

BALL JANIK LLP

A T T O R N E Y S

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WASHINGTON, D.C. 20005

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OF COUNSEL
(202) 466-6532

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RECORDATION NO. 17977 DD, EE
FILED

MAR 17 '99

1-15PM

March 17, 1999

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

I have enclosed two originals of each of the two documents described below, to be recorded pursuant to 49 U.S.C. § 11301.

The first document is an Assignment and Assumption Agreement, a secondary document, dated as of March 17, 1999. The primary document to which this is connected is recorded under Recordation No. 17977. We request that this document be recorded under Recordation No. 17977-DD.

The names and addresses of the parties to the Assignment and Assumption Agreement are:

Assignor:

National Railway Equipment Co.
14400 South Robey
Dixmoor, IL 60426

Assignee:

The CIT Group/Equipment Financing, Inc.
1211 Avenue of the Americas, 20th Floor
New York, NY 10036

Honorable Vernon A. Williams
March 17, 1999
Page 2

A description of the equipment covered by the Assignment and Assumption Agreement consists of 28 locomotives numbered SP 7400, 7486, 9194, 9243, 9245, 9254, 9273, 9282, 9294, 9300, 9308, 9328, 9330, 9333, 9337, 9345, 9347, 9359, 9362, 9373, 9375, 9385, 9391, 9392, 9395, 9400, 9401, and 9402.

The second document is a Memorandum of Purchase Agreement, a secondary document, dated as of March 17, 1999. The primary document to which this is connected is recorded under Recordation No. 17977. We request that this document be recorded under Recordation No. 17977-EE.

The names and addresses of the parties to the Memorandum of Purchase Agreement are:

Seller:

National Railway Equipment Co.
14400 South Robey
Dixmoor, IL 60426

Purchaser:

The CIT Group/Equipment Financing, Inc.
1211 Avenue of the Americas, 20th Floor
New York, NY 10036

A description of the equipment covered by the Memorandum of Purchase Agreement consists of 28 locomotives numbered SP 7400, 7486, 9194, 9243, 9245, 9254, 9273, 9282, 9294, 9300, 9308, 9328, 9330, 9333, 9337, 9345, 9347, 9359, 9362, 9373, 9375, 9385, 9391, 9392, 9395, 9400, 9401, and 9402.

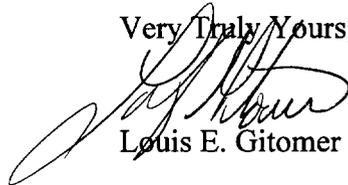
A fee of \$52.00 is enclosed. Please return an original of each document to:

Louis E. Gitomer
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005

Honorable Vernon A. Williams
March 17, 1999
Page 3

A short summary of the documents to appear in the index follows: (1) an Assignment and Assumption Agreement between National Railway Equipment Co., 14400 South Robey, Dixmoor, IL 60426, and The CIT Group/Equipment Financing, Inc., 1211 Avenue of the Americas, 20th Floor, New York, NY 10036; and (2) a Memorandum of Purchase Agreement between National Railway Equipment Co., 14400 South Robey, Dixmoor, IL 60426, and The CIT Group/Equipment Financing, Inc., 1211 Avenue of the Americas, 20th Floor, New York, NY 10036, both covering 28 locomotives numbered SP 7400, 7486, 9194, 9243, 9245, 9254, 9273, 9282, 9294, 9300, 9308, 9328, 9330, 9333, 9337, 9345, 9347, 9359, 9362, 9373, 9375, 9385, 9391, 9392, 9395, 9400, 9401, and 9402.

Very Truly Yours,



Louis E. Gitomer

Enclosures

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

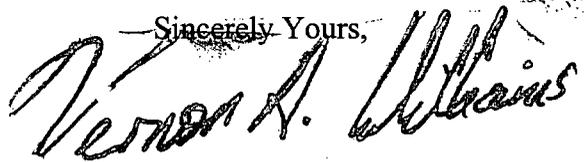
OFFICE OF THE SECRETARY

Louis E. Gitomer
Ball Janik, LLP
1455 F Street, Suite 225
Washington, D.C. 20005

Dear Sir:

The enclosed documents (s) was recorded pursuant to the provisions of 49 U.S.C.
11301 and CFR 1177.3 (c), on 3-17-99 at 1:15 PM, and
assigned recordation numbers (s):17977-DD and 17977-EE .

Sincerely Yours,

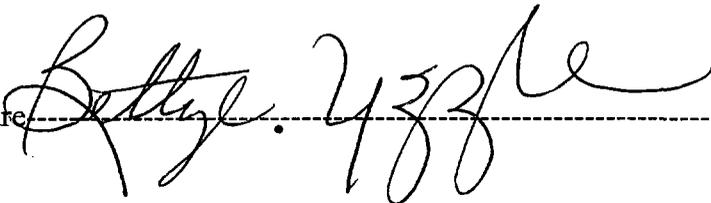


Vernon A. Williams

Enclosure(s)

\$ 52.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature



MAR 17 '99

1-15PM

EXECUTION VERSION

ASSIGNMENT AND
ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of March 17, 1999 (this "Agreement"), between NATIONAL RAILWAY EQUIPMENT CO., an Illinois corporation ("Assignor") and THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Assignee").

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to that certain Purchase Agreement dated as of the date hereof (as amended, modified or supplemented from time to time, the "Purchase Agreement"), wherein, inter alia, Assignor agrees to sell to Assignor certain locomotives leased to Union Pacific Railroad Company (as successor in interest to Southern Pacific Transportation Company), as lessee ("Lessee"), pursuant to that certain Equipment Lease dated as of March 31, 1993 as supplemented by Lease Supplement No. A-1 executed April 6, 1993, Lease Supplement No. A-2 executed April 6, 1993, Lease Supplement No. A-3 executed April 6, 1993, Lease Supplement No. A-4 executed April 6, 1993, Lease Supplement No. A-5 dated as of May 19, 1993 and Lease Supplement No. A-6 dated as of May 19, 1993 and as amended by Amendment Agreement No. 1, dated as of October 1, 1993, to Lease Supplement No. A-4 (together with all schedules, supplements and amendments thereto, the "Lease") between Assignor (as assignee of Owner Trustee (as defined below)), as lessor, and Lessee;

WHEREAS, the Lease pertains to the locomotives set forth on Schedule A attached hereto;

WHEREAS, the Lease was filed and recorded with the Surface Transportation Board as follows: Equipment Lease dated as of March 31, 1993, between Assignor (as assignee of Owner Trustee) as lessor and Lessee as lessee, including Lease Supplement No. A-1 (covering seven locomotives numbered SP 7400, 9194, 9245, 9254, 9273, 9294 and 9300), Lease Supplement No. A-2 (covering five locomotives numbered SP 9308, 9328, 9337, 9345 and 9347), Lease Supplement No. A-3 (covering four locomotives numbered SP 9359, 9362, 9373 and 9385), and Lease Supplement No. A-4 (covering four locomotives numbered SP 9392, 9395, 9400 and 9401), which was recorded at the Interstate Commerce Commission (the "ICC") on April 20, 1993 at 12:40 p.m. under Recordation Number 17977-B; Lease Supplement No. A-5 dated as of May 19, 1993 (covering four locomotives numbered SP 7486, 9243, 9282 and 9330) and Lease Supplement No. A-6 dated as of May 19, 1993 (covering four locomotives numbered SP 9333, 9375, 9391 and 9402), which were recorded at the ICC on May 21, 1993 at 11:15 a.m. under Recordation Numbers 17977-J and 17977-K, respectively; and Amendment Agreement No. 1 dated as of October 1, 1993, which was recorded at the ICC on December 15, 1993 at 2:35 p.m. under Recordation Number 17977-T;

WHEREAS, Assignor desires to transfer to Assignee all of its right, title and interest in, to and under each of (a) the Lease and (b) the Agreement to Lease dated as of March 31, 1993, as amended, modified or supplemented from time to time, between Assignor, as assignee of Owner Trustee and as Owner Participant Assignee (as defined below), and Lessee and the Tax Indemnity Agreement dated as of March 31, 1993, as amended, modified or

supplemented from time to time, between Assignor, as Owner Participant Assignee, and Lessee (each, an "Assigned Agreement" and collectively, the "Assigned Agreements");

WHEREAS, with respect to the Lease and the Assigned Agreements, Lessee is willing to execute and deliver to Assignee a Notice and Acknowledgment, substantially in the form of Annex 1 hereto.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

Section 1. Definitions. Capitalized terms used herein without definition shall have the same meanings and the same rules of interpretation as in the Purchase Agreement.

Section 2. Transfer and Assumption. Assignor does hereby sell, assign and transfer to Assignee all of Assignor's present and future rights, obligations and interests in, to and under each of the Lease and each Assigned Agreement (the "Assignor's Interest"), and Assignee hereby accepts the Assignor's Interest from Assignor. Assignor and Assignee agree that such sale, assignment, transfer and acceptance is effective on the Closing Date. Assignee agrees that, from and after the Closing Date, it shall be bound by all the terms of, and shall have assumed and undertaken to perform all the obligations of Assignor with respect to, the Assignor's Interest.

Section 3. Effect of Transfer. Upon the execution and delivery of this Agreement, Assignee shall be deemed the "Lessor" for all purposes of the Lease and the "Owner Trustee" and the "Owner Participant" for all purposes of the Assigned Agreements, and each reference in the Lease to "Lessor" or in either Assigned Agreement to "Owner Trustee" or "Owner Participant" shall thereafter be deemed to be Assignee, except with respect to Reserved Rights. Assignee expressly assumes hereunder all and any liability and obligation of Assignor accruing or arising under the Lease and the Assigned Agreements or in respect of the Equipment on and after the Closing Date and Assignor shall be released from any such liability and obligation accruing or arising after the Closing Date.

Section 4. No Third Party Benefit. The provisions of this Agreement are for the sole benefit of Assignor and Assignee and their respective successors and assigns, and are not for the benefit, directly or indirectly, of any other Person, except as expressly agreed by the other parties hereto.

Section 5. Notices. Any notices provided for in the Lease or either Assigned Agreement shall be delivered to Assignee at the following address or such other place as Assignee may designate in accordance with the Lease:

The CIT Group/Equipment Financing, Inc.
1211 Avenue of the Americas, 20th Floor
New York, NY 10036

Attention: Manager - Rail Group
Tel: 212-536-9319
Fax: 212-536-9397

Section 6. Headings. The headings of the Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7. GOVERNING LAW. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE GENERAL OBLIGATIONS LAW).

Section 8. Execution in Counterparts. This Agreement and any amendments, waivers or consents hereto may be executed by Assignor and Assignee in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9. Purchase Agreement. The rights and obligations of the parties hereto are subject to the terms and conditions of the Purchase Agreement.

Section 10. Recordation. Assignor hereby authorizes the recordation of this Agreement and hereby agrees to execute such further documentation as Assignee may reasonably request in order to carry out the purpose of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption Agreement to be duly executed and sealed as of the day and year first written above.

NATIONAL RAILWAY EQUIPMENT CO.,
as Assignor

By: *S. J. Beal*
Name: *PRÉSIDENT*
Title:

THE CIT GROUP/EQUIPMENT
FINANCING, INC., as Assignee

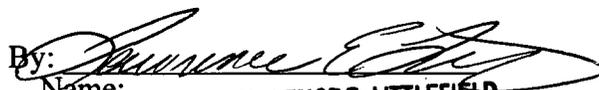
By: _____
Name:
Title:

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption Agreement to be duly executed and sealed as of the day and year first written above.

NATIONAL RAILWAY EQUIPMENT CO.,
as Assignor

By: _____
Name:
Title:

THE CIT GROUP/EQUIPMENT
FINANCING, INC., as Assignee

By: 
Name: LAWRENCE E. LITTLEFIELD
Title: VICE PRESIDENT

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On this 26th day of February, 1999, before me personally appeared Lawrence Littlefield, to ~~me~~ personally known, who, being by me duly sworn, says that ~~(s)~~ he is Vice-President of THE CIT GROUP/EQUIPMENT FINANCING, INC., that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and ~~(s)~~ he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara Garner
Notary Public

My commission expires _____

BARBARA GARNER
Notary Public, State of New York
No. 01GA5065133
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Sept. 3, ~~1999~~
2000

FORM OF NOTICE AND ACKNOWLEDGMENT

March __, 1999

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Attention: John Billingsley

Ladies and Gentlemen:

Reference is hereby made to (a) that certain Equipment Lease dated as of March 31, 1993, as supplemented by Lease Supplement No. A-1 executed April 6, 1993, Lease Supplement No. A-2 executed April 6, 1993, Lease Supplement No. A-3 executed April 6, 1993, Lease Supplement No. A-4 executed April 6, 1993, Lease Supplement No. A-5 dated as of May 19, 1993 and Lease Supplement No. A-6 dated as of May 19, 1993 and as amended by Amendment Agreement No. 1, dated as of October 1, 1993, to Lease Supplement No. A-4 (together with all schedules, supplements and amendments thereto, the "Lease") between Union Pacific Railroad Company (as successor in interest to Southern Pacific Transportation Company), as lessee ("Lessee") and National Railway Equipment Co. (as assignee of U.S. Trust Company of California, N.A. ("Owner Trustee")) as lessor ("Seller"), and (b) the Agreement to Lease dated as of March 31, 1993 (as amended, modified or supplemented from time to time, the "Agreement to Lease") between Seller, as assignee of Owner Trustee and as assignee of the Owner Participants (as defined therein), and Lessee.

This will advise you that Seller intends to (i) sell the locomotives subject to the Lease (collectively, the "Equipment") to The CIT Group/Equipment Financing, Inc. ("Purchaser") and (ii) assign to Purchaser all of its right, title and interest in and to the Lease and the Agreement to Lease, provided that the following rights (the "Reserved Rights") shall not be assigned to Purchaser, and are retained by Seller: any right, title and interest of Seller in and to each and every indemnity or other payment on behalf of or in favor of Seller under the Lease and the Agreement to Lease to the extent such indemnity or other payment vests or relates to events occurring prior to the execution and delivery of the Transfer Documents (as defined below), including the right to payment of all indemnities and liability insurance proceeds which are now or hereafter payable to Seller for its own account as lessor under the Lease or as beneficiary of the Assigned Agreements.

Purchaser agrees to be bound by all the terms of, and shall assume and undertake and perform all the obligations of Seller and shall be the "Lessor" for all purposes of the Lease and the "Owner Trustee" for all purposes of the Agreement to Lease upon the execution and delivery of the following documents (collectively, the "Transfer Documents"), (i) a Purchase

Agreement between Seller and Purchaser for the purchase and sale of the Equipment, (ii) an Assignment and Assumption Agreement between Seller and Purchaser in respect of the Lease and the Agreement to Lease and (iii) a Bill of Sale by Seller in favor of Purchaser in respect of the Equipment.

Lessee hereby:

- (a) represents and warrants that the Equipment is subject to the Lease;
- (b) agrees that all of its covenants and obligations under the Lease and the Agreement to Lease shall inure to the benefit of Purchaser from and after the date hereof;
- (c) agrees that all of its indemnities under the Agreement to Lease (including, without limitation, those under Sections 7.1 and 7.2 thereof) continue to remain in full force and effect in favor of Purchaser as if it were an indemnified party originally named therein; and
- (d) agrees that all rights and benefits of the manufacturer's warranty assigned to Lessee pursuant to Section 5 of the Lease shall become the rights and benefits of Purchaser in the circumstances set forth therein.

Lessee hereby represents and warrants for the benefit of Purchaser that, on and as of the date hereof: (a) no "event of default" or "event of loss" under (and as defined in) the Lease has occurred and is continuing, (b) no rent or other amount payable under the Lease or either Assigned Agreement has been prepaid, (c) to the best of Lessee's knowledge, Lessee has no claims of any nature against Seller under or in connection with the Lease or either Assigned Agreement, (d) the lease rate per locomotive is \$181.24 per day, (e) the stipulated loss values payable to Lessor in the event of loss of any of the locomotives are equal to the amounts listed on Schedule 1 hereto, (f) all locomotives are currently in operation and are not subject to casualty or event of loss or currently in need of repair due to a catastrophic failure of the crankshaft or the main generator/alternator, (g) Lessee's obligation to pay rent and all other amounts due or to become due under the Lease is unconditional, and Lessee shall pay all such amounts when due, without any right of setoff, defense, claim or counterclaim and (h) the Equipment is free and clear of all liens, claims and encumbrances (other than as permitted by the Lease).

Seller and Purchaser hereby request, give notice and instruct Lessee that all rentals and other amounts payable pursuant to the Lease due and payable after the Closing Date of March ____, 1999 should be made to Purchaser or its assignee and forwarded to the following address:

The CIT Group/Equipment Financing, Inc.
1211 Avenue of the Americas, 20th Floor
New York, NY 10036
Attention: Manager - Rail Group.

If payments are made by wire transfer, all payments should be paid to the account of Purchaser at:

The Chase Manhattan Bank
640 Madison Avenue
New York, NY 10021
ABA No. 021-000-021

Account Name: The CIT Group/Equipment Financing, Inc.
Account No: 116-003855

From and after the date hereof all notices to be given to the "Lessor" under the Lease or to the "Owner Trustee" or the "Owner Participant" under the Lease and the Agreement to Lease should be given to:

The CIT Group/Equipment Financing, Inc.
1211 Avenue of the Americas, 20th Floor
New York, NY 10036
Attention: Manager - Rail Group

By the execution and delivery of this letter agreement, Lessee and Purchaser agree that the Lease will terminate as to each unit of Equipment on a unit per unit basis as Lessee takes delivery of certain SD40-2 locomotives pursuant to that certain letter agreement dated January 14, 1999 between Purchaser and Lessee, as such letter agreement shall be superseded by a lease agreement to be entered into by Purchaser and Lessee.

This letter agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This letter agreement shall in all respects be governed by, and construed in accordance with, the laws of the state of New York, including all matters of construction, validity and performance, without giving effect to principles of conflicts of laws (other than Title 14 of Article 5 of the General Obligations Law).

[Remainder of Page Intentionally Left Blank]

Please execute this letter to confirm your acknowledgment and consent to the foregoing in the space provided below and return it to Purchaser at the above address.

Sincerely,

NATIONAL RAILWAY EQUIPMENT CO.

By: _____
Its:

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: _____
Its:

Acknowledged and Consented

UNION PACIFIC RAILROAD COMPANY

By: _____
Its:

Schedule 1
to
Notice and Acknowledgment

LOCOMOTIVES

<u>Unit No.</u>	<u>Type</u>
SP 7400	SD-45-2
SP 9194	SD-45-T2
SP 9245	SD-45-T2
SP 9254	SD-45-T2
SP 9273	SD-45-T2
SP 9294	SD-45-T2
SP 9300	SD-45-T2
SP 9308	SD-45-T2
SP 9328	SD-45-T2
SP 9337	SD-45-T2
SP 9345	SD-45-T2
SP 9347	SD-45-T2
SP 9359	SD-45-T2
SP 9362	SD-45-T2
SP 9373	SD-45-T2
SP 9385	SD-45-T2
SP 9392	SD-45-T2
SP 9395	SD-45-T2
SP 9400	SD-45-T2
SP 9401	SD-45-T2
SP 7486	SD-45-2
SP 9243	SD-45-T2

<u>Unit No.</u>	<u>Type</u>
SP 9282	SD-45-T2
SP 9330	SD-45-T2
SP 9333	SD-45-T2
SP 9375	SD-45-T2
SP 9391	SD-45-T2
SP 9402	SD-45-T2