificate or Certificates of Acceptance with respect to each unit of such Equipment as contemplated by Article 3 of the CSA and Section 2.1 of the Lease;

(d) an invoice of such Builder for the units of such Equipment accompanied by or having endorsed

thereon a certification by the Owner Trustee and the Lessee as to their approval thereof;

(e) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee, the Owner Trustee and the Owner, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in the units of such Builder's Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment) arising from, through or under such Builder; and

(f) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner Trustee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Owner Trustee of the amount required to be paid by it pursuant to Section 4.3(a) of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee and the Owner Trustee that the CSA was duly authorized, executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner Trustee, the CSA is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in its Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Cravath, Swaine &

Moore at their offices in New York, New York. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

M-K INDUSTRIAL SERVICES COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

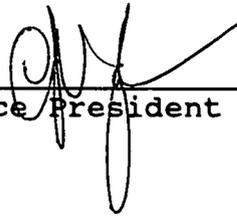
\_\_\_\_\_  
Assistant Secretary

other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by



\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:



\_\_\_\_\_  
Assistant Secretary

M-K INDUSTRIAL SERVICES COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President

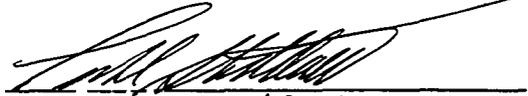
[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

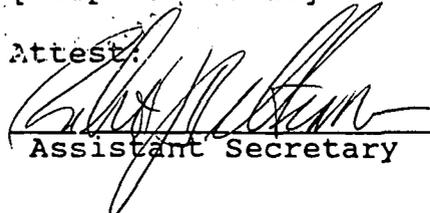
M-K INDUSTRIAL SERVICES COMPANY,

by

  
\_\_\_\_\_  
President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

MERIDIAN TRUST COMPANY, as  
Indenture Trustee,

by

  
\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Authorized Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the  
assignment made by, the foregoing Agreement and Assignment  
is hereby acknowledged as of November 1, 1988.

THE CONNECTICUT BANK AND  
TRUST COMPANY, NATIONAL  
ASSOCIATION,  
not in its individual  
capacity but solely in its  
capacity as owner Trustee,

by

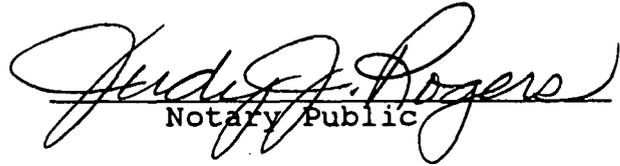
  
\_\_\_\_\_  
Authorized Officer





STATE OF IDAHO,     )  
                          ) ss.:  
COUNTY OF ADA     ,    )

On this 21st day of November 1988, before me personally appeared Leon D. Stoddard, to me personally known, who, being by me duly sworn says that he is the President of M-K INDUSTRIAL SERVICES 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.

  
Notary Public

(Notarial Seal)

My Commission expires 3-3-93