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

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

5-240A060
Date AUG 28 1979
Fee $ 110.00
ICC Washington, D.C.

RECORDATION NO. 10770 Filed 1425
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INTERSTATE COMMERCE COMMISSION

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

Counterpart John Heath

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 — New Number~~
~~2) Lease of Equipment — A~~
~~3) Lease Amendment No. 1 — B~~
~~4) Assignment of Lease & Agreement — C~~

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.

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

SECURITY AND LOAN AGREEMENT

Dated as of July 1, 1979

Among

GENERAL AMERICAN LIFE INSURANCE COMPANY,

Lender,

FIRST SECURITY BANK OF UTAH, N.A.,

as Security Trustee

for the Lender,

Secured Party,

and

SAN FRANCISCO FINANCIAL No. III,

Debtor

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THIS SECURITY AND LOAN AGREEMENT dated as of July 1, 1979, (the "Agreement") among San Francisco Financial No. III (the "Debtor"), a partnership composed of Steiner Sea, Air & Rail Co., a Utah corporation, and AUCO Leasing Co., a Utah corporation; First Security Bank of Utah, N.A. (the "Secured Party") as Security Trustee for General American Life Insurance Company (the "Lender"); and the Lender,

W I T N E S S E T H

A. The Debtor (i) is the owner of the Trailers, leased to Western Pacific Railroad Company (the "Iessee") under a Lease of Equipment dated as of April 6, 1979 (the "Lease"), attached hereto as Exhibit I, and (ii) proposes to acquire and lease to the Lessee pursuant to the Iease, as amended by Lease Amendment No. 1 dated the date hereof, the Rebuilt Hulks and the Auto Racks. The Trailers, the Rebuilt Hulks and the Auto Racks are hereinafter referred to collectively as the "Equipment", and individually as a "unit of Equipment", as more fully described in the Equipment Schedules attached hereto and to the Lease.

B. The Lender agrees to lend to the Debtor a portion of the Lessor's Cost of the Equipment; and the Debtor, while remaining the beneficial owner of the Equipment, hereby grants to the Secured Party a security interest in the Equipment and its rights in, to and under the Lease pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") attached hereto as Exhibit II. The rights acquired by the Secured Party pursuant to this Agreement shall be and are acquired by the Secured Party for the benefit of the Lender.

SECTION 1. Definitions.

For all purposes of this Security and Loan Agreement, the following terms shall have the following meanings:

"Agreement" shall mean this Security and Loan Agreement.

"Auto Racks" shall mean the new Auto Racks on flat cars to be purchased from the Manufacturer.

"Basic Rent" shall mean Basic Rent as defined in Section 3(b) of the Lease.

"Builder" shall mean Pacific Fruit Express Company.

"Business Day" shall mean any day which is neither a Saturday or Sunday nor a day in which banking institutions in Utah are authorized or required by law to remain closed.

"Casualty Occurrences" shall mean Casualty Occurrences as defined in the Lease.

"Certificate of Delivery" shall mean a Certificate of Delivery, in the form attached to the Lease as Exhibit I, which shall particularly describe a unit or units of Equipment and evidence delivery and acceptance thereof.

"Collateral" shall mean the Lease Collateral, Equipment Collateral and After-Acquired Property as described in Section 2 of this Agreement.

"Cut-off Date" shall mean December 31, 1979.

"Debtor" shall mean San Francisco Financial No. III, a partnership composed of Steiner Sea, Air & Rail Co. and AUCO Leasing Co.

"Declaration of Default" shall mean a Declaration of Default by the Secured Party pursuant to Section 16.1 of this Agreement.

"Deposit" shall mean the funds deposited with the Secured Party by the Lender pursuant to Section 3.1 of this Agreement.

"Disbursement Date" shall mean the date upon which any unit of Equipment is delivered to and accepted by the Lessee under the Lease and settlement is made therefor by the Debtor and the Secured Party.

"Equipment" (in the singular, a "unit of Equipment") shall mean the Trailers, Auto Racks and Rebuilt Hulks leased by the Lessee under the Lease, a security interest in which is granted to the Secured Party by this Agreement.

"Equipment Collateral" shall mean the Trailers, Auto Racks and Rebuilt Hulks together with all accessories, equipment, parts and appurtenances thereto as described in Section 2.1 hereof.

"Equipment Schedule" shall mean a schedule attached hereto and to the Lease describing with particularity the Equipment to be leased by the Iessee under the Lease and to be subject to the security interest hereunder.

"Escrow Expense" shall mean any investment fees or similar charges of the Secured Party payable pursuant to Section 3.3 hereof.

"Escrow Fund" shall mean the portion of the Lender's Deposit with the Secured Party which is not disbursed to the Debtor on the First Disbursement Date, to be invested by the Secured Party pursuant to Section 3.3 hereof.

"Escrow Gain" shall mean the amount, if any, by which the proceeds of the sale of an Investment exceed the Investment Cost thereof plus Escrow Expenses thereon.

"Escrow Loss" shall mean the amount, if any, by which the Investment Cost of an Investment plus Escrow Expenses thereon exceeds the proceeds from the sale thereof.

"Event of Default" shall mean an Event of Default under the Lease.

"First Disbursement Date" shall mean August 22, 1979 or such later date to which the parties hereto shall agree.

"Hulks" shall mean the used standard railroad cars to be rebuilt by the Builder.

"Indebtedness" shall mean all moneys owed to the Lender hereunder as evidenced by the Note of the Debtor and secured by the Collateral.

"Investment Cost" shall mean an amount equal to the purchase or investment price of an Investment (including any interest accrued or discount earned prior to the purchase thereof).

"Investments" shall mean the Investments described in Section 3.3(a) hereof.

"Lease" shall mean the Lease of Equipment dated as of April 6, 1979 between the Debtor, as Lessor, and the Lessee, attached hereto as Exhibit I, as amended by Lease Amendment No. 1 dated the date hereof.

"Lease Assignment" shall mean the Lease Assignment, dated the date hereof, attached hereto as Exhibit II.

"Lease Collateral" shall mean the Debtor's rights under the Lease, assigned to the Secured Party pursuant to Section 2.2 hereof.

"Lender" shall mean General American Life Insurance Company.

"Lessee" shall mean Western Pacific Railroad Company.

"Lessor's Cost" shall mean, as to any unit of Equipment, the purchase price of such unit plus applicable sales and use taxes, freight, storage and delivery costs, and all other costs and expenses allocable to the manufacture and delivery of such unit and includible in the basis of the unit under the Internal Revenue Code for purposes of depreciation of the unit.

"Letter Agreement" shall mean the Letter from the Debtor to the Builder directing the rebuilding of the Hulks attached hereto as Exhibit III.

"Manufacturer" shall mean Whitehead & Hales, Detroit, Michigan, the manufacturer of the Auto Racks.

"Note" shall mean the Note of the Debtor, payable to the Lender, for the full amount of the Indebtedness hereunder.

"Payment Date" shall mean the date upon which an installment of Indebtedness pursuant to the Note is payable to the Secured Party.

"Purchase Order Assignment" shall mean the Purchase Order Assignment of the Lessee attached hereto as Exhibit IV assigning its rights and obligations to purchase the Auto Racks under the Purchase Order.

"Rebuilt Hulks" shall mean the Hulks as rebuilt by the Builder pursuant to the Letter Agreement and to be leased under the Lease.

"Reconstruction Cost" shall mean the cost of rebuilding the Hulks, including freight and storage charges, if any.

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

"Stipulated Loss Value" shall mean the amount to be paid by the Lessee upon a Casualty Occurrence with regard to a unit of Equipment as shown on the applicable Stipulated Loss Value Schedule attached hereto.

"Trailers" shall mean the twenty-five forty-foot FRP trailers leased to the Lessee under the Lease.

SECTION 2. Grant of Security Interest.

In consideration of the premises and other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all of the Debtor's covenants and conditions in the Note and in this Agreement, the Debtor grants to the Secured Party a security interest, for the benefit of the Lender, in the following described property (the "Collateral"):

(20%) of such amount unless the Lender shall otherwise agree in writing).

(c) Should the First Disbursement Date be other than August 22, 1979, the Debtor will give the Lender, the Secured Party and Messrs. Chapman & Cutler not less than five (5) Business Days' prior written or telegraphic notice thereof. Payment for the Note (as hereinafter defined) shall be made to the Secured Party at the principal office of the Secured Party, not later than 10:00 A.M. local time on the First Disbursement Date in Federal Reserve or other funds immediately available to the Secured Party. The Note delivered to the Lender on the First Disbursement Date shall be typewritten and in the form of a single note registered in the name of the Lender.

(d) The several commitments of the Debtor and the Lender shall expire on December 31, 1979.

3.2 First Disbursement Date.

(a) On the First Disbursement Date, the Secured Party shall pay to the Debtor from the Deposit an amount equal to the Lender's portion of the Lessor's Cost of the Trailers as shown on Equipment Schedule A hereto. The remaining balance of the Deposit (the "Escrow Fund") shall be retained by the Secured Party and applied as described below. The Debtor shall deliver to the Lender a note (the "Note") evidencing the indebtedness of the Debtor in the amount of the Deposit.

(b) Interest on the unpaid principal balance of the Note shall be payable at ten and one-quarter percent (10-1/4%) from the First Disbursement Date until the entire amount owing has been paid pursuant to Section 4 hereof.

3.3 Investment of Escrow Fund.

(a) On the First Disbursement Date, so long as, to the knowledge of the Secured Party, no Event of Default under the Lease or event of default hereunder exists, the Secured Party shall, upon the written direction of the Debtor and at the expense of the Debtor, invest and reinvest the Escrow Fund in such of the following Investments as the Debtor shall specify:

(i) Bonds or other obligations of the United States which as to principal and interest constitute direct obligations of the United States of America or are issued or guaranteed by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States and for which the full faith and credit of the United States Government is pledged to provide for the payment of principal and interest;

(ii) Certificates of deposit and repurchase agreements issued by or banker's acceptances drawn on commercial banks which are members of the Federal Reserve System with capital and surplus of at least $50,000,000; or

(iii) Commercial paper rated "A-1" or "P-1", or their equivalent, by Standard & Poor's Corporation or Moody's Investors Service, Inc., respectively, or their successors;

in each case maturing as nearly as possible on the Disbursement Date on which such funds will be disbursed to pay the Lessor's Cost of the Equipment to be delivered on such Disbursement Date.

(b) "Investment Cost" means an amount equal to the purchase or investment price of an Investment (including any interest accrued or discount earned prior to the purchase thereof); "Escrow Expenses" means any investment or similar fees incurred by or payable to the Secured Party, and "Escrow Gain" means the amount by which the proceeds of any sale of an Investment exceed the Investment Cost thereof plus Escrow Expenses thereon.

(c) Upon any sale or payment at maturity of any Investment, the proceeds thereof shall be held by the Secured Party as part of the Escrow Fund for investment, reinvestment and application pursuant to Sections 3.4 and 3.5. If such proceeds shall be less than such Investment Cost, the Secured Party will immediately notify the Debtor of such deficiency (an "Escrow Loss"). Within three days of receipt of such notice, the Debtor will pay to the Secured Party the amount of the Escrow Loss specified in such notice. Any payment in respect of an Escrow Loss shall be held and applied by the Secured Party in like manner as the proceeds of the sale or redemption of Investments.

3.4 Disbursements from Escrow Fund. Subject to the satisfaction of the conditions set forth in Section 5.2, the Secured Party will on each Disbursement Date:

(a) disburse from the Escrow Fund for payment in accordance with the invoice and/or certificate delivered under Section 5.2, an amount equal to the Lender's portion of the Lessor's Cost of the units of Equipment delivered and accepted on said Disbursement Date; and

(b) if such moneys then on deposit in the Escrow Fund are insufficient to make the payments provided for in clause (a) above, promptly upon receipt of notice of such Disbursement Date, sell such portion of the Investments as may be necessary in order to provide sufficient funds for such payment and use the funds so derived, together with any Escrow Loss paid by the Debtor, to make such payments as are provided in clause (a) above.

3.5 Return of Balance of Escrow Fund.

(a) If, when all disbursements for Equipment have been made, there is a balance remaining in the Escrow Fund, the Secured Party will, on the final Disbursement Date, (i) subtract any Escrow Expenses remaining unpaid therefrom, retaining any investment fees owing to it; (ii) return any portion of the Deposit which has not been disbursed to pay the Lender's portion of the Lessor's Cost of Equipment to the Lender; and (iii) pay to the Debtor any Escrow Gain remaining. Payment to the Lender pursuant to Section 3.5(a)(ii) shall constitute a prepayment on the Note on such date without premium. Such payment shall include such amount as shall be necessary to enable to the Secured Party to pay to the Lender interest accrued at the rate of 10-1/4% per annum on the full amount of the Escrow Fund for the period from the First Disbursement Date to and including the date of the the final Disbursement Date. Upon such prepayment and upon surrender of the original Note, the Debtor will issue and deliver a new Note identical in all respects to said original Note, but after giving effect to such prepayment and interest payment thereon, reflecting a principal amount and installments due and payable thereon revised after giving effect to such prepayment.

(b) If, on the final Disbursement Date, the amounts remaining in the Escrow Fund are insufficient to pay the amounts owing pursuant to the above Section 3.5(a), the

Debtor will pay to the Secured Party by wire transfer of immediately available funds the entire amount of any deficiency.

3.6 Status of Escrow Fund. Pursuant to this Agreement, all moneys from time to time on deposit with the Secured Party as part of the Escrow Fund are being pledged and assigned to the Secured Party, in trust for the Lender, and shall at all times constitute additional security for the payment of the principal and interest on the Note; provided, however, that if no event of default hereunder or Event of Default under the Lease has occurred and is continuing to the knowledge of the Secured Party, Debtor shall continue to direct the Secured Party as to the investment and reinvestment of the moneys remaining in the Escrow Fund. If an event of default under this Agreement or an Event of Default under the Lease has occurred and is continuing to the knowledge of the Secured Party, all moneys on deposit with the Secured Party as part of the Escrow Fund shall be applied in the manner provided for in Section 17 of this Agreement in respect of the income and proceeds of the Equipment, as defined in Section 6.2.

SECTION 4. The Note and Payment Therefor.

4.1 The Note. On the final Disbursement Date, the principal amount of the Note shall be equal to the total of the amounts of the Deposit advanced by the Secured Party on the First Disbursement Date and each further Disbursement Date to pay the Lender's portion of the Lessor's Cost of the Equipment and shall otherwise be in the form provided in Section 3.5(a) above. Notwithstanding any provision to the contrary in this Agreement, the Debtor will cause all amounts payable to the Lender with respect to the Note held thereby (without any presentment thereof and without any notation of such payment being made thereon) to be paid to the Secured Party at the address set forth in Section 23 hereof, provided that the Lender agrees that if it shall sell or transfer the Note, it will, prior to such sale or transfer, cause to be evidenced on the face of the Note the aggregate amount of principal theretofore paid to the Lender and the date to which accrued interest has been so paid in full. The Secured Party and the Lender may make such provision for transfer to the Lender, of the moneys so paid as shall be deemed by them most desirable. Until further notice to the contrary, the Lender instructs that the moneys be transferred by bank wire transfer of Federal or other

immediately available funds to: First National Bank in St. Louis, 510 Locust Street, St. Louis, Missouri, 63101, for credit to the Lender's Account No. 00-0034-2.

4.2 Payment of Indebtedness.

(a) The Indebtedness payable pursuant to the Note shall be payable in one payment of interest only on the full amount of the Note from the date thereof to January 1, 1980, on January 1, 1980, and thereafter in sixteen (16) consecutive semi-annual payments, on each July 1 and January 1, commencing July 1, 1980, to and including January 1, 1988 (or if any such date is not a Business Day, on the next succeeding Business Day), each such date being hereinafter called a Payment Date. The unpaid balance of the Note shall bear interest from the First Disbursement Date at the rate of ten and one-quarter percent (10-1/4%) per annum and such interest shall be payable, to the extent accrued, on July 1, 1980, and on each Payment Date thereafter. The amount due and owing on each Payment Date shall be the amount shown on the Debt Service Schedule attached as Exhibit I to the Note. The Debtor will furnish to the Secured Party promptly after the final Disbursement Date a schedule, in such number of counterparts as shall be requested by the Secured Party, showing the respective amounts of principal and interest payable on each Payment Date.

(b) Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

(c) The Debtor will pay interest, to the extent legally enforceable, at the rate of ~~eleven~~ ten and one-quarter ~~percent (11~~ 10-1/4%) per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

(d) All payment provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except to the extent specifically provided for in this Agreement, the Note shall not be subject to prepayment or redemption in whole or in part at the option of the Debtor prior to the expressed maturity date thereof. So long as no Event of Default

exists to the knowledge of the Secured Party, the amounts received by the Secured Party which constitute payment of Basic Rent under the Lease shall be applied:

First, to the payment of the installments of interest and principal (and in each case first to interest and then to principal) on the Note which have matured or will mature on or before the due date of such installments of Basic Rent; and

Second, the balance, if any, of such amounts shall be paid by wire transfer of immediately available funds to the Debtor at the place of payment specified in Section 23 of this Agreement promptly upon collection of such amounts by the Secured Party.

4.3 Application of Stipulated Loss Value Payments. So long as no Event of Default under the Lease exists to the knowledge of the Secured Party, the amounts received by the Secured Party which constitute settlement by the Lessee of the Stipulated Loss Value of a unit of Equipment pursuant to Section 11 of the Lease shall be ratably applied:

First, to the prepayment without premium of the unpaid principal amount of the Note allocable to such unit of Equipment (being an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Lessor's Cost of such unit of Equipment for which settlement is then being made and the denominator of which is the aggregate Lessor's Cost of all units of Equipment then subject to the Lease (including the Lessor's Cost of the unit of Equipment for which settlement is then being made), times (B) the unpaid principal amount of the Note immediately prior to the prepayment provided for in this section (after giving effect to all payments of installments of principal made or to be made on the date of prepayment provided for in this section), together with interest accrued to the date of prepayment on the amount so prepaid; and

Second, the balance, if any, of such amounts shall be paid by wire transfer of immediately available funds to the Debtor at the place of payment specified in Section 23 hereof.

Each of the remaining installments of the Note shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Note immediately prior to the prepayment.

If an Event of Default exists under the Lease, all amounts received by the Secured Party shall be applied in the manner provided for in Section 17 hereof.

4.4 Application of Insurance Proceeds. The amounts received by the Secured Party from time to time which constitute proceeds of casualty insurance maintained by the Lessee in respect of the Equipment shall be held by the Secured Party as a part of the Collateral and shall be applied by the Secured Party from time to time to any one or more of the following purposes:

(a) So long as no Event of Default has occurred and is continuing to the knowledge of the Secured Party, the proceeds of such insurance shall, if the item of Equipment is to be repaired, be released to the Debtor to reimburse the Lessee for expenditures made for such repair upon receipt by the Secured Party of a certificate of an authorized officer of the Lessee to the effect that any damage to such item in respect of which such proceeds were paid has been fully repaired; and

(b) If the insurance proceeds shall not have been released to the Debtor pursuant to the preceding paragraph (a) within 180 days from the receipt thereof by the Secured Party, then so long as no Event of Default has occurred and is continuing to the knowledge of the Secured Party, the insurance proceeds shall be applied by the Secured Party as follows:

(i) First, to the prepayment of the Note, all in the manner and to the extent provided for by clauses First and Second of Section 4.3 hereof; and

(ii) Second, the balance, if any, of such insurance proceeds held by the Secured Party after making the applications provided for by the preceding subparagraph (i) shall be released to or upon the order of the Debtor on the date of such prepayment of the Note.

4.5 Registration and Loss of Note.

(a) The Note shall be registered as to principal and interest and shall be signed on behalf of the Debtor by the president or vice-president of the managing partner of the Debtor, or any other officer of the Debtor's managing partner who, at the date of the actual execution thereof, shall be a proper officer to execute the same.

(b) In case the Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the Lender, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The Lender shall furnish to the Debtor such security or indemnity as may be required by the Debtor to save it harmless from all risks, and the Lender shall also furnish to the Debtor evidence to its satisfaction of the mutilation, destruction, loss or theft of the Note and of the ownership thereof. In case the Note has matured or is about the mature and is mutilated or destroyed, lost or stolen, the Debtor may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note), if the Lender shall furnish to the Debtor such security or indemnity as the Debtor may require to save it harmless, and shall furnish evidence to the satisfaction of the Debtor of the mutilation, destruction, loss or theft of such Note and the ownership thereof. The affidavit of the president, vice-president, treasurer or assistant treasurer of the Lender setting forth the fact of loss, theft or destruction, and of its ownership of the Note at the time of such loss, theft or destruction shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of the Lender to indemnify the Debtor for any claims or action against it (and for its attorney's fees) resulting from the issuance of such new Note or the reappearance of the old Note.

(c) Each new Note issued pursuant to subsection (b) above shall be dated the date of the old Note. The Debtor shall mark on the new Note (i) the dates to which principal and interest have been paid on the old Note (ii) all payments and prepayments of principal previously made on the old Note, and (iii) the amount of each installment payment payable on the new Note. Interest shall be deemed

to have been paid on such new Note to the date on which interest shall have been paid on such old Note, and all payments and prepayments of principal marked on such new Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(d) Upon the issuance of a new Note, the Debtor may require the payment of a sum to reimburse it for, or to provide it with funds for, the payment of any tax or other governmental charge or any other charges and expenses connected therewith which are paid or payable by the Debtor.

(e) Any new Note issued pursuant to subsection (b) in exchange for or in substitution or in lieu of an old Note shall be a valid obligation of the Debtor evidencing the same debt as the old Note and shall be entitled to the benefits and security of this Agreement to the same extent as the old Note.

(f) Upon the issuance of any Note pursuant to this Agreement, the Debtor shall prepare and deliver to the Secured Party an amortization schedule with respect to such Note setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment. The Secured Party shall deliver, or send by first-class mail, postage prepaid, one copy of the applicable schedule to the Lender at its address set forth in the Register.

(g) Any Note surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Debtor for cancellation or, if surrendered to the Debtor, shall be cancelled by it, and no Note shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Agreement.

(h) The person in whose name the Note shall be registered shall be deemed and treated as the owner thereof for all purposes of this Agreement and the Debtor shall not be affected by any notice to the contrary. Payment of or on account of the principal of, premium, if any, and interest on such Note shall be made only to or upon the order in writing of such registered owner. For the purpose of any request, direction or consent hereunder, the Debtor may deem and treat the registered owner of any Note as the owner thereof without production of such Note.

SECTION 5. Conditions Precedent.

5.1 First Disbursement Date. On the First Disbursement Date there shall be delivered to the Secured Party, the Lender and Messrs. Chapman & Cutler, Lender's special counsel, the following documents, in form and substance satisfactory to them, in such number of counterparts as may be reasonably requested by them:

(a) An executed copy of the Lease, Lease Amendment No. 1, and the Security and Loan Agreement delivered by the parties thereto and in full force and effect.

(b) The Certificate of Delivery with respect to the Trailers;

(c) The evidences of ownership of the Trailers; which evidence shall include bills of sale from the manufacturer of such Trailers, certified as correct by the Lessee, warranting said manufacturer's title to the Trailers, application for California vehicle certificates of ownership for said Trailers showing the Lender as First Lienholder, and requisite California Uniform Commercial Code filings.

(d) An opinion of Messrs. Chapman & Cutler, special counsel to the Lender, in form and substance satisfactory to the Lender.

(e) Opinions of Messrs. Brobeck, Phleger & Harrison, who are acting as counsel for the Debtor, dated the First Disbursement Date, substantially in the form of Exhibits Va and Vb hereto.

(f) Certificate of the Debtor, signed by an authorized officer of the managing partner, dated the First Disbursement Date, substantially in the form of Exhibit VI hereto.

(g) An opinion of counsel for the Lessee dated the First Disbursement Date, addressed to the Debtor, the Lender and the Secured Party, substantially in the form of Exhibit VII hereto.

(h) A certificate of an officer of the Lessee, addressed to the Debtor, the Lender and the Secured Party, substantially in the form of Exhibit VIII hereto.

(i) Such other instruments, documents and assurances as may be requested by Messrs. Brobeck, Phleger & Harrison, the Secured Party, or the Lender.

In giving the opinions specified above and in Section 5.2, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and limitations imposed by applicable laws, which may affect the remedies provided therein (including, without limitation, the remedy of specific performance). In giving the opinion specified in said subparagraph (d), counsel may rely (i) as to authorization, execution and delivery by the Debtor of the documents executed by the Debtor on the Certificate of the Debtor, (ii) to the extent appropriate, as to due authorization, execution and delivery of this Agreement by the Debtor under the laws of Utah and as to any matter governed by the law of Utah, on the opinion of Messrs. Ray, Quinney & Nebeker, substantially in the form of Exhibit IX hereto, (iii) to the extent appropriate, as to due authorization, execution and delivery of the partnership agreement and related matters by AUCO Leasing Co. on the opinion of counsel substantially in the form of Exhibit X hereto, and (iv) as to matters relating to the perfection of the security interest in the Collateral perfected under the Interstate Commerce Act, on the opinion of Messrs. Wilmer, Cutler & Pickering to be delivered on further Disbursement Dates.

5.2 Further Disbursement Dates. On each Disbursement Date after the First Disbursement Date, the Secured Party shall receive, in addition to funds of the Debtor equal to its portion of the Lessor's Cost of Equipment delivered and accepted on such Disbursement Date, the following items prior to disbursement from the Escrow Fund of the Lender's portion of the Lessor's Cost of Equipment to be delivered and accepted on such Disbursement Date:

(a) Rebuilt Hulk Disbursement Dates

(1) Opinion of Messrs. Wilmer, Cutler & Pickering as to the perfection of the security interest in the Rebuilt Hulks and the Lease under the Interstate Commerce Act.

(2) Bill of sale for the Hulks and opinion of counsel as to title to the Hulks from Conrail, the seller of the Hulks.

(3) Bill of Sale and opinion of counsel for the Builder warranting title to the Rebuilt Hulks in the Debtor.

(4) Invoice of Builder as to Lessor's Cost of Rebuilt Hulks delivered, certified as correct by the Lessee.

(5) Evidence as to any additional items comprising Lessor's Cost of the Rebuilt Hulks.

(6) Certificate of Delivery of Lessee or Lessee's agent.

(7) Equipment Schedule and Stipulated Loss Value Schedule relating to the Rebuilt Hulks delivered.

(8) Certificates of No Default of the Lessee and the Debtor.

(b) Auto Rack Disbursement Dates

(1) Opinion of Messrs. Wilmer, Cutler & Pickering as to the filing of the security interest in the Auto Racks with the Interstate Commerce Commission.

(2) Evidence of the filing of a security interest in the Auto Racks under the Utah and California Uniform Commercial Codes.

(3) Acknowledgement of Debtor's ownership of the Auto Racks from Trailertrain, the lessor of the underlying flat cars.

(4) Opinion of Messrs. Brobeck, Phleger & Harrison as to the perfection of the security interest in the Auto Racks under the Utah and California Uniform Commercial Codes.

(5) Bill of sale and opinion of counsel to the manufacturer warranting title to the Auto Racks in the Debtor.

(6) Invoice of Manufacturer as to Lessor's Cost of Auto Racks delivered, certified as correct by the Lessee.

(7) Evidence as to any additional items comprising Lessor's Cost of the Auto Racks.

(8) Certificate of Delivery of Lessee or Lessee's agent.

(9) Equipment Schedule and Stipulated Loss Value Schedule relating to the Auto Racks delivered.

(10) Certificates of No Default of the Lessee and the Debtor.

SECTION 6. Debtor's Liability.

6.1 Limitation of Liability. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Sections 16 and 17 hereof), it is understood and agreed by the Secured Party that the liability of the Debtor for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to Sections 3.1 and 3.5, the proviso to the last paragraph of Section 13, and Section 21 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment," and such payments shall be made by the Debtor only to the extent that the Debtor or any assignee of the Debtor shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Secured Party agrees that the Debtor shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Debtor or any assignee of the Debtor.

6.2 Income and Proceeds from Equipment. As used herein the term "income and proceeds from the Equipment" shall mean:

(a) If one of the events of default specified in Section 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Debtor or any assignee of the

Debtor at any time after any such event and during the continuance thereof:

(A) all amounts of rental and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease,

(B) any and all payments or proceeds received by the Debtor or any assignee of the Debtor for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(C) any and all other payments received by the Debtor or any assignee of the Debtor under Section 9 of the Lease and

(b) At any other time only that portion of the amounts referred to in the foregoing clauses (A), (B) and (C) as are indefeasibly received by the Debtor or any assignee of the Debtor and as shall equal the portion of the Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six (6) days after, the date such amounts received by the Debtor or any assignee of the Debtor were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (A), (B) and (C) which (i) were received by the Debtor or any assignee of the Debtor prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six (6) days after, the date on which amounts with respect thereto received by the Debtor or any assignee of the Debtor were required to be paid pursuant to the Lease or (ii) which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease.

6.3 <u>Debtor Not Responsible for Lessee's Obligations</u>. In addition, the Secured Party agrees that the Debtor (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or

enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Secured Party will look solely to the Secured Party's rights under this Agreement against the Equipment and to the Debtor's rights under the Lease against the Lessee and the Equipment.

6.4 Secured Party May Proceed Against Equipment. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Debtor shall derogate from the right of the Secured Party to proceed against the Equipment as provided for herein for the full outstanding unpaid principal balance of the Note and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Section 17 hereof, the Secured Party agrees that in the event it shall obtain a judgment against the Debtor for an amount in excess of the amounts payable by the Debtor pursuant to the limitations set forth in this Section 6.1, which judgment so in excess shall only be obtained if necessary to establish the Secured Party's rights against the Equipment, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations herein set forth.

SECTION 7. Taxes.

All payments to be made by the Debtor hereunder will be free of expense to the Secured Party for collection or other charges and will be free of expense to the Secured Party with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes, franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Debtor assumes and agrees to pay on demand.

The Debtor will also pay promptly all impositions which may be imposed upon the Equipment delivered to it for the use or operation thereof or upon the earnings arising therefrom or upon the Secured Party solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the interest of the Secured Party or result in a lien upon any part of the Equipment; provided, however, that the Debtor shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Secured Party, adversely affect the property or rights of the Secured Party in or to the Equipment or otherwise under this Agreement.

If any impositions shall have been charged or levied against the Secured Party directly and paid by the Secured Party, the Debtor shall reimburse the Secured Party upon presentation of an invoice therefor, and any amounts so paid by the Secured Party shall be secured by and under this Agreement; provided, however, that the Debtor shall not be obligated to reimburse the Secured Party for any impositions so paid unless the Secured Party shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Secured Party) or unless the Debtor shall have approved the payment thereof.

SECTION 8. Maintenance; Casualty Occurrences.

8.1 Lessee To Maintain Equipment. The Equipment shall be maintained and kept in good order and repair by the Lessee pursuant to the Lease.

8.2 Casualty Payment Dates. In the event that any unit of the Equipment shall be worn out beyond repair, lost, stolen, destroyed, or, in the opinion of the Debtor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Debtor shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Secured Party to be fully informed in regard thereto. Provided the Lessee has not elected to provide a replacement unit in accordance with subparagraph (ii) of Section 11 of the Lease, on the next succeeding Payment Date, the Debtor shall pay over to the Secured Party a sum equal to (a) all

Rent (as defined in the Lease) with respect to such unit due on or prior to such Payment Date, or, in the case of Supplemental Rent (as defined in the Lease), due in consequence of such Casualty Occurrence, plus (b) the Stipulated Loss Value (as shown on the Stipulated Loss Value Schedule applicable to said unit) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Secured Party a certificate setting forth the Stipulated Loss Value of such unit. Any money paid to the Secured Party pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Indebtedness, and the Debtor will promptly furnish to the Secured Party a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Secured Party may request, calculated as provided herein.

8.3 Title To Equipment Suffering a Casualty Occurrence. Upon payment to the Secured Party of the Stipulated Loss Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Debtor, without further transfer or action on the part of the Secured Party, except that the Secured Party, if requested by the Debtor, will execute and deliver to the Debtor, at the expense of the Debtor, an appropriate instrument confirming such passage to the Debtor of all the Secured Party's right, title and interest in such unit, in recordable form, in order that the Debtor may make clear upon the public records the title of the Debtor to such unit.

8.4 Payment of Insurance Proceeds. If the Secured Party shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Secured Party shall, subject to the Secured Party having received payment of the Stipulated Loss Value hereunder, pay such insurance proceeds or condemnation payments to the Debtor. All insurance proceeds received by the Secured Party in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Debtor upon proof satisfactory to the Secured Party that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

SECTION 9. Reports and Inspections.

On or before December 31 in each year, commencing with the 1980, the Debtor shall cause the Lessee to furnish to the Secured Party an accurate statement (a) setting forth as at the preceding November 30, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Secured Party may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Section 10 hereof have been preserved or replaced. The Secured Party shall have the right, by its agents, to inspect the Equipment and all records with respect thereto at such reasonable times as the Secured Party may request during the term of this Agreement.

SECTION 10. Marking of Equipment.

The Debtor will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in the Equipment Schedule extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Rebuilt Hulk and each Auto Rack, 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 Equipment and its rights under this Agreement. The Debtor will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Debtor will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Secured Party and filed, recorded and deposited by the Debtor in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Debtor will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

SECTION 11. Compliance with Laws and Rules.

During the term of this Agreement, the Debtor will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, and Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Debtor will conform therewith at its own expense; provided, however, that the Debtor may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not in the opinion of the Secured Party, adversely affect the property or rights of the Secured Party under this Agreement.

SECTION 12. Possession and Use.

The Debtor, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Debtor may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Secured Party under this Agreement; provided, however, that so long

as the Lessee shall not be in default under the Lease or otherwise, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the Lease. The Debtor hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease and until the Secured Party shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Secured Party copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Secured Party.

SECTION 13. Prohibition Against Liens.

The Debtor will pay or discharge any and all sums claimed by any party from, through or under the Debtor or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Secured Party's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Secured Party in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Secured Party in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Section 13 shall be subject to the limitations set forth in Section 6.1 hereof and to the provisions of Section 25 hereof, provided, however, that the Debtor will pay or discharge any and all taxes, liens, claims, charges or security interests claimed by any party from, through or under the Debtor or its

successors or assigns not arising out of the transactions contemplated hereby (but including tax liens arising out of the remittance of the Rentals and other payment under the Lease and any other proceeds from the Equipment), which if unpaid might become a lien, charge or security interest in or with respect to the Equipment, or any unit thereof, or the Debtor's interest in the Lease and the payment to be made thereunder, but the Debtor shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith or by appropriate legal or administrative proceedings in any reasonable manner and the non-payment thereof does not adversely affect the title or interest of the Lender in or to the Equipment otherwise under this Agreement or in the Lease and the payment to be made thereunder.

SECTION 14. Indemnities and Warranties.

The Debtor agrees to indemnify, protect and hold harmless the Secured Party from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Secured Party of its interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when the Secured Party retains an interest in the Equipment or the transfer of Secured Party's interest in the Equipment by the Secured Party pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant made by the Builder or manufacturer of the Equipment. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, or the termination of this Agreement in any manner whatsoever.

The Debtor will bear the responsibility for the risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

THE SECURED PARTY MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER.

SECTION 15. Restrictions on Transfer of the Debtor's Interest.

The Debtor agrees that it will not transfer or assign any of its interest unless (a) its entire interest is being transferred or assigned to a single transferee or assignee, (b) the transferee or assignee is an "affiliated company" or an "institutional investor" or any other person agreeable to the Lender as evidenced by its written consent delivered to the Debtor and (c) the transferee or assignee shall execute and deliver an agreement in form and content satisfactory to the Lender whereby the transferee or assignee agrees to be bound by all of the terms of and to undertake all of the obligations of the Debtor under this Agreement, and makes representations of the scope provided for as to the Debtor in this Agreement. The term "affiliated company" shall mean either partner of the Debtor, any company ("the Parent") owning not less than 80% of the voting stock of either partner of the Debtor, any company (the "Holding Company") owning not less than 80% of the Voting Stock of the Parent, and any company not less than 80% of the Voting Stock of which is owned, directly or indirectly, by the Holding Company, the Parent or either partner of the Debtor. The term "Voting Stock" for any company shall mean capital stock having the right to vote for the election of the directors of such company. The term "institutional investor" means any one of the following persons existing under the laws of the United States of America or any state thereof which (in the case of any banking institution of insurance company) has capital, surplus, and undivided profits (or the equivalent) of at least $50,000,000, or (in the case of any finance or leasing company) has a net worth of at least $25,000,000: (i) any bank, bank holding company, savings institution, trust company or national banking association acting for its own

account or in a fiduciary capacity as trustee or agent under any pension, retirement, profit sharing or similar trust or fund, (ii) any insurance company or fraternal benefit society, or (iii) any finance company or leasing company, or (iv) any corporation, all of whose capital stock and other securities are owned by any of the foregoing. Prior to transferring its interest, the Debtor shall give written notice to the Lender and the Lessee specifying the name and address of the transferee and such additional information as may be required to demonstrate compliance with the preceding provisions of this Section 15. Upon any such transfer or assignment of the interest as above provided, the transferee or assignee shall be deemed "Debtor" for all purposes of this Agreement and shall be deemed to have made all payments previously made by the transferring or assigning Debtor and each reference in this Agreement to the Debtor shall thereafter be deemed to mean such transferee or assignee; provided that in the case of a transfer to an affiliated company the transferring or assigning Debtor shall remain liable as a guarantor of all of the obligations assumed hereunder by such affiliated company. Any transfer or assignment of the Debtor's interest in violation of this Section shall be void and of no effect. Anything in this Section 15 to the contrary notwithstanding, no transfer may be made by the Debtor of its interest to any person in the event the ownership thereof by such person would result in a violation of the Clayton Act or any other applicable law.

SECTION 16. Defaults.

16.1 Declarations of Default. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Debtor shall fail to pay in full any sum payable by the Debtor when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Debtor) and such default shall continue for ten (10) days; or

(b) The Debtor shall, for more than thirty (30) days after the Secured Party shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the

Secured Party for such compliance; or

(c) Any representations or warranties on the part of the Debtor made herein or in the Lease or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease or the transactions contemplated thereby, shall prove to have been false or misleading in any material respect when made;

(d) Any claim, lien or charge other than those permitted by this Agreement or the Lease (other than such charges and encumbrances which the Lessee is obligated to discharge under Section 6 of the Lease) shall be asserted against or levied or imposed upon the Equipment which is prior to or on a parity with the security interest granted hereunder, and such claim, lien or charge shall not be discharged or removed within 30 calendar days after written notice from the Secured Party or the Lender to the Debtor and the Lessee demanding the discharge or removal thereof;

(e) The Debtor or any partner thereof becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or receiver for the Debtor or for the major part of its property;

(f) A trustee or receiver is appointed for the Debtor or any partner thereof or for the major part of its property and is not discharged within 30 days after such appointment;

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, other proceedings for the relief of the Debtor or any partner thereof are instituted by or against the Debtor, and if instituted against the Debtor or consented to, are not dismissed within 30 days after such institution;

(h) The Debtor shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(i) An Event of Default shall occur under the Lease,

the payment of a monetary sum, not less than 10 days' prior written notice, and (2) in the case of default which cannot be remedied by the payment of a monetary sum, not less than 30 days' prior written notice, of the date (the "Enforcement Date") on which the Secured Party will exercise any remedy or remedies pursuant to Section 17 hereof. If an Event of Default under the Lease shall have occurred and be continuing, the Debtor shall have the following rights hereunder:

(a) Right to Cure. In the event of the occurrence of an Event of Default in respect of the payment of Basic Rental, or any other Event of Default which may be remedied by a payment of a monetary sum (unless there shall have occurred and be continuing any Event of Default under the Lease other than a failure to pay Basic Rental or such monetary sum), the Debtor may, prior to the Enforcement Date, as to such Basic Rental payment default, pay to the Secured Party an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Note, and as to any such other Event of Default, pay such sum to the party to receive the same and such payment by the Debtor shall be deemed to cure such Event of Default under the Lease which would otherwise have arisen on account of such non-payment; provided, however, that the Debtor may not exercise such right in respect of more than two consecutive Basic Rental payment defaults or in any event more than a total of four times throughout the term of the Lease.

Except as hereinafter in this Section 16.3 provided, the Debtor shall not, by exercising the right to cure any such Event of Default, obtain any lien, charge or encumbrance of any kind on any of the Collateral for or on account of costs or expenses incurred in connection with the exercise of such right nor shall any claims of the Debtor against the Lessee or any other party for the repayment of such costs or expenses impair the prior right and security interest of the Secured Party in and to the Collateral. Upon such payment by the Debtor of the amount of principal and interest then due and payable on the Note, the Debtor shall be subrogated to the rights of the Secured Party in respect of the Basic Rental which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue, and therefore, if no other Event of Default shall have occurred and be continuing and if all principal and interest payments due on the Note have been

paid at the time of receipt by the Secured Party of such Basic Rental, the Debtor shall be entitled to receive such Basic Rental and such interest upon receipt thereof by the Secured Party; provided that (1) in the event the principal and interest on the Note shall have become due and payable pursuant to Section 16.1 hereof, such subrogation shall until principal of and interest on all Note shall have been paid in full, be subordinated to the rights of the Secured Party in respect of such payment of Basic Rental and such interest on such overdue Basic Rental prior to receipt by the Debtor of any amount pursuant to such subrogation, and (2) the Debtor shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing right of subrogation.

(b) Option to Prepay Note. Whether or not the Debtor shall then have the right to cure an Event of Default under the Lease pursuant to this Article, the Debtor may at its option prepay the Note, without premium or penalty, by payment of the entire unpaid principal amount thereof, together with accrued interest thereon to the date of prepayment.

SECTION 17. Remedies.

17.1 The Secured Party May Take Possession of the Equipment. At any time during the continuance of a Declaration of Default, the Secured Party may, subject to the rights of the Lessee set forth in Section 12 hereof, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Secured Party, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Debtor or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Debtor, the Lessee or any other person and for such purpose may enter upon the premises of the Debtor or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Debtor or the Lessee.

17.2 The Secured Party May Retain the Equipment. At any time during the continuance of a Declaration of Default, the Secured Party (after retaking possession of the

Equipment as hereinbefore in this Section 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Indebtedness and make such disposition thereof as the Secured Party shall deem fit. Written notice of the Secured Party's election to retain the Equipment shall be given to the Debtor and the Lessee by telegram or registered mail, addressed as provided in Section 23 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Secured Party should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Debtor's rights in the Equipment shall thereupon terminate and all payments made by the Debtor and the Lessee may be retained by the Secured Party as compensation for the use of the Equipment; provided, however, that if the Debtor, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Secured Party the total unpaid balance of such Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Debtor; provided, further, that if the Debtor, the Lessee or any other person notified under the terms of this paragraph object in writing to the Secured Party within thirty (30) days from the receipt of notice of the Secured Party's election to retain the Equipment, then the Secured Party may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Secured Party shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of Section 17.3.

17.3 The Secured Party May Sell the Equipment. At any time during the continuance of a Declaration of Default, the Secured Party, with or without retaking possession thereof, at its election and upon reasonable notice to the Debtor, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Section 12 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Debtor, the

Lessee or any other party claiming from, through or under the Debtor or the Lessee at law or in equity, at public or private sale and with or without advertisement as the Secured Party may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Debtor should tender full payment of the total unpaid balance of the Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Secured Party in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Secured Party's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Debtor. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Secured Party in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Secured Party under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Salt Lake City, Utah, at such time or times as the Secured Party may specify (unless the Secured Party shall specify a different place or places, in which case the sale shall be held at such place or places as the Secured Party may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Secured Party may determine, so long as such sale shall be in a commercially reasonable manner. The Debtor and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Section 23 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Debtor and the Lessee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Secured Party, the Debtor or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Secured Party shall be the purchaser thereof, it shall not be accountable to the Debtor or the Lessee (except to the extent of surplus money received as hereinafter provided in Section 17.5, and in payment of the purchase price therefor the Secured Party shall be entitled

to have credited on account thereof all sums due to the Secured Party hereunder.

17.4 Remedies Not Exclusive. Each and every power and remedy hereby specifically given to the Secured Party shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Secured Party. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Secured Party in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted shall not otherwise alter or affect the Secured Party's rights or the Debtor's obligations hereunder. The Secured Party's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Debtor's obligations or the Secured Party's rights hereunder with respect to any subsequent payments or default herein.

17.5 Waiver by the Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Debtor acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize

any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

17.6 Deficiency; Surplus; Expenses.

(a) If, after applying all sums of money realized by the Secured Party after the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Debtor shall pay the amount of such deficiency to the Secured Party upon demand, and, if the Debtor shall fail to pay such deficiency, the Secured Party may bring suit therefor and shall be entitled to recover a judgment therefor against the Debtor. If, after applying as aforesaid all sums realized by the Secured Party, there shall remain a surplus in the possession of the Secured Party, such surplus shall be paid to the Debtor. The Secured Party agrees that in the event it shall obtain a judgment against the Debtor for an amount in excess of the amounts payable by the Debtor pursuant to the limitations set forth in Section 6, which judgment so in excess shall only be obtained if necessary to establish the Secured Party's rights against the Equipment, it will accordingly limit its execution of such judgment to amounts payable pursuant to the limitations set forth in Section 6.

(b) The Debtor will pay all reasonable expenses, including attorneys' fees, incurred by the Secured Party in enforcing its remedies under the terms of this Agreement. In the event that the Secured Party shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Secured Party may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

(c) The foregoing provisions of Section 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 18. The Secured Party.

18.1 Certain Duties and Responsibilities of the Secured Party.

(a) Except during the continuance of an event of default:

(1) the Secured Party undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Secured Party; and

(2) in the absence of bad faith on its party, the Secured Party may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Secured Party and conforming to the requirements of this Agreement or the Lease; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Secured Party, the Secured Party shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

(b) In case an event of default has occurred and is continuing, the Secured Party shall exercise such of the rights and powers vested in it by this Agreement for the benefit of the Lender, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Agreement shall be construed to relieve the Secured Party from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this subsection (c) shall not be construed to limit the effect of subsection (a) of this Section 18.1;

(2) the Secured Party shall not be liable for any error of judgment made in good faith by an officer of the Secured Party unless it shall be proved that the Secured Party was negligent in ascertaining the pertinent facts; and

(3) the Secured Party shall not be liable to the Lender with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Secured Party, or exercising any trust or power conferred upon the Secured Party under this Agreement.

(d) The Secured Party shall be entitled to reasonable compensation for its services hereunder and to be reimbursed for its reasonable expenses when incurred. No provision of this Agreement shall require the secured Party to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. In case an event of default has occurred and is continuing or in the event the Secured Party is acting pursuant to the direction of the Lender, the Secured Party shall be entitled to be indemnified by the Lender with respect to compensation for its services in connection therewith and against any liability or expense (including, without limitation, reasonable counsel fees) in connection with taking such action or asserting such rights.

(e) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Secured Party shall be subject to the provisions of this Section 18.1.

18.2 Certain Rights of the Secured Party.

(a) The Secured Party shall not be responsible for any recitals herein or for insuring the Equipment, or for paying or discharging any tax, assessment, governmental charge or lien affecting the Collateral, or for the recording, filing or refiling of this Agreement, or of any supplemental or further mortgage or trust deed, nor shall the Secured Party be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements contained herein, and, except in the case of a default in the payment of the principal of, or interest or premium, if any, on the Note or a default of which the Secured Party has actual knowledge, the Secured Party shall be deemed to have knowledge of any default in the performance or observance of any such covenants, conditions or agreements only upon receipt of written notice thereof from

the Lender. The Secured Party shall promptly notify the Lender of any default of which the Secured Party has actual knowledge.

(b) The Secured Party makes no representation or warranty as to the validity, sufficiency or enforceability of this Agreement, the Note, or any instrument included in the Collateral, or as to the value, title, condition, fitness for use of, or otherwise with respect to, any Equipment or unit of Equipment or any substitute therefor. The Secured Party shall not be accountable to anyone for the use or application of the Note or the proceeds thereof or for the use or application of any property or the proceeds thereof which shall be released from the lien and security interest hereof in accordance with the provisions of this Agreement.

(c) The Secured Party may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(d) Any request, direction or authorization by a general partner of the Debtor or the Lessee shall be sufficiently evidenced by a request, direction or authorization in writing, delivered to the Secured Party, and signed in the name of the Debtor or the Lessee, as the case may be, by its Chairman of the Board, President, any Vice President, Treasurer or Secretary, and any resolution of the Board of Directors of a general partner of the Debtor or the Lessee shall be sufficiently evidenced by a copy of such resolution certified by its Secretary or an Assistant Secretary to have been duly adopted and to be in full force and effect on the date of such certification, and delivered to the Secured Party.

(e) Whenever the Secured Party shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate purporting to be signed by the Chairman of the Board, the President, any Vice President, the Treasurer or

the Secretary of a general partner of the Debtor and delivered to the Secured Party, and such certificate shall be full warrant to the Secured Party or any other person for any action taken, suffered or omitted on the faith thereof, but in its discretion the Secured Party may accept, in lieu thereof, other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable.

(f) The Secured Party may consult with counsel, appraisers, engineers, accountants and other skilled persons to be selected by the Secured Party, and the written advance of any thereof shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(g) The Secured Party shall be under no obligation to take any action to protect, preserve or enforce any rights or interests in the Collateral or to take any action towards the execution or enforcement of the trusts hereunder or otherwise hereunder, whether on its own motion or on the request of any other person, which in the opinion of the Secured Party may involve loss, liability or expense, unless the Debtor or the Lender shall offer and furnish reasonable security or indemnity against loss, liability and expense to the Secured Party.

(h) The Secured Party shall not be liable to the Lender for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(i) The Secured Party shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document unless requested in writing to do so by the Lender.

(j) The Secured Party may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Secured Party shall not be responsible for any misconduct or negligence on the party of any agent or attorney appointed by it with due care.

The provisions of paragraphs (c) to (j) inclusive of this section 18.2, shall be subject to the provisions of section 18.1.

18.3 Showings Deemed Necessary by the Secured Party. Notwithstanding anything elsewhere in this Agreement contained, the Secured Party shall have the right, but shall not be required, to demand in respect of withdrawal of any cash, the release of any property, the subjection of any after-acquired property to the lien of this Agreement, or any other action whatsoever within the purview hereof, any showings, certificates, opinions, appraisals or other information by the Secured Party deemed necessary or appropriate in addition to the matters by the terms hereof required as a condition precedent to such action.

18.4 Status of Moneys Received. All moneys received by the Secured Party shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Secured Party under such general conditions as may be prescribed by law in the Secured Party's general banking department, and the Secured Party shall be under no liability for interest on any moneys received by it hereunder. The Secured Party and any affiliated corporation may be interested in any financial transaction with the Debtor or any affiliated corporation or the Lessee or any affiliated corporation, or the Secured Party may act as depositary or otherwise in respect to other securities of the Debtor or any affiliated corporation or the Lessee or any affiliated corporation, all with the same rights which it would have if not the Secured Party. The Secured Party agrees that, whenever it shall be required to disburse moneys to the Lender under the provisions hereof, it shall do so by wire transfer of immediately available funds to a designated bank or trust company located in the continental United States whenever such method of payment is requested in writing by such Lender.

18.5 Resignation of the Secured Party. The Secured Party may resign and be discharged of the trusts hereby created by mailing notice specifying the date when such resignation shall take effect to the Debtor and to the Lender at their addresses set forth in Article 23. Such resignation shall take effect on the date specified in such notice (being not less than thirty days after the mailing of

such notice) unless previously a successor secured party shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor.

18.6 Removal of the Secured Party. The Secured Party may be removed and/or a successor secured party may be appointed at any time by an instrument or concurrent instruments in writing signed and acknowledged by the Lender and delivered to the Secured Party and to the Debtor and, in the case of the appointment of a successor secured party, to such successor secured party.

18.7 Successor Secured Party. Each secured party appointed in succession of the Secured Party named in this Agreement, or its successor in the trust, shall be a trust company or banking association or corporation organized under the laws of the United States of America or a state thereof and having its principal office in the continental United States, in good standing and having a capital and surplus aggregating at least $50,000,000, if there be such a trust company or banking corporation qualified, able and willing to accept the trust upon reasonable or customary terms.

18.8 Appointment of Successor Secured Party. If the Secured Party shall have given notice of resignation to the Debtor pursuant to Section 18.5 hereof, if notice of removal shall have been given to the Secured Party and the Lender pursuant to Section 18.6 hereof, which notice does not appoint a successor secured party, a successor secured party may be appointed by the Debtor, or, if such successor secured party shall not have been so appointed or shall not have accepted such appointment within fifteen calendar days after the giving of such notice of resignation or the giving of any such notice or removal, as the case may be, a successor secured party may be appointed by the Debtor, the Lender or, upon application of the retiring secured party by any court of competent jurisdiction.

18.9 Merger or Consolidation of the Secured Party. Any company into which the Secured Party, or any successor to it in the trust created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated or any company resulting from any merger or consolidation to which the Secured Party or any successor to it shall be a party (provided such company

shall be a corporation organized under the laws of the United States of America or a state thereof and having its principal office in the continental United States, in good standing and having a capital and surplus of at least $50,000,000), shall be the successor to the Secured Party under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Debtor covenants that in case of any such merger, consolidation or conversion it will, upon the request of the merged, consolidated or converted corporation, execute, acknowledge and cause to be recorded or filed suitable instruments in writing to confirm the estates, rights and interests of such corporation as secured party under this Agreement.

18.10 Conveyance Upon Request of Successor Secured Party. Should any deed, conveyance or instrument in writing from the Debtor be required by any successor secured party for more fully and certainly vesting in and confirming to such new secured party such estates, rights, powers and duties, then upon request any and all such deeds, conveyances and instruments in writing shall be made, executed, acknowledged and delivered, and shall be caused to be recorded and/or filed, by the Debtor.

18.11 Acceptance of Appointment by Successor Secured Party. Any new secured Party appointed pursuant to any of the provisions hereof shall execute, acknowledge and deliver to the Debtor an instrument accepting such appointment and thereupon such new secured party, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with like effect as if originally named as secured party herein; but nevertheless, upon the written request of the Debtor or of the successor secured party, the secured party ceasing to act shall execute and deliver an instrument transferring to such successor secured party, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the secured party so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such secured party to the successor secured party so appointed in its or his place.

SECTION 19. Applicable State Laws.

Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, any conflicting provisions of any such applicable law may be waived, they are hereby waived by the Debtor and the Lessee to the full extent permitted by law.

Except as otherwise provided in this Agreement, the Debtor to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, and place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Secured Party's rights under this Agreement and any and all rights of redemption.

SECTION 20. Recording.

The Debtor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 11303 of the Interstate Commerce Act; and the Debtor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Secured Party, for the purpose of carrying out the intention of this Agreement; and the Debtor will promptly furnish to the Secured Party certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Secured Party.

SECTION 21. Payment of Expenses.

The Debtor will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto.

SECTION 22. Article Headings; Effect and Modification of Agreement.

All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including any Equipment Schedule hereto, exclusively and completely states the rights of the Secured Party, the Debtor and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Secured Party, the Lender, and the Debtor.

SECTION 23. Notice.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) To the Secured Party, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Trust Division, Corporate Trust Department;

(b) To the Debtor, at One Market Plaza, Spear Street Tower, 25th Floor, San Francisco, California 94105;

(c) To the Lessee, at 526 Mission Street, San Francisco, California 94105, Attention: Senior Vice-President, Finance;

(d) To the Lender, at P.O. Box 396, St. Louis, Missouri 63166;

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 24. Private Offering.

The Lender represents that it is acquiring its interest in the Note for its own account, with its own general corporate assets for investment and not with a view

to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

The Lender understands that its interest in the Note has not been registered under the Securities Act of 1933 because the transaction is exempt from the registration requirements of said Act pursuant to Section 4(2) thereof and that such interest must be held indefinitely unless its interest is registered under said Act in connection with a subsequent disposition thereof or such Lender secures an opinion of counsel that such subsequent disposition is exempt from registration.

The Lender hereby agrees that any transfer effected in accordance with this Section 24 by it of all or any part of its interest in the Note shall be upon the express condition that the transferee thereof shall be bound by the terms of this Agreement. Prior to any such transfer the Lender shall notify the Secured Party in writing thereof and the Secured Party shall cause to be prepared and delivered to the Lender an appropriate agreement, to be entered into among the Lender, such transferee and the Secured Party, evidencing such transfer upon the terms hereof. The Lender shall pay to the Secured Party a reasonable charge and the out-of-pocket expense of the Secured Party in connection with such transfer.

SECTION 25. Immunities; Satisfaction of Undertakings.

No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholders, director or officer, past, present or future, of the Secured Party, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

Except as set forth in Section 6.1 hereof, the obligations of the Debtor to all persons including, but not

limited to, the Secured Party, shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Debtor shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Section 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Secured Party.

Except as set forth in Section 6.1 hereof, it is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Debtor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Debtor, or for the purpose or with the intention of binding the Debtor personally but are made and intended for the purpose of binding only the Collateral, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Debtor on account of any representation, undertaking or agreement of the Debtor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Secured Party and by all persons claiming by, through or under the Secured Party; provided, however, that the Secured Party or any person claiming by, through or under the Secured Party, making claim hereunder, may look to said Collateral for satisfaction of the same.

SECTION 26. Law Governing.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 27. Execution.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to

be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first above written, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

[SEAL]

FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity, but solely as Security Trustee for the Lender

Attest:

Title ASSISTANT

By _____
Authorized Officer

[SEAL

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

Attest:

Title VICE President

By _____
Authorized Officer

[SEAL]

GENERAL AMERICAN LIFE INSURANCE COMPANY

Attest:

Title VICE PRESIDENT & SECRETARY

By _____
Authorized Officer
Vice President and Treasurer

STATE OF UTAH)
) ss.:
CITY AND COUNTY OF SALT LAKE)

On this 23 day of August, 1979, before me personally appeared JOHN R. SAGER, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Verna L. McCora
Notary Public

My Commission Expires November 15, 1981

[Notarial Seal]

My commission expires

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

On this 20th day of August, 1976, before me personally appeared Paul Kepler, to me personally known, who, being by me duly sworn, says that he is an authorized officer of STEINER SEA, AIR & RAIL CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Helen Borgholthaus
Notary Public

[NOTARIAL SEAL]

My commission expires

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

STATE OF MISSOURI)
) ss.:
COUNTY OF St. Louis)

On this 17th day of August, 1979, before me personally appeared William R. Mead, to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of GENERAL AMERICAN LIFE INSURANCE 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.

Notary Public

[NOTARY SEAL]
My commission expires 8/8/82

EQUIPMENT SCHEDULE A
(to the Lease and the Security and Loan Agreement)
Twenty-five forty-foot FRP Trailers

Certificate of Delivery No. 1
Date of Acceptance: March 29, 1979
Lessor's Cost: $325,000.00
Lender's Portion (76.2425%): $247,788.12
Debtor's Portion (23.7575%): $77,211.88

Vehicle Serial Number	Lessee Identification Number
66-6732-14	WPZ 2798
66-6732-40	WPZ 2797
66-6732-31	WPZ 2808
66-6732-6	WPZ 2807
66-6732-41	WPZ 2806
66-6732-44	WPZ 2825
66-6732-20	WPZ 2826
66-6732-39	WPZ 2829
66-6732-22	WPZ 2830
66-6732-30	WPZ 2831
66-6732-16	WPZ 2832
66-6732-8	WPZ 2833
66-6732-34	WPZ 2866
66-6732-19	WPZ 2868
66-6732-4	WPZ 2867
66-6732-1	WPZ 2870
66-6732-9	WPZ 2869
66-6732-18	WPZ 2871
66-6732-17	WPZ 2872
66-6732-21	WPZ 2873
66-6732-42	WPZ 2874
66-6732-27	WPZ 2875
66-6732-25	WPZ 2879
66-6732-5	WPZ 2880
66-6732-43	WPZ 2881

FORM OF EQUIPMENT SCHEDULE

Trailers

Road Numbers	Total Cost	Lender's Portion	Debtor's Portion
		_%_ actual cost	_%_ actual cost

Rebuilt Hulks

Road Numbers	Total Cost	Lender's Portion	Debtor's Portion
		_%_ actual cost	_%_ actual cost

Auto Racks

Road Numbers	Total Cost	Lender's Portion	Debtor's Portion
		_%_ actual cost	_%_ actual cost

Certificate of Acceptance Number
Date of acceptance