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INTERSTATE COMMERCE COMMISSION

17236 D

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February 26, 1991

17236 A

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Twelfth Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Lease of Locomotives from NBB Eaton Lease Co., Ltd. to Union Pacific Railroad Company

Dear Mr. Strickland:

Enclosed are an original and two originally executed counterparts of the three primary documents described below and three secondary documents which are also described below and which are related to the primary document described as item number 1 below. All of the enclosed documents are to be recorded pursuant to Section 11303, Title 49, of the United States Code.

The enclosed primary documents are:

(1) Lease Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as lessor, and Union Pacific Railroad Company, as lessee.

(2) Mortgage, Assignment and Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as mortgagor, and Societe Generale, acting through its Tokyo branch, as mortgagee.

(3) Lessor Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as debtor, and Union Pacific Railroad Company, as secured party.

The enclosed secondary documents are:

(1) Lease Supplement No. 1, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as lessor, and Union Pacific

Railroad Company, as lessee. The primary document to which this Lease Supplement is connected is being submitted for recording concurrently herewith.

(2) Assignment Agreement, dated as of February 26, 1991, between Union Pacific Railroad Company, as assignor, and NBB Eaton Lease Co., Ltd., as assignee. The primary document to which this Assignment Agreement is connected is being submitted for recording concurrently herewith.

(3) Bank Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as debtor, and Societe Generale, acting through its Tokyo branch, as secured party. The primary document to which this Bank Security Agreement is connected is being submitted for recording concurrently herewith.

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

Lease Agreement

Lessor:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Lessee:
Union Pacific Railroad Company
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

Lease Supplement

Lessor:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Lessee:
Union Pacific Railroad Company
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

Assignment Agreement

Assignor:
Union Pacific Railroad Company
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

Assignee:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Mortgage, Assignment and Security Agreement

Mortgagor:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Mortgagee:
Societe Generale
Hibiya Central Building
2-9 Nishi Shinbashi
1-Chome, Minato-ku
Tokyo 105, Japan

Bank Security Agreement

Debtor:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Secured Party:
Societe Generale
Hibiya Central Building
2-9 Nishi Shinbashi
1-Chome, Minato-ku
Tokyo 105, Japan

Lessor Security Agreement

Debtor:
NBB Eaton Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Secured Party:
Union Pacific Railroad Company
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

The description of the equipment covered by the aforesaid Lease, Lease Supplement and Assignment is as follows:

Twenty-three General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives each marked on the sides in letters not less than one inch in height with the words "Ownership Subject to Documents Filed with the Interstate Commerce Commission" and bearing a nameplate with the legible inscription "TITLE TO THIS LOCOMOTIVE IS HELD BY NBB EATON LEASE CO., LTD., THE LESSOR, WHICH HAS LEASED THIS LOCOMOTIVE TO UNION PACIFIC RAILROAD COMPANY AND SUCH TITLE IS SUBJECT TO A MORTGAGE IN FAVOR OF SOCIETE GENERALE, ACTING THROUGH ITS TOKYO BRANCH, AS AGENT" and bearing the road numbers 6243 through 6265, inclusive.

Included in the property covered by the Mortgage, Assignment and Security Agreement are twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives and all additions, alterations and modifications thereto or replacements thereof and certain rights of NBB Eaton Lease Co., Ltd. in the Lease Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as lessor, and Union Pacific Railroad Company, as lessee, and the Assignment Agreement, dated as of February 26, 1991, between Union Pacific Railroad Company, as assignor, and NBB Eaton Lease Co., Ltd., as assignee.

Included in the collateral covered by the Bank Security Agreement are certain payments to be made in U.S. Dollars by Union Pacific Railroad Company, as lessee, to NBB Eaton Lease Co., Ltd., as lessor, in respect of the twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives.

Included in the property covered by the Lessor Security Agreement are twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives and all additions, alterations and modifications thereto or replacements thereof, subject to the Mortgage, Assignment and Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as mortgagor, and Societe Generale, acting through its Tokyo branch, as mortgagee.

A fee of Ninety Dollars ($90.00) is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Stephen A. Jannetta, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

A short summary of each of the documents to appear in the index follows:

1) Lease Agreement:
Lease Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as lessor, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan and Union Pacific Railroad Company, as lessee, Martin

Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018, covering twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives bearing road numbers 6243 through 6265, inclusive.

2) Lease Supplement No. 1:
Lease Supplement No. 1, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as lessor, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan and Union Pacific Railroad Company, as lessee, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018, covering twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives bearing road numbers 6243 through 6265, inclusive.

3) Assignment Agreement:
Assignment Agreement, dated as of February 26, 1991, between Union Pacific Railroad Company, as assignor, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018 and NBB Eaton Lease Co., Ltd., as assignee, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan, relating to the purchase of twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives bearing road numbers 6243 through 6265, inclusive.

4) Mortgage, Assignment and Security Agreement:
Mortgage, Assignment and Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as mortgagor, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan and Societe Generale, acting

through its Tokyo branch, as mortgagee, Hibiya Central Building, 2-9 Nishi Shinbashi, 1-Chome, Minato-ku, Tokyo 105, Japan, securing Mortgagor's obligations relating to twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives.

5) Bank Security Agreement: Bank Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as debtor, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan and Societe Generale, acting through its Tokyo branch, as secured party, Hibiya Central Building, 2-9 Nishi Shinbashi, 1-Chome, Minato-ku, Tokyo 105, Japan, securing debtor's obligations relating to twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives.

6) Lessor Security Agreement: Lessor Security Agreement, dated as of February 26, 1991, between NBB Eaton Lease Co., Ltd., as debtor, 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan and Union Pacific Railroad Company, as secured party, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018, securing debtor's obligations relating to twenty-three (23) General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives bearing road numbers 6243 through 6265, inclusive.

If you have any questions, please do not hesitate to call the undersigned.

Very truly yours,

Stephen A. Jannetta

SAJ/bas
Enclosures

17236
RECORDATION NO _____ FILED 1425
FEB 26 1991 9 55 AM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AGREEMENT

Dated as of February 26, 1991

FOR

TWENTY-THREE GENERAL MOTORS CORPORATION (ELECTRO - MOTIVE DIVISION) SD-60 DIESEL ELECTRIC LOCOMOTIVES

UNION PACIFIC RAILROAD COMPANY, as Assignor

NBB EATON LEASE CO., LTD., as Assignee

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on _____, 1991, at _____,recordation number _____.

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Annex A Form of Consent and Agreement

THIS ASSIGNMENT AGREEMENT, dated as of February 26, 1991, between UNION PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah (the "Assignor") and NBB EATON LEASE CO., LTD., a Japanese corporation (the "Assignee").

WITNESSETH:

WHEREAS, pursuant to the Purchase Agreement (as hereinafter defined), the Manufacturer (as hereinafter defined) has agreed, among other things, to manufacture and sell to the Assignor, and the Assignor has agreed to purchase from the Manufacturer, fifty General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives;

WHEREAS, the Assignor, on the terms and conditions hereinafter set forth, is willing to assign to the Assignee certain of the Assignor's rights and interests under the Purchase Agreement, and the Assignee is willing to accept such assignment, as hereinafter set forth, in order to enable the Assignee to purchase the Items of Equipment (as hereinafter defined) from the Manufacturer and to lease the Items of Equipment to the Assignor pursuant to the Lease Agreement (as hereinafter defined); and

WHEREAS, pursuant to the provisions hereof, the Manufacturer is willing to execute and deliver to the Assignee the "Consent and Agreement" in the form attached hereto as Annex A and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

1.1 For all purposes of this Agreement, the following terms shall have the following meanings:

"Bank Event of Default" means each of the events described in Section 5.1(a) through (f) of the Loan Agreement, dated as of February 26, 1991, between the Assignee and Societe Generale, acting through its Tokyo branch, subject to the provisions of such Section.

"Delivery Date" means the date of the Lease Supplement for the Items of Equipment, which date shall be the date on which the Items of Equipment are delivered to and accepted by the Assignee under this Agreement and the

Purchase Agreement and the Assignee leases the Items of Equipment to the Assignor pursuant to the Lease Agreement.

"Dollars" or "$" means the lawful currency of the United States of America.

"Item of Equipment" means each of the twenty-three General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives listed by road numbers in the Lease Supplement.

"Lease Agreement" means the Lease Agreement dated as of February 26, 1991 between the Assignee, as Lessor, and the Assignor, as Lessee, and all annexes, exhibits, schedules and supplements thereto, all as amended, modified or supplemented from time to time.

"Lease Supplement" means the Lease Supplement, substantially in the form of Exhibit A to the Lease Agreement, to be entered into between the Assignor and the Assignee on the Delivery Date for the purpose of leasing the Items of Equipment under and pursuant to the terms of the Lease Agreement, and any amendment to the Lease Supplement.

"Manufacturer" means General Motors Corporation (Electro-Motive Division), a Delaware corporation, and its successors and assigns.

"Mortgage" means the Mortgage, Assignment and Security Agreement, dated as of February 26, 1991, between the Assignee and Societe Generale, acting through its Tokyo branch, as Agent, and all annexes, supplements and exhibits thereto, all as amended, modified or supplemented from time to time.

"Participation Agreement" means the Participation Agreement dated as of February 26, 1991 among the Assignor, as Lessee, Societe Generale, acting through its Tokyo branch, as Lender and as Agent, and the Assignee, as Lessor, and all annexes, exhibits, schedules and supplements thereto, all as amended, modified or supplemented from time to time.

"Purchase Agreement" means the Term Sheet and Reliability Guarantee dated July 8, 1988 between the Manufacturer and the Assignor, as amended by letters dated February 23, 1989 and April 9, 1990 providing, among other things, for the manufacture and sale by the Manufacturer to the Assignor of fifty General Motors Corporation (Electro-Motive Division) SD-60 diesel electric locomotives, as such Purchase Agreement has been amended, modified or supplemented to the date hereof.

"Purchase Price" means the $33,855,795.07 to be paid for the Items of Equipment.

1.2 Except as otherwise provided herein, all other capitalized terms that are defined in Appendix X to the Participation Agreement are used herein with the same meanings.

SECTION 2. ASSIGNMENT AND SALE.

2.1 Subject to the terms and conditions of this Agreement, the Assignor does hereby assign, transfer and set over unto the Assignee all the Assignor's right, title and interest in and to the Purchase Agreement (except to the extent reserved below), including, without limitation:

(a) the right upon valid tender by the Manufacturer to purchase the Items of Equipment pursuant to the Purchase Agreement (including the right to accept delivery of the Items of Equipment and the records and other documents relating thereto), the right to take title to the Items of Equipment and the right to be named the "Buyer" in the bill of sale to be delivered by the Manufacturer for the Items of Equipment pursuant to the Purchase Agreement;

(b) all claims for damages in respect of the Items of Equipment arising as a result of any default by the Manufacturer under the Purchase Agreement including, without limitation, all warranty and indemnity provisions contained in the Purchase Agreement, and all claims arising under or in connection with the Purchase Agreement in respect of the Items of Equipment;

(c) any and all rights of the Assignor to compel performance of the terms of the Purchase Agreement in respect of the Items of Equipment;

(d) all rights and remedies that the Assignor may have against the Manufacturer with regard to each Item of Equipment in respect of any warranty, express or implied, as to title, materials, workmanship, design or patent infringement;

(e) with respect to the Items of Equipment, for so long as the Items of Equipment are owned by the Assignee but not leased to the Assignor, (i) the right to demand, accept and retain all rights in and to all property (other than the Items of Equipment), data and services that the Manufacturer is obligated to provide or does provide pursuant to the Purchase Agreement, and (ii) the right to obtain services pursuant to the Purchase Agreement;

reserving to the Assignor, however:

(i) to the extent the Purchase Agreement is deemed to relate to other property, all of the rights in the Purchase Agreement not related to the Items of Equipment;

(ii) all the rights to, interests in, credits for and repayment of any advance payments made or to be made in respect of the Items of Equipment under the Purchase Agreement and any other payments made or to be made by the Assignor in respect of the Items of Equipment under the Purchase Agreement and amounts credited or to be credited by the Manufacturer under the Purchase Agreement; and

(iii) with respect to the Items of Equipment, so long as the Items of Equipment are leased to the Assignor pursuant to the Lease Agreement, (A) the right to demand, accept and retain all rights in and to all property (other than the Items of Equipment), data, services and customer support that the Manufacturer is obligated to provide or does provide pursuant to the Purchase Agreement, and (B) the right to obtain services, training, data and demonstration and test runs pursuant to the Purchase Agreement.

2.2 The Assignee hereby accepts the foregoing assignment, subject to the terms hereof.

2.3 Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, the Assignee hereby authorizes the Assignor to exercise to the exclusion of the Assignee, and the Assignor shall exercise in the Assignor's name, all rights and powers of the Assignor under the Purchase Agreement including, without limitation, the right to retain any recovery or benefit resulting under the Purchase Agreement in respect of the Items of Equipment and the rights to enforce any indemnity, warranty or guarantee, except that;

(a) the Assignor may not exercise any of the rights assigned under this Agreement that are referred to in clause (a) of Section 2.1 unless prior to the exercise thereof the Assignee shall have delivered on the Delivery Date to the Manufacturer written notice that the Assignee has released such rights with respect to the Items of Equipment; and

(b) the Assignor shall not enter into any change order or other amendment, modification or supplement to the Purchase Agreement without the prior written consent of the Assignee if such change order, amendment, modification or supplement would:

(i) substitute another diesel locomotive for an Item of Equipment that the Assignee is entitled to purchase under the Purchase Agreement;

(ii) increase the purchase price of any Item of Equipment to an amount in excess of the Purchase Price (without prejudice to the operation of Section 7);

(iii) postpone the Delivery Date beyond February 28, 1991 (without prejudice to the operation of Section 7); or

(iv) except as provided in the Purchase Agreement, result in any rescission, cancellation or termination of the Purchase Agreement.

2.4 Notwithstanding any provision herein to the contrary, the assignment set forth in clauses (b), (c), (d) and (e) of Section 2.1 shall terminate with respect to any Item of Equipment, and all such rights and remedies thereunder with respect to such Item of Equipment shall revert to the Assignor, upon the purchase by the Assignor of such Item of Equipment pursuant to Sections 9, 10, 15 or 19 of the Lease Agreement.

2.5 It is understood that the execution by the Assignor of this Agreement is subject to the condition that concurrently with the delivery of the Items of Equipment, the Assignee shall lease the Items of Equipment to the Assignor under the Lease Agreement.

SECTION 3. PERFORMANCE.

3.1 It is expressly agreed that, anything herein contained to the contrary notwithstanding:

(a) on or prior to the Delivery Date the Assignor shall secure execution by the Manufacturer of the Consent and Agreement in the form attached as Annex A hereto;

(b) prior to the Delivery Date the Assignor shall perform the obligations to be performed by it with respect to each Item of Equipment under the Purchase Agreement on or before the Delivery Date;

(c) the Assignor shall exercise its rights and perform its obligations under the Purchase Agreement to the extent that such rights and obligations have not been assigned to or assumed hereunder by the Assignee;

(d) except to the extent such duties and obligations are to be performed by the Assignee as provided in Section 4 below, the Assignor will at all times remain liable to the Manufacturer under the Purchase Agreement to perform all the duties and obligations of the Assignor thereunder to the same extent as if this Agreement had not been executed;

(e) the exercise by the Assignee of any of the rights assigned or performance of the duties or obligations assumed hereunder will not release the Assignor from any of its duties or obligations to the Manufacturer under the Purchase Agreement, except to the extent that such exercise or performance by the Assignee will constitute performance of such duties and obligations to the Manufacturer; and

(f) except as provided in Sections 3.5 and 4 below, the Assignee will not have any obligation or liability under the Purchase Agreement by reason of, or arising out of or in connection with, this Agreement or be obligated to perform any of the obligations or duties of the Assignor under the Purchase Agreement or to make any payment (other than to pay to the Manufacturer an amount equal to the Purchase Price on the Delivery Date, to the extent and upon the terms and conditions set forth in the Purchase Agreement, this Agreement and the Consent and Agreement) or to make any inquiry as to the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce a claim for any payment assigned hereunder.

3.2 Nothing contained herein will subject the Manufacturer to any liability to which it would not otherwise be subject under the Purchase Agreement or modify in any respect the Manufacturer's contract rights thereunder nor require the Manufacturer to transfer title to or possession of any Item of Equipment prior to receipt of payment in full therefor as provided in the Purchase Agreement; provided, that payment by the Assignee of the Purchase Price will constitute payment in full of the purchase price of the Items of Equipment referred to in the Purchase Agreement.

3.3 The Assignor hereby appoints and constitutes, effective upon the occurrence of an Event of Default under the Lease Agreement and so long as such Event of Default is continuing thereunder, the Assignee, and its successors and assigns, the Assignor's true and lawful attorney, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due under or arising out of or in connection with the Purchase Agreement to the extent that the same have been assigned by this Agreement and, for such period as the Assignee may exercise rights with respect thereto under this Agreement, to endorse any checks, drafts, orders or other instruments in connection therewith and to file any claims or take any action or institute (or, if

previously commenced, assume control of) any proceedings and to obtain any recovery in connection therewith that the Assignee may deem to be necessary or advisable with respect to such monies and claims for monies.

3.4 (a) Any notice, declaration, instruction, demand, request, consent, approval or other communication (a "communication") to be made under or pursuant to this Agreement will be made only in writing and may be given by airmail, telegram, cable, telex, telecopy or telefax or any other customary means of communication, and any such communication shall be effective when delivered (i) if to the Manufacturer at 9301 W. 55 St., Administration Building, Lobby Desk, LaGrange, IL 60665, Attention: Manager of Finance, Telecopy/Telefax: 010-1-312-387-6312, or at such address as Manufacturer may from time to time designate and the Manufacturer shall be entitled and obligated to treat any such communication made by the Assignee as a communication for all purposes of this Agreement, (ii) if to the Assignor, at Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018, Attention: Treasurer, Telex: 710-670-0007, Answerback: UPCORP NYK, Telecopy/Telefax: 215-861-3220, or at such other address as Assignor may from time to time designate, and (iii) if to the Assignee, at 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan, Attention: General Manager, Telecopy/Telefax: 81-3-3281-0215, or at such other address as Assignee may from time to time designate.

(b) The Manufacturer will not be deemed to have knowledge of, and need not recognize, the occurrence, continuance, or discontinuance of an Event of Default under the Lease Agreement or any Item of Equipment being no longer subject to the Lease Agreement unless the Manufacturer has received from the Assignee written notice thereof, and when acting in accordance with the terms and conditions of the Purchase Agreement and this Agreement, the Manufacturer may rely conclusively upon any such notice. To the extent that the Assignee asserts any claims or exercises any rights under the Purchase Agreement, the Manufacturer will deal solely and exclusively with the Assignee as the Assignor under the Purchase Agreement. Promptly after all Events of Default under the Lease Agreement have been remedied or such Item of Equipment once again becomes subject to the terms of the Lease Agreement, the Assignee shall give written notice of the same to the Manufacturer, with a copy to the Assignor and upon the Manufacturer's receipt of such notice, the Assignor will have all of the rights that it has hereunder and under the Consent and Agreement in the absence of notice from the Assignee of an Event of Default.

3.5 Without in any way releasing the Assignor from any of its duties or obligations under the Purchase Agreement, the Assignee confirms for the benefit of the Manufacturer that, insofar as the provisions of the Purchase Agreement relate to the Items of Equipment, when exercising any rights under the Purchase Agreement or when making any claim with respect to any Item of Equipment or other goods or services delivered or to be delivered pursuant to the Purchase

Agreement, the terms and conditions of the Purchase Agreement will apply to and be binding upon the Assignee to the same extent as the Assignor; provided, however, that nothing contained in this Agreement will in any way diminish or limit the provisions of the Assignor's agreement in Section 8 below with respect to any liability of the Assignee.

SECTION 4. PAYMENTS.

4.1 Subject to the satisfaction or waiver by the Assignee of the conditions set forth in Section 3 of the Participation Agreement required to be satisfied on or prior to the Delivery Date and further subject to Section 7 hereof, the Assignee agrees to pay on the Delivery Date to the Manufacturer, in consideration for the transfer of all the right, title and interest in and to the Items of Equipment in accordance herewith, the Purchase Price by wire transfer of the amount thereof to the Manufacturer's Account No. 50-63191 at the First National Bank of Chicago, Chicago, Illinois.

4.2 Notwithstanding any other provision herein, in the event that any change in any applicable law, rule or regulation or in the interpretation or administration thereof will make it unlawful for the Assignee to make or fund the Purchase Price, then the Assignee will forthwith notify the Assignor thereof, and the obligation of this Agreement, including that of the Assignee to pay the Purchase Price pursuant to Section 4.1, will, if such payment has not been made, cease to have any effect and this Agreement will be without further force or effect.

SECTION 5. FURTHER INSTRUMENTS.

The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Agreement and of the rights and powers herein granted or intended to be granted.

SECTION 6. REPRESENTATIONS AND WARRANTIES.

6.1 The Assignor hereby represents and warrants that:

(a) a true and complete copy of the Purchase Agreement has been furnished to the Assignee;

(b) the Purchase Agreement is in full force and effect and is enforceable in accordance with its terms;

(c) the Assignor is not in default under the Purchase Agreement;

(d) the Purchase Price constitutes full, adequate and fair consideration for the Items of Equipment; and

(e) the Assignor has not assigned, mortgaged, charged, pledged or encumbered the whole or any part of the rights assigned hereby with respect to any or all of the Items of Equipment under the Purchase Agreement to anyone other than the Assignee.

6.2 The Assignor hereby covenants that:

(a) except as provided in the Mortgage, the Assignor shall not assign, mortgage, charge, pledge or encumber, so long as this Agreement remains in effect, the whole or any part of the rights under the Purchase Agreement hereby assigned with respect to any or all of the Items of Equipment to anyone other than the Assignee; and

(b) upon delivery of the Items of Equipment to the Assignee pursuant to the Purchase Agreement and this Agreement, the Assignee will acquire such title to the Items of Equipment as would have been conveyed to the Assignor under the Purchase Agreement but for the execution of this Agreement and the Items of Equipment will be free and clear of all liens arising from the act of the Assignor.

SECTION 7. TERMINATION.

7.1 Upon the occurrence of an Event of Default under the Lease Agreement or, if the Items of Equipment have not been delivered by February 28, 1991, the Assignee will have the right to terminate this Agreement by notice given to the Assignor and the Manufacturer.

7.2 If any of the conditions set forth in Section 3 of the Participation Agreement are not satisfied or waived as of the Delivery Date, the Assignee will have the right to terminate this Agreement by notice to the Assignor and the Manufacturer, whereupon the Assignee will have no further obligation to the Assignor or the Manufacturer hereunder.

7.3 If the Assignee fails to perform its obligation to purchase the Items of Equipment on the Delivery Date, the Assignor will have the right to terminate this Agreement by giving written notice thereof to the Assignee and the Manufacturer.

7.4 Upon such termination neither party will have any further rights or obligations hereunder, except that the Assignor will remain responsible to the

Manufacturer under Sections 3.1(d) and 3.1(e) of this Agreement and the Assignor will remain liable to the Assignee under Section 8 of this Agreement, and that such termination will not affect the obligations of the Assignor under the Purchase Agreement, including, without limitation, the obligation that, as between the Manufacturer and the Assignor, should any termination hereunder cause any delay in delivery of the Items of Equipment, the Assignor will be liable for any costs of such delay under the Purchase Agreement.

SECTION 8. INDEMNITIES.

The Assignor hereby undertakes to indemnify and hold harmless the Assignee from all claims, costs, expenses, damages and liabilities of whatever kind and nature imposed on, incurred by or asserted against Assignee in any way relating to or arising out of or in connection with the Purchase Agreement and this Agreement or any action or inaction of the Assignor in connection with the Purchase Agreement and this Agreement unless such claims, costs, expenses, damages and liabilities are attributable to or caused by the willful misconduct or gross negligence of the Assignee or breach of the Assignee's obligations under this Agreement.

SECTION 9. CONFIDENTIALITY.

9.1 The Assignor and the Assignee agree that they will not disclose the terms of the Purchase Agreement to any third party except (a) as required by applicable law or governmental regulation, (b) as required for the financing of the Items of Equipment, (c) with the prior written consent of the Manufacturer, the Assignee and the Assignor, or (d) in connection with any sale or lease of the Items of Equipment. In connection with any such disclosure of the Purchase Agreement or of the information contained therein pursuant to clause (a) of this Section 9.1, the Assignee or the Assignor, as the case may be, shall request and use its best efforts to obtain confidential treatment of the Purchase Agreement and the information contained therein. In making such request and using such best efforts, the Assignee or the Assignor, as the case may be, shall consult with the other party hereto and the Manufacturer, in making and supporting its request for confidential treatment. In connection with any such disclosure of the Purchase Agreement or of the information contained therein to any other third party pursuant to the clauses (b) through (d) of this Section 9.1, the Assignee or the Assignor, as the case may be, shall cause such person to treat the Purchase Agreement and the information contained therein as privileged and confidential.

SECTION 10. GOVERNING LAW; ASSIGNMENT; COUNTERPARTS.

10.1 This Agreement will be governed by and construed in accordance with the laws of the State of New York (excluding the laws applicable to conflicts or choice of law).

10.2 Except as otherwise provided in the Mortgage, neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other and the Manufacturer.

10.3 This Agreement may be executed in any number of counterparts (and each of the parties hereto shall not be required to execute the same counterpart). Each counterpart of this Agreement, including a signature page executed by either party hereto, shall be an original counterpart of this Agreement but all of such counterparts together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Name: John B. Larsen
Title: Assistant Treasurer

NBB EATON LEASE CO., LTD.

By: _____
Name: Leonard B. Shavel
Title: Attorney-in-fact

COMMONWEALTH OF PENNSYLVANIA:

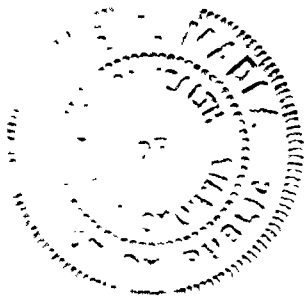
SS

COUNTY OF LEHIGH :

On this, the 25th day of February, 1991, before me, a notary public, personally appeared John B. Larsen, who acknowledged himself to be the Assistant Treasurer of Union Pacific Railroad Company, and that he, as such Assistant Treasurer, being duly empowered and authorized to do so, executed the within instrument for the purposes therein contained, by signing his name as such Assistant Treasurer.

In witness whereof, I hereunto set my hand and official seal.

(NOTARIAL SEAL)



Valene A. Madea
Notary Public

My Commission Expires:

Notarial Seal
Valene A Madea, Notary Public
Bethlehem Northampton County
My Commission Expires Oct 10, 1994

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF PHILADELPHIA :

On this, the 25TH day of February, 1991 before me, a notary public, personally appeared Leonard B. Shavel, who acknowledged himself to be the Attorney-in-fact of NBB Eaton Lease Co., Ltd., and that he, as such Attorney-in-fact, being duly empowered and authorized to do so, executed the within instrument for the purposes therein contained, by signing his name as such Attorney-in-fact.

In witness whereof, I hereunto set my hand and official seal.

(NOTARIAL SEAL)

Rosemary Pasquariello
Notary Public

My Commission Expires:

NOTARIAL SEAL
Rosemary Pasquariello Notary Public
City of Philadelphia, Phila County
My Commission Expires May 16 1992

Annex A

CONSENT AND AGREEMENT

This Consent and Agreement is made and entered into as of the 26th day of February, 1991 by the ELECTRO-MOTIVE DIVISION of GENERAL MOTORS CORPORATION, a Delaware corporation (the "Manufacturer"), for the use and benefit of UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UP") and NBB EATON LEASE CO., LTD., a Japanese corporation (the "Assignee").

RECITALS

A. Pursuant to the terms of that certain Term Sheet and Reliability Guarantee dated July 8, 1988, as amended by letters dated February 23, 1989 and April 9, 1990, between the Manufacturer and UP (collectively, the "Purchase Agreement"), the Manufacturer has agreed to sell to UP, and UP has, among other things, agreed to purchase from the Manufacturer, fifty SD-60 Series Diesel Electric Locomotives (the "Locomotives"), which number includes the twenty-three locomotives described on Exhibit A attached hereto and by this reference made a part hereof (the "Assigned Locomotives").

B. UP has agreed to assign to the Assignee all of UP's right to acquire from the Manufacturer the Assigned Locomotives.

C. As a condition to its entering into the assignment with UP relating to the Assigned Locomotives, the Assignee requires that the Manufacturer enter into this Consent and Agreement.

COVENANTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Manufacturer hereby covenants and agrees as follows:

1. Consent to Assignment. The Manufacturer hereby consents to the assignment by UP to the Assignee of UP's right and interest in, under, and to the Purchase Agreement as such document relates to the Assigned Locomotives, including, but not limited to, the right to acquire from the Manufacturer the Assigned Locomotives pursuant to the terms of the Purchase Agreement and hereby consents to the execution of the Mortgage by the Assignee. The Manufacturer agrees that it shall accept performance by the Assignee or, following the occurrence of a Bank Event of Default, the Agent, of the obligations of UP

under the Purchase Agreement with respect to the Assigned Locomotives as though such performance had been made by UP.

2. Continuation of Agreements. All representations, warranties, indemnities, and agreements made by the Manufacturer to UP in the Purchase Agreement, to the extent such representations, warranties, indemnities, and agreements are applicable to the Assigned Locomotives, shall inure to the benefit of, and may be enforced by, the Assignee to the same extent as such representations, warranties, indemnities, and agreements benefit or may be enforced by UP. The Assignee shall not have any obligation or liability under the Purchase Agreement by reason of, or arising out of or in connection with, the assignment between UP and the Assignee, or be obligated to perform any of the obligations or duties of UP under the Purchase Agreement, except for the payment of the purchase price of the Assigned Locomotives in accordance with the terms of such assignment. Notwithstanding the provisions of the immediately preceding sentence, the provisions of subsections 4(b) and 4(c) hereof shall not be affected thereby and shall remain of full force and effect. Furthermore, all claims, demands, counterclaims, and other defenses which the Manufacturer would, in the absence of such assignment, have had against UP shall be available to the Manufacturer against the Assignee to the fullest extent such claims, demands, counterclaims, and other defenses would have been available against UP had such assignment not occurred.

3. Representations and Warranties. The Manufacturer hereby represents and warrants that:

(a) the Manufacturer is a corporation duly organized and existing in good standing under the laws of the State of Delaware;

(b) the making and performance of the Purchase Agreement and of this Consent and Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval, and do not contravene the Manufacturer's Certificate of Incorporation or Bylaws or any indenture, credit agreement, or other contractual agreement to which the Manufacturer is a party or by which it is bound; and

(c) subject to the application of general equitable principles and to the application of bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally, the Purchase Agreement and this Consent and Agreement are legal, valid, and binding obligations of the Manufacturer, enforceable in accordance with their respective terms.

4. Rights and Responsibilities. Nothing contained herein shall be deemed to modify or impair the Manufacturer's contractual rights with respect to

any Locomotives, or to require the Manufacturer to transfer title to or possession of any of the Locomotives prior to receipt of payment in full therefor. Furthermore, notwithstanding anything to the contrary contained herein or in any of the documents and instruments entered into by UP and/or the Assignee with respect to the Assigned Locomotives:

(a) UP shall be and remain fully liable for the performance of its obligations to the Manufacturer with respect to all of the Locomotives, including, but not limited to, the Assigned Locomotives, to the same extent as if the assignment had not occurred;

(b) in connection with the exercise of any rights or the making of any claims against the Manufacturer, its successors and assigns, with respect to the Assigned Locomotives or the goods and services delivered or to be delivered in connection therewith, the terms and conditions of the Purchase Agreement shall apply to, and be binding upon, the Assignee and the Agent; and

(c) the Manufacturer shall not be subject to any liability with respect to any Locomotives, including, but not limited to the Assigned Locomotives, other than as set forth in the Purchase Agreement.

5. Counterparts. This Consent and Agreement may be executed in any number of counterparts (and each of the parties hereto shall not be required to execute the same counterpart). Each counterpart of this Consent and Agreement, including a signature page executed by either party hereto, shall be an original counterpart of this Agreement but all of such counterparts together shall constitute one instrument.

[signatures begin on next page]

IN WITNESS WHEREOF, the Manufacturer has executed this Consent and Agreement, and UP and the Assignee have acknowledged and agreed to its terms, as of the day and year first above written.

GENERAL MOTORS CORPORATION,
ELECTRO-MOTIVE DIVISION

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED TO:

UNION PACIFIC RAILROAD COMPANY,
a Utah corporation

By:_____
Name: John B. Larsen
Title: Assistant Treasurer

NBB EATON LEASE CO., LTD.,
a Japanese corporation

By:_____
Name: Leonard B. Shavel
Title: Attorney-in-fact

EXHIBIT A TO CONSENT AND AGREEMENT

Locomotive Road Numbers

6243
6244
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