

RECORDATION NO. 17926 FILED 8425

AUG 25 1992 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

Assignment and Security Agreement

This Assignment and Security Agreement, dated as of August 17, 1992, is hereby entered into by and between Union Pacific Holdings, Inc., a Utah corporation (the "Assignor"), and Electro-Motive Division, General Motors Corporation, a Delaware corporation (the "Secured Party").

WITNESSETH:

WHEREAS, the Assignor has assumed under a Purchase Agreement Assignment, dated as of August 1, 1992, certain obligations under a locomotive purchase agreement (the "Purchase Agreement"), pursuant to which the Assignor has agreed to purchase from the Secured Party, and the Secured Party has agreed to sell to the Assignor, 50 new Model SD-60M diesel-electric locomotives (the "Locomotives"); and

WHEREAS, prior to the closing of such purchase and sale of the Locomotives, the Secured Party may lease some or all of the Locomotives to Assignor pursuant to a lease between the parties; and

WHEREAS, the Assignor has agreed to grant to the Secured Party the security interests set forth herein as security for the performance by Assignor of its obligations under the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Grant of Security Interest. As general and continuing collateral security for the full and complete performance by Assignor of all of its obligations under the Purchase Agreement,

including its obligation to pay the full purchase price for the Locomotives delivered thereunder (the "Obligations"), the Assignor hereby assigns, grants, transfers and pledges unto the Secured Party and its successors and assigns, a security interest in all of the Assignor's right, title and interest, whether now owned or hereafter acquired, in the Locomotives delivered under the Purchase Agreement and in that certain Locomotive Sublease Agreement, dated as of August 17, 1992 (the "Sublease"), between the Assignor and Union Pacific Railroad Company, including all rental and other payments to which the Assignor may be entitled under the Sublease (such right, title and interest hereinafter referred to as the "Collateral").

2. Representations of Assignor. The Assignor hereby represents and warrants to the Secured Party as follows:

- a. the Assignor is a corporation duly organized and validly existing under the laws of the state of Utah;
- b. the Assignor has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder;
- c. this Agreement has been duly authorized, executed and delivered by the Assignor and, assuming the due authorization, execution and delivery hereof by the Secured Party, constitutes a legal, valid and binding obligation of the Assignor, enforceable against the Assignor in accordance with its terms, except as such

enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and subject to equitable principles; and

- d. neither the execution and delivery by the Assignor of this Agreement, nor the compliance by the Assignor with the terms of this Agreement will (i) violate any of the terms or provisions of the charter or the bylaws of the Assignor, (ii) violate any provisions of applicable law, or (iii) conflict with, result in a breach of or constitute a default under any indenture, mortgage, security agreement or other instrument to which the Assignor is a party or by which the Assignor is bound.

3. Covenants of Assignor. The Assignor hereby covenants and agrees to and with the Secured Party as follows:

- a. the Assignor shall maintain, preserve and keep in full force and effect its corporate existence and all franchises, licenses, permits and authorizations necessary to conduct its business;
- b. the Assignor shall not enter into any transaction or take any action which would materially and adversely affect the Collateral or the Assignor's ability to

satisfy the Obligations, provided that the Sublease shall not in any event be considered such a transaction or action;

- c. the Assignor shall not sell or encumber the Collateral except pursuant to the Sublease or as otherwise permitted herein;
- d. the Assignor shall, at the Secured Party's request, endorse, execute and deliver all agreements, certificates, instruments, documents or notices reasonably necessary to carry into effect the provisions of this Agreement; and
- e. the Assignor agrees to pay to the Secured Party on demand all reasonable out-of-pocket costs and expenses incurred by the Secured Party (including reasonable attorney's fees and expenses) in connection with the enforcement of this Agreement or the exercise of any rights or remedies hereunder accruing as a result of the default by the Assignor hereunder.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

- a. the Assignor fails to pay when due the purchase price applicable to the Locomotives delivered under the

Purchase Agreement or otherwise fails to perform any material obligation under the Purchase Agreement; or

b. an event of default shall occur under the Sublease; or

c. the Assignor (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing in this subparagraph c.

5. Remedies. If an Event of Default shall occur and be continuing, the Secured Party may exercise any one or more of the remedies hereinafter set forth, it being understood that no remedy is intended to be exclusive of any other remedy and each remedy

shall be cumulative and shall be in addition to every other remedy set forth herein or existing at law or in equity:

- a. the Secured Party may, by written notice to the Assignor, declare the entire unpaid balance of the purchase price for Locomotives delivered to the Assignor under the Purchase Agreement to be immediately due and payable, and thereupon such unpaid balance shall be and become immediately due and payable; or

- b. the Secured Party may proceed to exercise all rights, privileges and remedies of the Assignor under the Sublease and may exercise such rights, privileges and remedies either in the name of the Secured Party or in the name of the Assignor for the benefit of the Secured Party; or

- c. the Secured Party may enter any premises in which the Collateral may be located and may remove such Collateral to such place as the Secured Party may deem advisable and may sell, dispose of, resell, assign, transfer, lease and deliver or otherwise deal or decline to deal with all or any part of the Collateral, in each case with or without advertisement, in one or more sales, at such price or prices, and upon

such commercially reasonable terms either for cash or credit or future delivery, as the Secured Party may elect.

It is hereby understood that the proceeds from any realization on or liquidation of the Collateral, less all costs and expenses incurred by the Secured Party in connection therewith, shall be applied by the Secured Party to satisfy the Assignor's Obligations under the Purchase Agreement.

6. Release of Security Interest. Upon full and complete satisfaction of the Obligations, the assignment and security interest granted under this Agreement and the other rights provided for herein shall, without further act, terminate and the Secured Party, upon request of the Assignor, shall execute and deliver to or as directed by the Assignor an appropriate instrument or instruments evidencing the discharge of the Collateral from the assignment and security interest granted hereunder.

7. No Waiver. No waiver or amendment of or forbearance to enforce any of the Secured Party's rights hereunder shall be effective unless set forth in a written instrument, and shall be limited to the extent expressed therein. No delay on the part of the Secured Party in the exercise of any right or remedy shall operate as a waiver thereof and no single or partial exercise by the Secured Party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

8. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under any such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9. Headings. The captions in this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

10. Assignment. This Agreement shall inure to and be binding upon the successors and permitted assigns of the Assignor and the Secured Party. Neither party has the right to assign this Agreement without the prior written consent of the other party, and any purported assignment effected in violation of this section shall be null and void.

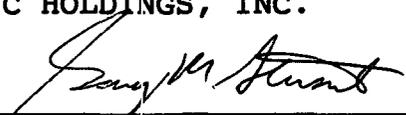
11. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart, when duly executed and delivered, shall be deemed an original and all such counterparts shall together constitute a single instrument.

IN WITNESS WHEREOF, the Assignor and the Secured Party have duly executed and delivered this Agreement as of the date first written above.

UNION PACIFIC HOLDINGS, INC.

[Seal]

Attest: Jandra L. Cannon

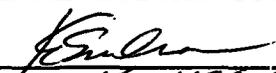
By: 

Name: Gary M. Stuart
Title: Vice President

ELECTRO-MOTIVE DIVISION,
GENERAL MOTORS CORPORATION

[Seal]

Attest: 

^{RM}
By: 

Name: R. McANLESS
Title: ASST. SECRETARY

