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RECORDATION NO. ..... Filed 1425
AUG 28 1979 -12 20 PM
INTERSTATE COMMERCE COMMISSION

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Date AUG 28 1979
Fee $ 110.00
ICC Washington, D.C.

RECORDATION NO. 10770 Filed 1425
AUG 28 1979 -12 20 PM
INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. ..... Filed 1425
AUG 28 1979 -12 20 PM
INTERSTATE COMMERCE COMMISSION

10770-A
RECORDATION NO. ..... Filed 1425
AUG 28 1979 -12 20 PM
INTERSTATE COMMERCE COMMISSION

Counterparts John Keeth

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Lease of Equipment dated as of April 6, 1979 between San Francisco Financial No. III, lessor, and The Western Pacific Railroad Company, lessee.

Dear Sir:

Enclosed herewith for filing pursuant to 49 U.S.C. § 11303 is the Lease of Equipment dated as of April 6, 1979, as amended and assigned to First Security Bank of Utah, N.A., and the Security and Loan Agreement dated as of July 1, 1979 among San Francisco Financial No. III, First Security Bank of Utah, N.A., and General American Life Insurance Company.

The parties to the transaction are:

Lessor: San Francisco Financial No. III, a partnership composed of Steiner Sea, Air & Rail Co. and AUCO Leasing Co.
c/o Steiner Sea, Air & Rail Co.
Spear Street Tower - Suite 2510
One Market Plaza
San Francisco, California 94105

Lessee: The Western Pacific Railroad Company
526 Mission Street
San Francisco, CA 94105

NOTE Please file in this order

~~1) Security and Loan Agreement — A~~
~~2) Lease of Equipment — A~~
~~3) Lease Amendment No. 1 — B~~
~~4) Assignment of Lease & Agreement — C~~

New Number

1) Lease of Equipment - New Number
2) Lease Amendment No 1 - A
3) Assignment of Lease — B
4) Security & Loan Agreement - C

Lender: General American Life Insurance Company
700 Market Street
St. Louis, Mo. 63101

Secured Party: (for the Lendor) First Security Bank of Utah, N.A.
Corporate Trust Department
79 South Main Street
Salt Lake City, Utah 84111

The railroad rolling stock covered by the Lease is:

30 bi-level auto racks on leased Trailer Train flatcars; Lessee road numbers WPB 701-730

2 tri-level auto racks on leased Trailer Train flatcars; Lessee road numbers WPR 731-732

5 Wide deck implement flatcars, rebuilt from cars in series PC 750000 Lessee road numbers WP 1902-1906

Please record one original of each document and stamp the other four copies and the copy of this letter enclosed herewith with the recordation date and return such copies to the delivering messenger who will wait.

A check is enclosed in payment of the applicable recording fee.

Very truly yours,

Paul Kepler

Paul Kepler
President,
Steiner Sea, Air & Rail Co.,
Managing partner of
San Francisco Financial No. III

PK/gm
Encs.

Lease Amendment No 1

10770-A

RECORDATION NO. ..... Filed 1425

AUG 28 1979 - 12 20 PM

INTERSTATE COMMERCE COMMISSION

No #

CERTIFICATE OF A NOTARY PUBLIC

I, HELEN Borgholthaus, do hereby certify that:

(i) I have compared the attached copy of the Lease of Equipment dated as of April 6, 1979, between San Francisco Financial No. III as Lessor and the Western Pacific Railroad Company as Lessee, as amended and assigned to First Security Bank of Utah, N.A., with the original document; and

(ii) The attached copy is a true and correct copy of the original in all respects.

OFFICIAL SEAL
HELEN BORGHOLTHAUS
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Oct. 1, 1981

Helen Borgholthaus
Notary Public

RECORDATION NO. 16770-A Filed 1425
AUG 28 1979 - 12 20 PM
INTERSTATE COMMERCE COMMISSION

LEASE AMENDMENT NO. 1

THIS LEASE AMENDMENT NO. 1, dated as of July 1, 1979, between SAN FRANCISCO FINANCIAL NO. III (the "Lessor") and THE WESTERN PACIFIC RAILROAD COMPANY (the "Lessee")

WITNESSETH

WHEREAS, the parties hereto have executed a Lease of Equipment dated as of April 6, 1979 (the "Lease") setting forth the rights and duties inter sese with regard to the leasing of 25 FRP Trailers; and

WHEREAS, the parties hereto wish to amend said Lease to incorporate the following changes and additions and to provide for the lease of certain other equipment;

NOW, THEREFORE, the parties hereto agree as follows:

1. The following definitions are hereby amended or added to read as follows:

> "Cut-Off Date" shall mean December 31, 1979.
>
> "Equipment Schedule" shall mean a schedule attached hereto and to the Security Document describing with particularity the Units to be leased by the Lessee under the Lease as amended by this Lease Amendment No. 1 and to be subject to the security interest under the Security Document.

"Lender" shall mean General American Life Insurance Company, the Lender under the Security Document.

"Secured Party" shall mean First Security Bank of Utah, N.A., Security Trustee for the Lender under the Security Document.

"Security Document" shall mean the Security and Loan Agreement dated as of July 1, 1979 among the Lender, the Lessor and the Secured Party.

"Units" shall mean collectively, (i) the twenty-five 40 foot trailers described in Equipment Schedule A hereto (the "Trailers"); (ii) the rebuilt hulks to be described in Equipment Schedules attached hereto (the "Rebuilt Hulks"), and (iii) the two and three-level auto racks to be described in Equipment Schedules attached hereto (the "Auto Racks"); a "Unit" shall mean one of such trailers, rebuilt hulks or auto racks.

2. Section 3(c) is hereby amended to read as follows:

(c) Holdover Rent. "Holdover Rent" shall be an amount equal to .044234 percent of Lessor's Cost for Units, in each case to be paid by Lessee to Lessor for each Unit for each day between the date of termination of this Lease as to any Unit and the date of the return of such Unit pursuant to Section 5 herein.

3. Section 3(g) is hereby amended to read as follows:

(g) Method of Rental Payment. Lessee agrees to make all payments of Rent required hereunder to the Lessor or the assignee of Lessor. Initially, payment

shall be made to the Secured Party under the Security Document, at the Secured Party's address specified in Section 23 of the Security Document, by wire transfer of immediately available funds not later than 10:00 a.m. local Salt Lake City time, on each Rental Payment Date; provided that in the event that either the Secured Party or the Lender shall notify the Lessee in writing that the right to receive payment of Rent required hereunder shall have been assigned, Lessee shall make all payment of Rent as provided in said written notice.

4. The last sentence of Section 3(f) is hereby amended tc read as follows:

Lessee will also pay to Lessor, on demand, as Supplemental Rent, to the extent permitted by applicable law, interest at a rate cf ten and one-quarter percent (10-1/4%) per annum on any part of any installment of Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent not paid when demanded by Lessor for the period until the same shall be paid.

5. Section 4(b)(vii) is hereby amended to read as follows:

(vii) except for issuance of applicable certificates of title and appropriate filings under the California Commercial Code as to the Trailers, appropriate filings under the California Commercial Code and the Interstate Commerce Act as to the Auto Racks and the Lease, and appropriate filings under the Interstate Commerce Act as to the Rebuilt Hulks, no recording or filing is necessary in order to establish and protect the

Lessor's title to, and interest in, any Unit or any payment of Rent as against Lessee and any third party.

6. Section 4(b)(xi) is hereby amended to read:

(xi) ownership of the Units by Lessor will entitle Lessor to the benefit of any one of the accelerated methods of depreciation as provided in Section 167(b) of the Code calculated on the basis of an 8-year life, switching to the straight-line method at will without the prior consent of the Commissioner of Internal Revenue, to a salvage value of 10% of Lessor's Cost; the benefit of the 10% investment credit under Section 38 of the Code, in the case of the Trailers and Auto Racks, as to 100% of Lessor's Cost and in the case of the Rebuilt Hulks as to 100% of the cost of rebuilding; and payment or accrual of interest under the Security Document will entitle Lessor to a deduction of such interest as provided in Section 163(a) of the Code.

7. Section 4(b) is hereby amended by the addition of the following subsections following Section 4(b)(xii):

(xiii) the consolidated proforma balance sheet of the Lessee and its subsidiaries as of December 31, 1978, and the Prospectus dated March 28, 1979, of the Lessee, furnished to you in connection with this financing, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein not misleading; and the financial statements contained therein have been prepared in conformity with generally accepted accounting principles for railroad companies applied on a

consistent basis, subject to any exceptions stated therein and in the notes thereto, and correctly and fairly present the financial condition of the Lessee (and its predecessor corporation) as of the dates and the results of its operations for the periods indicated in such statements. No material adverse change has occurred in the condition, financial or otherwise, of the Lessee (or its predecessor company for the period until the date of acquisition of the properties of the predecessor company by the Lessee) since December 31, 1978, other than as disclosed in the Prospectus.

(xiv) The financial statements referred to in subsection (xiii) hereof do not, nor does any written statement furnished by the Lessee in connection with the negotiation of the Lease, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact peculiar to the Lessee which the Lessee has not disclosed in writing which materially affects adversely nor, so far as the Lessee can now forsee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Lessee and its subsidiaries.

(xv) There are no proceedings pending or, to the knowledge of the Lessee threatened, against or affecting the Lessee or any subsidiary in any court or before any governmental authority or arbitration board or tribunal which, in the reasonable opinion of the Lessee will materially and adversely affect the Lessee's ability to perform its obligations under the Lease, the Security Document or the Purchase Order Assignment. Neither the Lessee nor any

subsidiary is in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

(xvi) No Event of Default as defined in the Lease has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as herein defined.

(xvii) The Units are covered by the insurance required by Section 12 of the Lease and all premiums due on or prior to the date hereof in respect of such insurance have been paid in full.

(xviii) The Lessee is a "common carrier" within the meaning of Section 3(a)(6) of the Securities Act of 1933, as amended.

(xix) Lessee has not, nor has any person authorized by Lessee as agent or otherwise in connection with the note of Lessor to the Lender under the Security Document (the "Note") or any similar security of the Lessor, offered the Note or any similar security of Lessor for sale to, or solicited offers to buy any thereof from, or otherwise prepared or negotiated with respect thereto, any prospective purchaser; provided that it is understood and agreed that the Lessee has not authorized or employed the Lessor as its agent in such capacity.

8. Section 4(b)(xiii) is hereby renumbered as Section 4(b)(xx).

9. Section 5(a) shall be amended to read as follows:

(a) Not later than sixty (60) days after the termination of this Lease as to any Unit at the end of the Term with respect thereto, Lessee, at its own cost, expense and risk, will return such Unit by delivering the same to Lessor on suitable property of Lessee, as designated by Lessor, or at nearby facilities, or at such other location as may be agreed upon by Lessor and Lessee and will permit Lessor to store such Unit on such property for a period not exceeding four (4) months after the date of return of such Unit. For each day elapsed between the date of the termination of this Lease as to any Unit at the end of the Term with respect thereto and the date of the return of such Unit pursuant to the preceding sentence of this Section 5(a), Lessee agrees to pay to Lessor Holdover Rent as defined in Section 3(c) hereof for such Unit if returned after expiration of the original Term, and Elapsed Term Rent as defined in Section 3(e) hereof if returned after the expiration of the Term as extended, such amount to be payable to Lessor not later than five (5) Business Days after the date of return of such Unit. At the end of the Term of the Lease or any Renewal Term thereof with respect to the Auto Racks, and during any storage period which may result from the inability of Lessor to sell, re-lease or otherwise dispose of said Auto Racks at the end of the Term or any renewal Term with respect thereto, Lessor agrees to reimburse Lessee for any expenses incurred by Lessee by reason of the payment of rent to Trailer Train, the lessor of the flatcars to which the Auto Racks are attached. In the event of termination of the Lease due to an Event of Default under the Lease, Lessee shall store the Units at its own risk and expense and maintain insurance coverage upon said

Units for a period not exceeding six months and if so notified in writing by the Lessor, in the case of the Auto Racks, Lessee shall remove the Auto Racks from any unit of railroad rolling stock to which they might be attached prior to providing such storage.

INITIAL HERE lws

At the time of return, each Unit shall be owned by the Lessor free and clear of all liens, encumbrances and rights of others (except such as may result from liens against the Lessor not related to the ownership of such Unit) and shall be in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted.

10. The first paragraph of Section 9 shall be deleted and the following paragraphs shall be inserted as the first two paragraphs of Section 9:

This Lease and all Rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the Rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's

title, or any interruption from whatsoever cause in the use, operation or possession of the Units or any part thereof, or any damage to or loss or destruction of the Units or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 7, 12(a) [with respect to public liability insurance] and 13 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be

and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Units.

11. There shall be added to the end of the third paragraph of Section 9, the following:

Lessee may use the Trailers for over-the-road transport in addition to the use of the Units generally upon lines of railroad. Any operation of any Unit in Canada or Mexico shall be de minimus.

12. There shall be added to the end of the first paragraph of Section 10, the following:

In addition, Lessee shall deliver to the Secured Party, the Lender and the Lessor an opinion of counsel as to any Unit for which a new number has been substituted stating that such filings are adequate to protect the interests of the Secured Party and the Lessor in the Unit.

13. Section 10 shall be amended by the addition of the following paragraph:

The Lessor shall cause each Auto Rack and each Rebuilt Hulk to be plainly, distinctly, permanently and conspicuously marked on each said of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 11303" or other appropriate

words designated by the Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Secured Party's interest in the Units and its rights under the Security Document.

14. Subsection 11(i)(C) shall be amended to read as follows:

(C) Furnish Lessor, Lender and Secured Party with such evidence of Lessee's title to such replacement Unit, including an opinion of counsel to the Lessee that all filings necessary to protect the interests of Lender, Secured Party and Lessor have been made and furnish such evidence of the condition of such replacement Unit as Lessor, Lender and Secured Party may reasonably request.

15. There shall be added at the end of the last paragraph of Section 11, the following:

In the event that Lessee has elected alternative (ii) above and has not fully performed within sixty (60) days of such written notice of election, Lessee shall pay to the Lessor, on the sixtieth (60th) day, the Stipulated Loss Value of the Unit suffering a Casualty Occurrence.

16. The second and third paragraphs of Section 12(b) shall be amended to read as follows:

All insurance shall be taken out in the name of Lessor and Lessee as their interests may appear. Lessee shall cause to be issued by the insurer of the Units the standard mortgage loss payable clause, made payable to the Lender. The

policies or certificates shall provide that there shall be no recourse against Lessor for the payment of premiums, and shall provide for at least twenty (20) business days' prior written notice to be given to Lessor and Secured Party by the underwriters in the event of cancellation.

All insurance policies or certificates shall provide that the losses thereunder shall be adjusted with the Lessee and shall be payable to Lessor or Lender as the case may be; provided, however, that payment of $10,000 or less may be made directly to Lessee where such payment is for damage not amounting to an actual or constructive total loss.

17. Section 15(d) shall be amended to read as follows:

(d) any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; for the purposes of this Section 15(d), an incorrect warranty or representation by the Leseee shall be deemed to be immaterial so long as the Lessee, pursuant to its obligations under this Lease, fully indemnifies Lender and Lessor (to Lender's and Lessor's satisfaction) for any loss suffered by Lender or Lessor as a result thereof.

18. Section 15(e) shall be amended by deleting the last clause thereof, beginning with the word "or" and continuing through the word "Lessee."

19. The rate of interest stated in Section 17 shall be changed from "ten percent (10%) per annum" to "ten and one-quarter percent (10-1/4%) per annum."

20. The first sentence of the second paragraph of Section 18 shall be amended to read as follows:

> Lessee will promptly and duly execute and deliver to Lessor and Lender such further documents and assurances and take such further action as Lessor or Lender may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor and Lender hereunder; provided, however, that this sentence is not intended to impose upon Lessee any additional liabilities not otherwise contemplated by this Lease.

21. Subsection (iii) of the second paragraph of Section 18 shall be amended to read as follows:

> (iii) to furnish to Lessor and Lender quarterly financial statements within 45 days after the close of such quarterly period certified as correct by a financial officer of the Lessee.

22. The last sentence of the third paragraph of Section 18 shall be amended to read as follows:

> The Lessor and Lender shall have the right, by their agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

23. Subsection (iii) of Section 19 shall be amended to read as follows:

> (iii) if to Lender, at Post Office Box 396, St. Louis, Missouri 63166, Attention: Securities Department, with one copy of all such notices mailed to Steiner Sea, Air & Rail Co. at Spear Street Tower, One Market Plaza, San Francisco, California 94105.

24. The first three paragraphs of Section 21 shall be amended to read as follows:

> Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than eight (8) months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of such Units then covered by this Lease, for consecutive one-year periods commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that no such extended term extends beyond October 31, 1990, at a "Fair Market Rental" payable in semi-annual payments on January 1 and July 1 in each year of such extended term or (ii) elect to purchase all, but not fewer than all, the Units then covered by this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of the original or extended term of this Lease, as the case may be.
>
> Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length

transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before six (6) months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such value shall be determined in accordance with the foregoing definition by the American Appraisal Company or its successor (hereinafter called the Appraiser). The Appraiser shall be instructed to make such determination within a period of thirty (30) days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before six (6) months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition

by the Appraiser. The Appraiser shall be instructed to make such determination within a period of thirty (30) days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

SAN FRANCISCO FINANCIAL NO. III
by Steiner Sea, Air & Rail, Co.,
a general partner

Attest:

_____
Title_____

By Paul Kepler

THE WESTERN PACIFIC RAILROAD COMPANY

Attest: [signature]

Title Corporate Secretary

By [signature]
Sr. Vice President - Financ

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this 30th day of August, 1979, before me personally appeared Paul Kepler, to me personally known, who being by me duly sworn, says that he is the President of Steiner Sea, Air & Rail Co., the corporation named in the within document, that the said corporation is a general partner of the partnership named in the within document, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation and partnership by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said partnership.

Helen Borgholthaus
Notary Public

[NOTARIAL SEAL]

OFFICIAL SEAL
HELEN BORGHOLTHAUS
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Oct. 1, 1981

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this 20 day of August, 1979, before me personally appeared R W Stumpp Jr, to me personally known, who, being by me duly sworn, says that he is the Sr. Vice President Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and 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 a free act and deed of said corporation.

Marlene J. Vernon
Notary Public

[NOTARIAL SEAL]

OFFICIAL SEAL
MARLENE J. VERNON
NOTARY PUBLIC - CALIFORNIA
San Francisco County
My Commission Expires June 13, 1983