

NEW NUMBER

5-144A030

James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. \_\_\_\_\_  
Date MAY 24 1985  
Fee \$ 10.00  
ICC Washington, D.C.

14656  
RECORDATION NO. Filed 12:23  
**MAY 24 1985 - 10 43 AM**  
INTERSTATE COMMERCE COMMISSION

Dear Mr. Bayne:

Enclosed for recordation under the provisions of Section 11303 of Title 49 of the U.S. Code are the original and five counterparts of an Equipment Lease dated as of May 20, 1985. The Equipment Lease is a primary document.

A general description of the railroad rolling stock covered by the enclosed documents and intended for use related to interstate commerce is set forth in Schedule 1 attached to this letter and made a part hereof.

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

- Lessor: Wells Fargo Leasing Corporation  
101 California Street  
Suite 2800  
San Francisco, California 94111  
Attention: Operations Department
- Lessee: Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Vice President - Finance

The undersigned acted as special counsel in connectn with the preparation of the enclosed documents and has knowledge of the matters set fth therein.

Please return the original and any extra copies of the Equipment Lease not needed by the Commission for recordation to Elizabeth L. Mars, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$10.00 covering the required recording fee.

A short summary of the enclosed primary documents appear in the Index is as follows:

*C. Cutler Mars - C.T. Kupper*

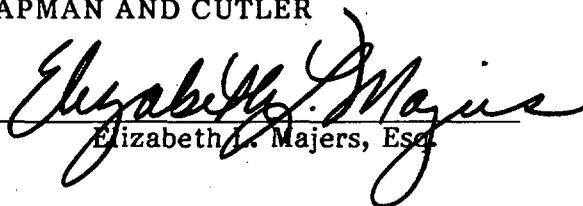
127  
10 11 1985

Equipment Lease between Wells Fargo Leasing Corporation, as Lessor, 101 California Street, Suite 2800, San Francisco, California 94111, Attention: Operations Department and Southern Pacific Transportation Company, as Lessee, One Market Plaza, San Francisco, California 94105, Attention: Vice President-Finance covering railroad rolling stock.

Very truly yours,

CHAPMAN AND CUTLER

By

  
Elizabeth L. Majers, Esq.

Enclosures

SCHEDULE 1

**Description of Items:**

Twenty-one (21) high horsepower (3,600HP) 6-axle SD45 locomotives originally manufactured by General Motors (Electromotive Division) and rebuilt by the Seller as SD45-2, locomotives substantially in accordance with the Specifications attached to the Acquisition Agreement and bearing identifying numbers SP7540 through 7560, both inclusive.

Interstate Commerce Commission  
Washington, D.C. 20423

5/24/85

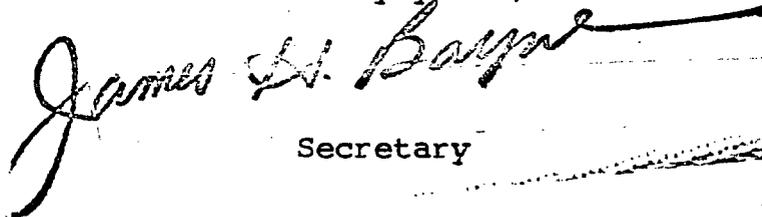
OFFICE OF THE SECRETARY

Elizabeth L. Majers:  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/24/85 at 10:45am and assigned re-  
recording number(s). 14656

Sincerely yours,

  
Secretary

Enclosure(s)

14656

REGISTRATION NO. \_\_\_\_\_ Filed 1425

MAY 24 1985 -10 45 AM

INTERSTATE COMMERCE COMMISSION

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**EQUIPMENT LEASE**

**Dated as of May 20, 1985**

**Between**

**WELLS FARGO LEASING CORPORATION**

**LESSOR**

**And**

**SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**LESSEE**

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(Southern Pacific 85-1)  
(21 Rebuilt Locomotives)

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- Schedule A - Description of Items of Equipment
- Schedule B - Certificate of Acceptance under Equipment Lease
- Schedule C-1 Schedule of Casualty Value - Single Investor
- Schedule C-2 Schedule of Casualty Value - Leveraged Lease

## **EQUIPMENT LEASE**

THIS EQUIPMENT LEASE dated as of May 20, 1985 is between WELLS FARGO LEASING CORPORATION, a California corporation (the "Lessor") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Lessee").

### **R E C I T A L S:**

A. Pursuant to an Acquisition Agreement dated as of May 20, 1985 (the "Acquisition Agreement"), Southern Pacific Transportation Company, a Delaware corporation (in its capacity as seller of the hereinafter described Equipment, the "Seller") has agreed to sell 21 locomotives more fully described in Schedule A attached hereto (individually "Item of Equipment" and collectively the "Equipment") to the Lessor upon the terms and conditions set forth in the Acquisition Agreement and for the purchase Price ("Purchase Price") set forth in said Schedule A; provided that such Purchase Price is subject to increase or decrease but in no event shall the Purchase Price of all Items of Equipment exceed \$17,371,200 or be less than \$14,212,800, nor shall the Purchase Price of any Item of Equipment exceed \$827,200 or be less than \$676,800. The Lessor will purchase the Equipment from the Seller on the dates (the "Closing Dates") provided for in the Acquisition Agreement. The Items of Equipment purchased by the Lessor under the Acquisition Agreement in respect of which the Lessor has not issued Notes (as hereinafter defined) to finance a portion of the Purchase Price thereof are hereinafter sometimes referred to as the "Single Investor Equipment" and the Items of Equipment purchased by the Lessor in respect of which the Lessor has issued Notes to finance a portion of the Purchase Price thereof are hereinafter sometimes referred to as the "Leveraged Lease Equipment".

B. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of May 20, 1985 (the "Participation Agreement") with the institutional investor named in Schedule I thereto (the "Note Purchaser") providing for the commitment of the Note Purchaser which, together with funds provided by the Lessor, will permit the Lessor to obtain the funds necessary to purchase the Leveraged Lease Equipment on the second and each subsequent Closing Date under the Acquisition Agreement and to reimburse the Lessor for a portion of the Purchase Price paid by the Lessor for the Single Investor Equipment. The proceeds from the advance of a portion of the Purchase Price by the Note Purchaser will be evidenced by the 11.40% Secured Notes (the "Notes") of the Lessor, which Notes will be secured by an assignment of certain of the Lessor's right, title and interest in and to this Lease and certain sums due and to become due hereunder and by the grant of a security interest by the Lessor in the Equipment, all pursuant to a Security Agreement dated as of May 20, 1985 (the "Security Agreement") between the Lessor, as debtor, and the Note Purchaser, as secured party.

### **SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.**

1.1. **Intent to Lease and Hire.** Upon delivery of each Item of Equipment under the Acquisition Agreement, the Lessee shall lease and let and the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

**1.2. Inspection and Acceptance.** The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to hire any Item of Equipment unless the same is delivered on or before the Outside Delivery Date set forth in Schedule A. Pursuant to the Acquisition Agreement, the Lessee has been designated by the Lessor as its agent to accept the Items of Equipment to be leased hereunder from the Seller.

**1.3. Certificate of Acceptance.** The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture or condition or in any other respect, and shall conclusively establish as between the Lessor and the Lessee that such Item of Equipment is in good order and condition and conforms to the Specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment as of the date of delivery and acceptance by the Lessee hereunder. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## **SECTION 2. RENTALS AND PAYMENT DATES.**

**2.1. Rent for Equipment.** The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) **Interim Rental.** (i) For each Item of Single-Investor Equipment, an amount per calendar day equal to .0298897% of the Purchase Price of each such Item of Single Investor Equipment for the period from and including the Closing Date with respect to such Item to, but not including, December 31, 1985 (the "Term Lease Commencement Date") payable on December 31, 1986;

(ii) For each Item of Leveraged Lease Equipment, an amount per calendar day equal to .031361% of the Purchase Price of each such Item of Leveraged Lease Equipment for the period from and including the Closing Date with respect to such Item to, but not including, the Term Lease Commencement Date payable on December 31, 1985.

Rental payable by the Lessee pursuant to this Section 2.1(a) is hereinafter referred to as "Interim Rental".

(b) **Fixed Rental.** For each Item of Equipment, forty (40) quarterly installments of Fixed Rental payable in arrears (the "Fixed Rental"), in the amounts set forth on Schedule A attached hereto, as applicable.

**2.2. Rent Payment Dates.** The forty (40) installments of Fixed Rental for each Item of Equipment shall be due and payable on March 31, 1986 and on the last day of each June, September, December and March thereafter to and including December 31, 1995. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of California are authorized or required to close.

**2.3. Adjustment of Rentals.** The Lessee and the Lessor agree that the Interim Rentals and Fixed Rentals payable hereunder and the Casualty Value percentages set forth in Schedule C hereto will, as to each Item of Equipment, be adjusted in the event that

(a) the Purchase Price of the Items of Equipment shall have been paid to the Seller or the amount of the Purchase Price of the Equipment to be paid is other than in accordance with the following schedule:

<u>Date on which Items are to be Paid For</u>	<u>Purchase Price</u>	<u>Number of Items to be Paid For</u>
May 23, 1985	\$ 3,760,000	5
June 13, 1985	1,504,000	2
July 12, 1985	1,504,000	2
August 15, 1985	1,504,000	2
September 12, 1985	1,504,000	2
October 8, 1985	1,504,000	2
November 12, 1985	1,504,000	2
December 11, 1985	1,504,000	2
December 27, 1985	<u>1,504,000</u>	<u>2</u>
	\$ 15,792,000	21

(b) the Items of Equipment shall have been placed in service within the meaning of Sections 38, 46 and 48 of the Code other than in accordance with the following schedule:

<u>Date</u>	<u>Number of Items</u>
May 23, 1985	5
June 13, 1985	2
July 12, 1985	2
August 15, 1985	2
September 12, 1985	2
October 8, 1985	2
November 12, 1985	2
December 11, 1985	2
December 27, 1985	<u>2</u>
	21

(c) the effective interest rate payable by the Lessor in respect of the Notes is other than 11.4% per annum with daily interest computed on the basis of a 360-day year of twelve 30-day months and with the daily interest factor applied to 30 days for a full calendar month and applied to actual days elapsed for a partial month;

(d) the interest payable in respect of the Notes is not payable on December 31, 1985 and thereafter quarterly in arrears on March 31, June 30, September 30 and December 31 in each year commencing on March 31, 1986;

(e) the actual initial and ongoing fees and expenses paid in connection with the transactions contemplated by this Lease and related documents are other than 1.0% of the Purchase Price of the Equipment leased hereunder;

(f) any amendment to, or change in the Internal Revenue Code of 1954, as amended (the "Code) or income tax regulations thereunder or applicable state law or regulations, or published administrative or judicial interpretations of the Code or such law or regulations is, in respect of any Item of Equipment, enacted, adopted or announced and has an effective date on or prior to the date of acceptance hereunder of such Item, the effect of which is to change the net after-tax rate of return or the net after-tax cash flow of the Lessor with respect to such Item of Equipment based on the same assumptions and methods of calculation utilized by the Lessor in originally evaluating the transactions contemplated by this Lease;

(g) the portion of the Purchase Price of the Leveraged Lease Equipment advanced by the Lessor is other than 58.23% of the aggregate Purchase Price of such Equipment except as may otherwise be agreed to in writing by the Lessor and the Lessee;

(h) the Items of Equipment include both Single-Investor Equipment and Leveraged Lease Equipment; and

(i) the Notes, if any, issued by the Lessor to finance a portion of the Purchase Price of the Equipment delivered on the first Closing Date are not issued on June 13, 1985 or the Notes, if any, issued by the Lessor to finance a portion of the Purchase Price of the Equipment delivered on each subsequent Closing Date are not issued on said Closing Date.

Any such adjustment shall be effective as of the first Fixed Rental payment date following the event giving rise to such adjustment and shall be made in such manner as will result, in the Lessor's reasonable judgment, in maintaining for the Lessor the same after-tax rate of return and after-tax cash flow that would have been realized by the Lessor over the entire term of this Lease had such event not occurred, (i) based on the rates of Federal and state taxes on, or measured by, net income in effect from time to time, and (ii) in all other respects based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents (the "Net Economic Return").

Anything in this Section 2.3 to the contrary notwithstanding, the amounts payable as installments of Fixed Rental and Casualty Value (as defined in Section 11.7 of this Lease) hereunder, with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date or casualty payment date under this Lease, and (ii) shall not be reduced below an amount which would cause the Lessor to lose the ability to account for this Lease and its investment in the Equipment using leveraged lease accounting, in accordance with Financial Accounting Standards Board Statement No. 13, and (iii) will be adjusted in such manner (subject to the restrictions of the preceding clauses) so as to enable the Lessor to satisfy the profit and positive cash flow requirements set forth in Section 4(6) of Rev. Proc. 75-21, 1975-1 Cum. Bull. 715, as such requirements may be modified or adjusted as of the applicable rental payment date or casualty payment date. The Lessor shall furnish the Lessee prior to the effective date of any such adjustment with a notice setting forth in reasonable detail the computations and methods used in computing such adjustment.

**2.4. Place and Manner of Rent Payment.** The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installments of Interim Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof, if any, which the Lessee shall be required to pay to the Lessor pursuant to Section 2.3 hereof shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 21.1 hereof;

(c) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof

provided for payments in Section 21.1 hereof; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions, in addition to the portion referred to in Section 2.4(b) hereof, and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(d) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payment in Section 21.1 hereof or in such other manner or to such other address as may be designated by the Lessor in writing; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(e) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance), 19 and 21.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(f) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(g) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above, not later than 10:00 A.M. on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised of in writing.

**2.5. Net Lease.** This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under

this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of or requisitioning of the Equipment by condemnation or otherwise, the prohibition of Lessee's use of the Equipment other than by the Lessor's breach of the Lessee's right of quiet enjoyment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 10 hereof for any reason whatsoever.

### **SECTION 3. TERM OF THE LEASE.**

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate ten (10) years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

### **SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.**

**4.1. Retention of Title.** The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

**4.2. Duty to Number and Mark Equipment.** The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased and Subject to a Security Interest recorded with the I.C.C."

or

"Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

**4.3. Prohibition Against Certain Designations.** Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

## **SECTION 5. DISCLAIMER OF WARRANTIES.**

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, THE LESSOR EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE DESIGN (INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE DESIGNATED SPECIFICATIONS) OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (D) ANY OTHER MATTER WHATSOEVER; IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the original manufacturer or rebuilder thereof, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights and provided, further, that the Lessor has, at any time, the right, but not the obligation, to proceed on its own behalf against the manufacturer or rebuilder of the Equipment. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment

described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

## **SECTION 6. LESSEE'S INDEMNITY.**

**6.1. Agreement to Indemnify.** Except to the extent provided in Section 6.3, the Lessee hereby assumes liability for, and agrees to defend, indemnify and hold the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) and their respective successors and assigns (each an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, suits, costs and expenses (including, without limitation, reasonable legal fees and expenses) of any nature whatsoever that may be imposed on, incurred by or asserted against an Indemnified Person in respect of any Item of Equipment or its manufacture, financing, purchase, acceptance, rejection, ownership, delivery, non-delivery, leasing, subleasing, possession, use, operation, repair, replacement, transportation, condition, sale, return, repossession or other disposition or arising out of this Lease, the Acquisition Agreement, the Participation Agreement or the Security Agreement.

**6.2. Claims Included in Indemnity.** The indemnity provided by Section 6.1 includes, but not by way of limitation, the following claims if related to an Item of Equipment: (a) claims arising out of any latent or other defect, whether or not discoverable by an Indemnified Person or the Lessee, (b) claims for patent, trademark or copyright infringement, and (c) claims for personal injury, death or property damage, including claims based on the negligence of the Indemnified Person or strict liability in tort.

**6.3. Claims Excluded from Indemnity.** The following claims are excluded from the indemnity provided by Section 6.1: (a) claims for Impositions (as defined in Section 10.2 hereof), (b) claims against an Indemnified Person to the extent that those claims arise out of such Indemnified Person's willful misconduct or gross negligence, and (c) claims arising after the expiration of the term of this Lease (including the renewal term) and not substantially related to events or matters occurring earlier.

**6.4. After-Tax Basis.** The indemnity amounts payable under Section 6.1 shall be computed on an "after-tax" basis, so that any such indemnity payment shall be in an amount which, when reduced by the net increase in the federal, state and local income tax liability of the Indemnified Person to be indemnified as a result of the receipt of such payment, shall equal the amount of the claim in respect of which such indemnity is payable.

## **SECTION 7. RULES, LAWS AND REGULATIONS.**

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and, to the extent applicable, the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of

Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor; **provided, however,** that Lessee may, in good faith and by appropriate legal proceedings, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not in the opinion of the Lessor adversely affect the property rights, or interests of the Lessor in the Equipment or hereunder.

### **SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.**

(a) The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment and the component parts thereof in good order and repair, to a standard at least equal to the standard and frequency of maintenance performed on other equipment owned or leased by it, and in the condition received by the Lessee from the Lessor, ordinary wear and tear excepted, and to the extent applicable, suitable for use in interchange in accordance with the Interchange Rules.

(b) Without limiting the provisions of paragraph (a) of this Section 8, the Lessee at its own expense may from time to time make such optional additions, improvements or alterations ("Alterations") to any Item of Equipment as the Lessee may deem desirable in the proper conduct of its business and which are not inconsistent with the continuing operation of such Item in accordance with its original intended purpose; **provided,** that any such Alteration made by the Lessee pursuant to this paragraph (b) shall not diminish the value or utility of such Item to the Lessor below the value and utility thereof to the Lessor immediately prior to such Alteration; and **provided further** that at least thirty days prior to making any Alteration to any Item of Equipment which will not comply with the requirements set forth in I.R.S. Rev. Proc. 79-48 for advance ruling purposes, the Lessee shall have advised the Lessor and the Note Purchaser in writing that it intends to make such Alteration and shall have confirmed its obligation to indemnify the Lessor against any tax consequences to the Lessor resulting therefrom pursuant to the Tax Indemnity Agreement (as hereinafter defined).

(c) Any parts installed or replacements or Alterations made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair pursuant to this Section 8 or which do not comply with the requirements set forth in I.R.S. Rev. Proc. 79-48 for advance ruling purposes or which do so comply but which cannot be readily removed without causing material damage to an Item shall in each case be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. Title to any readily removable Alterations which can be removed from an Item without causing material damage thereto shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable Alterations to be made to any Item of Equipment, the Lessee may, or at the request of the Lessor, the Lessee shall, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

If the Lessee shall make or plan to make any addition to an Item of Equipment not constituting maintenance, service, repair or restoration required by Section 7 hereof or the second sentence of this Section 8 and not constituting a substitution or replacement for any part of such Item (any such addition being hereinafter referred to as an "Addition"), the Lessee may, at its option, request the Lessor to finance the costs and expenses of such Addition. Upon receipt of such request, the Lessor shall give due consideration in good faith to financing the same but neither the Lessor nor the Lessee shall be under any obligation whatsoever with respect thereto.

#### **SECTION 9. LIENS ON THE EQUIPMENT.**

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the expiration or earlier termination of this Lease.

#### **SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.**

**10.1. Filing.** Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and in such other places within or without the United States as the Lessor may reasonably request and will furnish the Lessor proof thereof and prior to the first Closing Date on which the Note Purchaser purchases Notes of the Lessor, the Lessee will cause the Security Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with said §11303 and in such other places within or without the United States as the Note Purchaser may reasonably request and will furnish the Note Purchaser proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Note Purchaser, for the purpose of protecting the Lessor's title to, or the Note Purchaser's security interest in, any Item of Equipment to the satisfaction of the Lessor's or the Note Purchaser's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Note Purchaser proof of such filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor and the Note Purchaser that such action has been properly taken. Except as expressly provided in the Acquisition Agreement or the Participation Agreement, the Lessee will pay all costs, charges and expenses incident to any such filing, refile, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

## 10.2. General Tax Indemnity.

(a) **Agreement to Indemnify.** Except to the extent of Impositions (as hereinafter defined) excluded pursuant to Section 10.2(b), the Lessee hereby assumes liability for, and agrees to defend, indemnify and hold each Indemnified Person harmless from and against any and all license, documentation, recording and registration fees, and all taxes (including, without limitation, gross receipts, sales, use, personal property (tangible and intangible), real estate and stamp taxes, levies, imposts, duties, assessments, fees, charges and withholdings of any nature whatsoever, whether or not presently in existence, together with any penalties, fines, addition to tax or interest thereon, imposed by any government or taxing authority (hereinafter called "Impositions"), upon or with respect to (i) any Item of Equipment or any component thereof, (ii) the manufacture, financing, purchase, acceptance, rejection, ownership, delivery, non-delivery, leasing, subleasing, possession, use, operation, repair, replacement, transportation, condition, sale, return, repossession or any other disposition of an Item of Equipment or component thereof, and (iii) the rentals, receipts or revenues arising from any Item of Equipment or any applications or dispositions of those rentals, receipts or revenues.

(b) **Impositions Excluded From Indemnity.** The following Taxes are excluded from the indemnity provided by Section 10.2(a).

(i) Impositions based upon or measured by the net income of an Indemnified Person imposed by the United States of America or any state government or taxing authority;

(ii) Impositions imposed as a result of a sale, transfer, assignment or other disposition by the Lessor of any interest in an Item of Equipment, unless such disposition is made

(A) pursuant to Section 11.6,

(B) while an Event of Default is continuing.,

(C) with the written consent of the Lessee,

(D) as a result of entering into a renewal of this Lease with the Lessee, or

(E) as a result of a sale to the Lessee upon the expiration of the term of this Lease (including the renewal terms pursuant to Section 18.1 hereof) except as provided in clause (i) of this Section 10.2(b);

(iii) Impositions imposed in respect of an Item of Equipment to the extent that they relate to any period after the Item of Equipment has been surrendered pursuant to Section 13 (other than while an Event of Default is continuing) or any period after the expiration of the term of this Lease (including any renewal terms) unless the Lessee purchases the Item of Equipment pursuant to Section 18.3;

(iv) Impositions included in the Purchase Price of an Item of Equipment; and

(v) Impositions imposed on an Indemnified Person solely as a result of such person's willful misconduct or gross negligence.

(c) **Notices of Assessment.** the Lessor shall forward promptly to the Lessee all written assessments of Impositions received by it that are subject to the Indemnity provided in Section 10.2(a); **provided** that the Lessor's failure to forward an assessment to the Lessee shall not relieve the Lessee of any obligations under this Section 10.2 except to the extent, if any, that such failure actually caused the Lessee to be unable to contest such assessment.

(d) **Time for Payment of Taxes.** Except when the Lessee determines to resist payment in accordance with Section 10.2(e), the Lessee shall pay all Impositions subject to the indemnity provided in Section 10.2(a) within 30 days after it receives written notice from the Lessor or the relevant taxing authority that payment is due.

(e) **Resisting Payment.** The Lessee may resist payment of Impositions for which it must Indemnify an Indemnified Person pursuant to Section 10.2(a) by appropriate administrative or judicial proceedings conducted in good faith and at the Lessee's sole expense if the Lessee informs the Indemnified Person within 30 days after receipt by the Lessee of a written assessment of Compositions that it wishes to contest the assessment and if it delivers to the Indemnified Person an indemnity in form and substance reasonably satisfactory to such Indemnified Person against any liability, expenses or loss that may be incurred by the Indemnified Person arising out of or related to such contest; **provided** that if the Lessor determines that the Lessee's action presents a danger that any Item of Equipment will be sold, forfeited or lost or that any other interest of such Indemnified Person will be adversely affected, the Lessee shall take such action as may reasonably be requested by the Lessor, including the payment of Impositions, to eliminate that danger.

(f) **After-Tax Basis.** The indemnity amounts payable under Section 10.2(a) shall be computed on an "after-tax" basis, so that any such indemnity payment shall be in an amount which, when reduced by the net increase in the federal, state and local income tax liability of the Indemnified Person to be indemnified as a result of the receipt of such payment, shall equal the amount of the Impositions in respect of which such indemnity is payable.

(g) **Tax Filing and Payments.** The Lessee shall timely prepare and file all reports and returns which are required to be made with respect to any Impositions which are the obligations of the Lessee under, or arising out of, Section 10.2(a). The Lessee shall, to the extent permitted by law, cause all billing of such Impositions to be made to each Indemnified Person in care of the Lessee, make payment thereof and, from time to time on written request of any Indemnified Person, submit written evidence of such payment. Each Indemnified Person shall furnish the Lessee, promptly after receipt, copies of all requests for information from any taxing authority relating to any obligation of the Lessee under, or arising out of, Section 10.2(a), and shall request such taxing authority to contact the Lessee regarding any such information.

## **SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.**

**11.1. Insurance.** The Lessee agrees that it will at all times during the term of this Lease and during any return and storage period hereunder and at its own cost

and expense keep each Item of Equipment insured against loss by fire, collision, derailment, and explosion and with extended coverage and against such other risks as are customarily insured against by the Lessee with respect to similar equipment which it owns or leases and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit maintained by the Lessee with respect to similar equipment which it owns or leases (other than pursuant to leases entered into prior to the date hereof that require the Lessee to maintain a specified minimum amount of general public liability insurance or maximum deductible amount thereunder). Any insurance with respect to the Equipment may have deductible provisions to no greater extent than the Lessee maintains with respect to similar equipment which it owns or leases. All such insurance shall cover the interest of the Lessor and any assignee of the Lessor (including, without limitation, the Note Purchaser) and the Lessee, as their interests may appear, in the Equipment or, as the case may be, shall protect the Lessor and any assignee of the Lessor (including, without limitation, the Note Purchaser) and the Lessee, in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Equipment and shall provide that proceeds, if any, in respect to the Equipment shall be payable to the Lessee, the Lessor and the Note Purchaser as their respective interests may appear. To the extent applicable, all policies of insurance maintained pursuant to this Section shall provide therein or by endorsement that prior written notice of expiration, cancellation or modification shall be given to the Note Purchaser and the Lessor. Such written notice shall be given not less than 30 days prior to such expiration, cancellation or modification (or such advance period as is consistent with insurance industry practices) and, as to the interest of the Lessor or the Note Purchaser therein, no such insurance shall be invalidated by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto or by the use or operation of the Equipment for purposes more hazardous than is permitted by such policy. The Lessee warrants and affirms that it will satisfy all obligations under such policy necessary to keep such insurance in full force and effect. No such policy shall require co-insurance. Upon receipt by the Lessee of notice of the assignment of this Lease and certain of the rents and other sums payable hereunder pursuant to Section 16 hereof, the Lessee shall, to the extent applicable, cause the property insurance on the Equipment to provide that the proceeds, if any, shall be payable to the Note Purchaser under a standard mortgage loss payable clause satisfactory to the Lessor, the Lessee and the Note Purchaser. To the extent permitted by the terms of applicable insurance coverage, any loss under the property insurance policy referred to above shall be adjusted with the Lessee, provided that no such adjustment shall constitute a waiver of the respective rights of the named insureds under such insurance policy. The Lessee shall furnish the Lessor and the Note Purchaser with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates or binders evidencing such renewal as soon as practicable but in no event later than 30 days after the expiration date of the original policy or policies. All insurance provided for in this Section shall be effective with insurance companies or insurers having all necessary power and authority to furnish the required coverage.

The proceeds of any property insurance received by the Lessor or the Note Purchaser shall be held by such party until the repairs referred to in clause (a) below are made as specified therein or payment of the Casualty Value is made, but in no case longer than one year and will be paid either (a) to the Lessee within 30 days following receipt by the Note Purchaser or the Lessor, as the case may be, of a written application signed by

the Lessee for payment of, or to reimburse the Lessee for payment of, the costs of repairing or restoring the Item of Equipment which has been lost or damaged (which application shall be accompanied by reasonably satisfactory evidence of such cost and the completion of such repair or restoration), or (b) if this Lease is terminated with respect to such Item of Equipment because of a Casualty Occurrence and the Lessee has paid the Casualty Value due as a result thereof, such proceeds shall be applied in the manner as is provided for the disposition of insurance proceeds in Section 11.6 hereof, provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Lessor hereunder, such proceeds may be applied against such liability.

**11.2. Duty of Lessee to Notify Lessor.** In the event that any Item of Equipment shall be or become lost, stolen, destroyed or, in the reasonable opinion of the Lessee, rendered permanently unfit for normal use during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or title or use thereof shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease, (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee thereof pursuant to Section 16 hereof in regard thereto (including, without limitation, the Note Purchaser) and advise such persons whether the Lessee shall either replace the Item of Equipment having been the subject of such Casualty Occurrence with a similar item of equipment of equal or greater value and utility or shall pay the Casualty Value (as defined in Section 11.7 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

**11.3. Sum Payable for Casualty Loss.** The Lessee, on the Term Lease Commencement Date or next succeeding Fixed Rental payment date or the last day of any storage period pursuant to Section 13 hereof, as the case may be, following its determination that a Casualty Occurrence has taken place with respect to any Item of Equipment, shall, if the Lessee has specified that it will replace such Item of Equipment, replace such Item of Equipment with a similar item of equipment of equal or greater value and utility (as determined in the reasonable judgment of the Lessor and the Note Purchaser), provided that if the Lessor shall have prior to such payment date notified the Lessee that such replacement, after taking into account the recapture of any tax benefits with respect to the Item of Equipment which has been the subject of the Casualty Occurrence and the nature and value to the Lessor of any tax benefits then available and currently usable by the Lessor with respect to the new item of equipment, would impair the Lessor's Net Economic Return with respect to the Item of Equipment which has been the subject of such Casualty Occurrence or if the Lessee has not elected to replace such Item of Equipment, then the Lessee shall on such payment date pay to the Lessor (a) any rentals or other sums due on or prior to such date then remaining unpaid, and (b) a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

**11.4. Optional Retirement of Equipment.** When, in the good faith judgment of the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee any Item of Equipment then leased hereunder shall have become economically obsolete or surplus to the needs of the Lessee, the Lessee may upon not less than 120 days' prior written notice to the Lessor and the Note Purchaser, which notice shall be signed by any such officer and shall certify the reason for termination hereunder and shall designate the date on which termination will be effective, terminate this Lease with respect to such Item of Equipment as of the rent payment date for the eleventh installment of Fixed

Rental or as of any succeeding payment date for Fixed Rental during the term of this Lease upon payment to the Lessor of an amount equal to the Casualty Value of such Item of Equipment (together with the installment of Fixed Rental and any other sum then due in respect of such Item of Equipment). For the purposes of this Section 11.4, interest rates or similar finance charges payable by the Lessee in connection with the acquisition of similar equipment under conditional sales contracts, leases or other arrangements for deferred payment of the purchase price, shall be disregarded in the determination of whether such Equipment is obsolete or surplus to the needs of the Lessee or continued operation thereof is economically impracticable and the Lessee shall so certify in writing in connection with any such termination.

**11.5. Rent Termination.** Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment. If for any reason whatsoever the disposition pursuant to Section 11.6 hereof of any Item or Items of Equipment has not been completed prior to the Casualty Value payment date, this Lease shall continue in full force and effect with respect to such Item or Items as though such Item or Items have not been the subject of a Casualty Occurrence or a determination of obsolescence, as the case may be.

**11.6. Disposition of Equipment.** The Lessee shall, as agent for the Lessor, use its best efforts to dispose of such Item or Items of Equipment having suffered a Casualty Occurrence or which has or have been the subject of a determination of obsolescence as soon as it is able to do so at the best price available; it being understood that the purchaser thereof may not be the Lessee or any person or corporation affiliated therewith; provided, however, that the Lessor shall have the right, upon notice to the Lessee, to revoke the appointment of the Lessee as its agent with respect to the sale of any Item or Items having suffered a Casualty Occurrence. Any such disposition shall be on an "as-is", "where-is" basis without recourse, representation or warranty, express or implied (including, without limitation, those representations and warranties expressly disclaimed in Section 5 hereof). Upon the Lessee's request, the Lessor shall provide the Lessee with a bill of sale or any other documents reasonably necessary for the Lessee's disposition of the Items suffering a Casualty Occurrence or which has or have been the subject of a determination of obsolescence. Any payments received at any time by the Lessor or the Lessee from any governmental authority, insurer or other party with respect to a Casualty Occurrence or from a purchaser as a result of the disposition of an Item of Equipment pursuant to this Section, will be applied promptly as follows:

(a) so much of such payments as shall not exceed the Casualty Value (plus any indemnification payment required pursuant to Section 6 or Section 10.2 hereof) shall be applied in reduction of the Lessee's obligation to pay such Casualty Value (plus any indemnification payment), if not already paid by the Lessee, or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such Casualty Value (plus any such indemnification payment); and

(b) any remaining balance, shall be paid to the Lessor.

**11.7. Casualty Value.** The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this

Section 11 (and not the date of the Casualty Occurrence). Casualty Value for each Item shall be equal to that percentage of the Purchase Price thereof set forth in Schedule C hereto (as such Schedule may be modified pursuant to Section 2.3 hereof) opposite such date of payment, plus any additional percentage of Purchase Price called for by the last paragraph of such Schedule C.

**11.8. Risk of Loss.** The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessor and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

**11.9. Eminent Domain.** In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## **SECTION 12. ANNUAL REPORTS.**

**12.1. Duty of Lessee to Furnish.** On or before the first May 1 which occurs more than four months following the date of this Lease and on each May 1 thereafter, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), describing the insurance which is in force with respect to the Equipment and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

**12.2. Lessor's Inspection Rights.** The Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) each shall have the right (but not the obligation), at their respective sole cost and expense, by their respective authorized representatives, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm the existence and proper maintenance of the Equipment during the continuance of this Lease.

### **SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.**

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee or any entity associated with or owned or controlled, by the Lessee as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days and transport the same one time within such 180-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee.

The Equipment shall be in good repair, order and condition, ordinary wear and tear excepted, and shall be suitable for use in interchange in accordance with Interchange Rules and shall otherwise be in a condition so as to conform in all material respects to any other rules and regulations of governmental entities applicable to railroad rolling stock of the type leased hereunder.

All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

Any amounts earned in respect of the Equipment after the date of expiration of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to the daily average of the annual Fixed Rental payable in respect of Single Investor Equipment or, (ii) the Fair Rental Value (determined in the manner provided in Section 18.2 hereof) for such Item for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

### **SECTION 14. DEFAULT.**

**14.1. Events of Default.** Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for five business days;

(b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof not permitted by this Lease;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee or the Seller, as the case may be, contained herein or in the Participation Agreement or the Acquisition Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Note Purchaser to the Lessee, specifying the default and demanding the same to be remedied (or in the case of any such default which cannot with due diligence be cured within such 30-day period, if Lessee shall promptly proceed to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with such a default that the time of the Lessee within which to cure the same shall be extended for such period as may be necessary, but in no event more than 90 additional days);

(d) Any representation or warranty made by the Lessee or the Seller, as the case may be, contained herein or in the Participation Agreement or the Acquisition Agreement or in any statement or certificate furnished to the Lessor or the Note Purchaser pursuant to or in connection with this Lease, the Participation Agreement or the Acquisition Agreement (other than any representation or warranty contained in or made pursuant to the Tax Indemnity Agreement dated as of May 20, 1985 between the Lessor and the Lessee, the sole and exclusive remedy for which shall be as set forth in said Tax Indemnity Agreement) is untrue in any material respect as of the date of issuance or making thereof;

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall

continue), the trustee or trustees appointed in such proceedings shall not have agreed, pursuant to a court order or decree, as a cost of administration, to perform all the obligations of the Lessee hereunder, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

**14.2. Remedies.** If any Event of Default has occurred and is continuing, the Lessor and/or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees and such additional amounts as are sufficient to maintain for the Lessor the Net Economic Return (as defined in Section 2.3 hereof) that it would have realized had such breach not occurred; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period, such present worth to be computed in each case on a basis of a 11.4% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of m q h m j g q T y t z z ]  
the rent payment date on or immediately preceding the date of termination of

such Item of Equipment under the Lease over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Item in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

For purposes of this Section 14.2, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements in Section 18.2 hereof; provided that if an Event of Default shall have occurred and be continuing and a portion of Notes shall then remain outstanding, all rights of the Lessor referred to in said Section 18.2 shall be exercised by the Note Purchaser, and further provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

**14.3. Cumulative Remedies.** The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Equipment.

**14.4. Lessor's Failure to Exercise Rights.** The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

**14.5. Notice of Event of Default.** The Lessee also agrees to furnish to the Lessor and the Note Purchaser, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## **SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.**

**15.1. Lessee's Duty to Return.** If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select; provided that, in the event the Lessor shall designate storage tracks which are then unavailable either because such tracks are then being used to store equipment owned by a third party pursuant to a contractual obligation of the Lessee to provide storage therefor or because the storage of the Items of Equipment on such tracks would materially impair the ability of the Lessee to meet its obligations to perform services as a common carrier to the public, then the Lessee agrees to so store the Items of Equipment upon such other storage tracks as shall then be so available and nearest to such storage tracks designated by the Lessor;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof, and

(c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled delivered and stored as hereinabove provided within thirty days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to the daily average of the annual Fixed Rental payable in respect of Single Investor Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18.2 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

**15.2. Specific Performance.** The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

**15.3. Lessor Appointed Lessee's Agent.** Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## **SECTION 16. ASSIGNMENTS BY LESSOR.**

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor; **provided** that in no event will the Lessor make any such assignment to any person, firm or corporation which is or is affiliated with a company which is engaged in transportation by rail as a "common carrier". Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (a) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title or the failure of the Lessor to afford the right of quiet enjoyment to the Lessee, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (b) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance], 19 and 21.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (c) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

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

## **SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.**

**17.1. Lessee's Rights to the Equipment.** So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The

Lessee shall not enter into any sublease with respect to, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except pursuant to a sublease which shall be for a term not exceeding two years or in any event extending beyond the original term of this Lease and which shall be made expressly subject and subordinate to the rights of the Lessor and the Note Purchaser, which shall not result in foreign source income and losses to the Lessor and which shall require the sublessee to operate and maintain the Equipment in a manner consistent with the terms and provisions of this Lease. The Lessee will give the Lessor and the Note Purchaser at least twenty business days prior notice of the identity of any proposed sublessee under any such sublease and will deliver to such parties copies of such sublease, specifying the terms evidencing compliance with such restrictions. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any of its liabilities or obligations hereunder which shall be and remain those of a principal and not a surety.

**17.2. Use and Possession in Railroad Operations.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation, a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States, and the Lessee agrees that any use of the Equipment outside the continental United States shall be de minimus.

**17.3. Merger, Consolidation or Acquisition of Lessee.** Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignee, successor or transferee shall be, effective upon such transfer, a corporation incorporated in any state of the United States or the District of Columbia which shall have all necessary authorizations and approvals to operate such assets as an interstate rail carrier, shall have duly assumed in writing the obligations of the Lessee hereunder, shall not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease, shall have a net worth not less than that of the Lessee measured with respect to the Lessee immediately prior to the consolidation, merger or acquisition, and the Lessee shall notify the Lessor in writing at least 10 business days before the merger, consolidation or acquisition.

## **SECTION 18. RENEWAL OPTION; PURCHASE OPTIONS.**

**18.1. Renewal Options.** (a) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and there shall have been no material adverse change in the financial condition of the Lessee since the date of this Lease, the Lessee may by written notice delivered to the Lessor not less than 120 days

prior to the end of the original term of this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Items of Equipment then covered by this Lease for an additional period of one year commencing on the scheduled expiration of such original term; **provided, however**, that the aggregate of such renewal term plus the original term shall not exceed 75% of the total useful economic life (as determined pursuant to Section 18.2 hereof) of the Equipment. Such extended term of the Lease shall be on the same terms and conditions as are contained in this Lease, except (a) as to the amount of rentals, which shall be at a rate equal to 50% of the average quarterly Fixed Rental payments payable during the original term of the Lease, payable in arrears, in quarterly payments on the months and days such rentals were payable for the Items in each year of the original term and (b) that the Casualty Value of each Item on the first day of such extended term shall be equal to the "Fair Market Value" of such Item on such date and thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful life of such Item as determined by the procedures hereinafter established.

(b) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and there shall have been no material adverse change in the financial condition of the Lessee since the date of this Lease, the Lessee may by written notice delivered to the Lessor not less than 120 days prior to the end of the renewal term of this Lease elected pursuant to Section 18.1(a) hereof, elect to extend the term of this Lease in respect of all but not less than all the Items of Equipment then covered by this Lease for an additional period of one year commencing on the scheduled expiration of such renewal term. Such extended term of the Lease shall be on the same terms and conditions as are contained in this Lease, except (a) as to the amount of rentals, which shall be a rate equal to the Fair Market Rental of the Equipment, and (b) that the Casualty Value of each Item on the first day of such extended term shall be equal to the "Fair Market Value" of such Item on such date and thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful economic life of such Item as determined by the procedures hereinafter established.

**18.2. Appraisal Procedure.** Fair Market Rental, Fair Market Value and the economic useful life of the Items of Equipment shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph. Fair Market Rental and Fair Market Value shall be determined, on the basis of (and shall be equal in amount to) the rental or sale value which would obtain in an arm's length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value but there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to Section 8 hereof. Fair Market Rental, Fair Market Value and the economic useful life of the Items of Equipment shall be determined upon the assumption that the Items shall have been maintained in accordance with the provisions of Section 8 hereof.

If after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in Section 18.1 or of the Lessee's election to purchase the Equipment, as provided in Section 18.3, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, Fair Market Value or the economic useful life of the Items, as the case may be, such Fair Market Rental, Fair Market Value or economic useful life, as the case may be, shall be determined in

accordance with the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental, Fair Market Value or economic useful life, by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 business days after such notice is given, each party shall appoint an independent appraiser within 15 business days after such notice is given, and the two appraisers so appointed shall, within 10 business days after such appointment, appoint a third independent appraiser. If no such third appraiser is appointed within the time permitted, the parties shall promptly apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedures shall be instructed to determine Fair Market Rental, Fair Market Value or economic useful life, as the case may be, of the Items of Equipment within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental, Fair Market Value and economic useful life unless these are agreed upon by the Lessor and the Lessee as provided for herein, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

**18.3. Purchase Option.** The Lessee shall have the right to purchase the Equipment upon the terms and conditions contained in the First Amendment dated as of May 21, 1985 (the "First Amendment") to this Lease to the same extent as though each and all of the terms, provisions and agreements contained in the First Amendment were fully set out herein.

**18.4. Delivery of Equipment.** Unless the Lessee has elected to accept an offer to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the extended term, as the case may be, in accordance with Section 13 hereof.

## **SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.**

Anything to the contrary herein contained notwithstanding any nonpayment of rent or other sums due hereunder on or prior to June 13, 1985, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to interest at a rate 1% in excess of the prime commercial rate charged by Wells Fargo Bank, N.A., San Francisco, California (or the highest lawful rate, whichever is less) on such overdue amounts for the period of time during which they were were overdue and not repaid, and in the case of all rents and other sums due thereafter, the Lessee shall pay interest at a rate determined in accordance with the next following sentence depending on the due date thereof (or the highest lawful rate, whichever is less) on such overdue amounts for the

period of time during which they were overdue or expended and not repaid. The rate of interest payable for non-payment of rent or other sums due from and after June 13, 1985 pursuant to the preceding sentence shall be 12.40% per annum.

## **SECTION 20. FINANCIAL REPORTS AND RIGHTS OF INSPECTION.**

The Lessee agrees that it will furnish directly to the Lessor and the Note Purchaser and to any other holder of 10% or more of the Notes which shall make written request therefor, the following:

(a) as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Lessee, and in any event within 60 days thereafter, duplicate copies of:

(i) a consolidated balance sheet of the Lessee and its consolidated subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income and of retained income of the Lessee and its consolidated subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding period in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by a principal financial officer of the Lessee;

(b) as soon as practicable after the end of each fiscal year of the Lessee, and in any event within 120 days thereafter, duplicate copies of:

(i) a consolidated balance sheet of the Lessee and its consolidated subsidiaries at the end of such year, and

(ii) consolidated statements of income and of retained income of the Lessee and its consolidated subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by the Lessee, which opinion shall state that such financial statements fairly present the financial condition of the companies being reported upon, have been prepared in accordance with generally accepted accounting principles consistently applies (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(c) as soon as available, copies of the Lessee's SEC Form 10Q Quarterly Report and SEC Form 10K annual Report filed with the Securities and Exchange Commission or any successor agency (it being understood that if and to the extent such Forms are provided within the time periods prescribed by and contain the reports and accompanying certificates required by clauses (a) and (b) above, the requirement of supplying the reports required by (a) and (b) shall be deemed to have been met;

(d) promptly after their original distribution, copies, if any, of all such published financial statements and reports as the Lessee shall send to its public stockholders and of any registration statements or prospectus filed by the Lessee or any subsidiary with any securities exchange or the Securities and Exchange Commission or any successor agency;

(e) within the period provided in subparagraph (b) above, a certificate signed by the President, Vice President, Treasurer or Assistant Treasurer of the Lessee, to the effect that the signer thereof is familiar with the terms and provisions of the Lease and that at the date of said certificate is not aware of any default in compliance by the Lessee with any of the covenants, terms and provisions of the Lease, or if the signer is aware of any such default, he shall disclose in such certificate the nature thereof and the nature of the action the Lessee is taking or proposes to take with respect thereto;

(f) immediately upon becoming aware of the existence of any condition or event which constitutes a default or any Event of Default under the Lease, a written notice specifying the nature and period of existence thereof and what action, if any, the Lessee is taking or proposes to take with respect thereto; and

(g) with reasonable promptness, such other data and information as from time to time may be reasonably requested by the Lessor, the Note Purchaser or any other holder of 10% or more of the Notes.

## **SECTION 21. MISCELLANEOUS.**

**21.1. Notices.** Any notice required or permitted to be given by either party hereto to the other or to any other party listed below shall be in writing and shall be deemed to have been given when delivered personally or otherwise actually received at the following addresses.

If to the Lessor:

Wells Fargo Leasing Corporation  
101 California Street  
Suite 2800  
San Francisco, California 94111  
Attention: Operations Department

All communications as above, all payments: at the Lessor's account at Wells Fargo Bank, N.A.  
464 California Street  
San Francisco, California 94104  
Account No. 0001-097211

If to the Lessee:

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Vice President - Finance

If to the Note Purchaser:

At the address provided therefor in Schedule 1 to the Participation Agreement

or at such other address as such party or person shall hereafter furnish to such other parties in writing.

**21.2. Right of Lessor to Perform.** If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Note Purchaser) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest thereon at the lesser of (a) the maximum rate allowed by law, or (b) a rate determined in accordance with the next following sentence depending on the date such payment was made or such cost or expense was incurred. The rate of interest payable with respect to any payment made or cost or expense incurred pursuant to the preceding sentence shall be determined as follows: For the period on or prior to June 13, 1985, the rate of interest shall be 1% in excess of the prime commercial rate charged by Wells Fargo Bank, N.A., San Francisco, California and thereafter shall be 12.40% per annum.

**21.3. Execution in Counterparts.** This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

**21.4. Law Governing.** This Lease shall be construed in accordance with the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

**21.5. Headings and Table of Contents.** All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

**21.6. Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

WELLS FARGO LEASING CORPORATION

By Robert J. Darling  
Its Sr. Vice President

By Richard L. Coif  
Its Vice-President

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

By J. M. Bruni  
Its Vice President Management Services

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 23rd day of May, 1985, before me personally appeared Robert F. Darling and Richard L. Vogt to me personally known, who being by me duly sworn, says that he is a Senior Vice President and Vice President, respectively of WELLS FARGO LEASING CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia C de Vivers  
Notary Public

[NOTARIAL SEAL]

My commission expires:

Oct. 14, 1988

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 23rd day of May, 1985, before me personally appeared J.M. Graziano, to me personally known, who being by me duly sworn, says that he is a Vice President of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that said instrument was signed on behalf of said corporation 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 corporation.

Virginia C de Vivers  
Notary Public

[NOTARIAL SEAL]

My commission expires:

Oct. 14, 1988

## DESCRIPTION OF ITEMS OF EQUIPMENT

Term Lease Commencement Date: December 31, 1985

Outside Delivery Date: December 20, 1985

Place of Delivery: Eugene, Oregon or Tucson, Arizona

Description of Items: Twenty-one (21) high horsepower (3,600HP) 6-axle SD45 locomotives originally manufactured by General Motors (Electromotive Division) and rebuilt by the Seller as SD45-2, locomotives substantially in accordance with the Specifications attached to the Acquisition Agreement and bearing identifying numbers SP7540 through 7560, both inclusive.

Purchase Price: \$752,000 per Item  
(\$15,792,000 for 21 Items)

Schedule of Fixed Rental: Provided that the Note Purchaser has not purchased Notes of the Lessor to finance a portion of the Purchase Price of an Item of Equipment, for such Item of Equipment, the amounts set forth below:

<u>Fixed Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
March 31, 1986	2.69
June 30, 1986	2.69
September 30, 1986	2.69
December 31, 1986	2.69
March 31, 1987	2.69
June 30, 1987	2.69
September 30, 1987	2.69
December 31, 1987	2.69
March 31, 1988	2.69
June 30, 1988	2.69
September 30, 1988	2.69
December 31, 1988	2.69
March 31, 1989	2.69
June 30, 1989	2.69
September 30, 1989	2.69
December 31, 1989	2.69
March 31, 1990	2.69
June 30, 1990	2.69
September 30, 1990	2.69
December 31, 1990	2.69
March 31, 1991	3.29

(S.P. 85-1)

SCHEDULE A  
(to Equipment Lease)

<u>Fixed Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
June 30, 1991	3.29
September 30, 1991	3.29
December 31, 1991	3.29
March 31, 1992	3.29
June 30, 1992	3.29
September 30, 1992	3.29
December 31, 1992	3.29
March 31, 1993	3.29
June 30, 1993	3.29
September 30, 1993	3.29
December 31, 1993	3.29
March 31, 1994	3.29
June 30, 1994	3.29
September 30, 1994	3.29
December 31, 1994	3.29
March 31, 1995	3.29
June 30, 1995	3.29
September 30, 1995	3.29
December 31, 1995	3.29

Provided that the Note Purchaser has purchased Notes of the Lessor to finance a portion of the Purchase Price of an Item of Equipment, for such Item of Equipment, the amounts set forth below:

<u>Fixed Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
March 31, 1986	1.659584
June 30, 1986	1.659584
September 30, 1986	1.659584
December 31, 1986	5.178904
March 31, 1987	1.559283
June 30, 1987	1.559283
September 30, 1987	1.559283
December 31, 1987	5.479805
March 31, 1988	1.447548
June 30, 1988	1.447548
September 30, 1988	1.447548
December 31, 1988	5.815010
March 31, 1989	1.323075
June 30, 1989	1.323075
September 30, 1989	1.323075
December 31, 1989	6.188427
March 31, 1990	1.184420

Fixed Rental Payment Date

Percentage of Purchase Price

June 30, 1990	1.184413
September 30, 1990	1.184413
December 31, 1990	8.861463
March 31, 1991	0.965625
June 30, 1991	0.965617
September 30, 1991	0.965617
December 31, 1991	9.517850
March 31, 1992	0.721887
June 30, 1992	0.721878
September 30, 1992	0.721878
December 31, 1992	10.249066
March 31, 1993	0.450356
June 30, 1993	0.450353
September 30, 1993	0.450353
December 31, 1993	11.063647
March 31, 1994	0.147875
June 30, 1994	0.147875
September 30, 1994	0.147875
December 31, 1994	11.971084
March 31, 1995	-0-
June 30, 1995	-0-
September 30, 1995	12.414708
December 31, 1995	-0-

**CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE**

TO: Wells Fargo Leasing Corporation

I, a duly appointed and authorized representative of SOUTHERN PACIFIC TRANSPORTATION COMPANY (the "Lessee") under the Equipment Lease dated as of May 20, 1985 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and hereby accept delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture or condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased and subject to a Security Interest Recorded with the I.C.C."

or

"Ownership subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Seller (as defined in the Lease) for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 1985

\_\_\_\_\_  
Inspector and Authorized Representative  
of the Lessee

(S.P. 85-1)

SCHEDULE B  
(to Equipment Lease)

## SCHEDULE OF CASUALTY VALUE

### Single Investor Equipment

<u>Term Lease Commencement Date or Date of Fixed Rental Payment on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price</u>
Term Lease Commencement Date	92.2
March 31, 1986	91.8
June 30, 1986	91.4
September 30, 1986	91.2
December 31, 1986	87.0
March 31, 1987	86.8
June 30, 1987	86.6
September 30, 1987	86.2
December 31, 1987	85.8
March 31, 1988	85.3
June 30, 1988	84.7
September 30, 1988	84.0
December 31, 1988	83.2
March 31, 1989	82.3
June 30, 1989	81.2
September 30, 1989	80.1
December 31, 1989	78.9
March 31, 1990	77.6
June 30, 1990	76.3
September 30, 1990	74.9
December 31, 1990	73.5
March 31, 1991	71.5
June 30, 1991	69.4
September 30, 1991	67.3
December 31, 1991	65.1
March 31, 1992	63.0
June 30, 1992	60.7
September 30, 1992	58.5
December 31, 1992	56.2
March 31, 1993	53.9
June 30, 1993	51.5
September 30, 1993	49.2
December 31, 1993	46.7
March 31, 1994	44.3
June 30, 1994	41.7
September 30, 1994	39.1
December 31, 1994	36.6

<u>Term Lease Commencement Date or Date of Fixed Rental Payment on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price</u>
March 31, 1995	33.9
June 30, 1995	31.2
September 30, 1995	28.4
December 31, 1995	25.1

The above percentages have been computed without regard to recapture of investment tax credit. Consequently, if the Event of Loss or the date of termination of the Lease upon an Event of Default giving rise to the payment of Casualty Value with respect to an Item of Equipment occurs before an anniversary of the date of acceptance of such Item under the Lease set forth below, Casualty Value shall be determined by adding the corresponding percentage below of such Item's Purchase Price to the applicable Percentage set forth above:

<u>Anniversary of Date of Acceptance under the Lease</u>	<u>Percentage of Purchase Price to be added to the Above Percentage</u>
First	16.103
Second	12.882
Third	9.662
Fourth	6.441
Fifth	3.221

**SCHEDULE OF CASUALTY VALUE**

Leveraged Lease Equipment

Term Lease Commencement Date or Date of Fixed Rental Payment on which Casualty Value is Paid	<u>Percentage of Purchase Price</u>
Term Lease Commencement Date	89.415698
March 31, 1986	90.427868
June 30, 1986	91.200755
September 30, 1986	91.915403
December 31, 1986	89.053635
March 31, 1987	89.680243
June 30, 1987	90.235257
September 30, 1987	90.730332
December 31, 1987	87.249636
March 31, 1988	87.661601
June 30, 1988	88.005836
September 30, 1988	88.287555
December 31, 1988	84.143828
March 31, 1989	84.339678
June 30, 1989	84.470088
September 30, 1989	84.535171
December 31, 1989	79.687045
March 31, 1990	79.689703
June 30, 1990	79.689703
September 30, 1990	79.689703
December 31, 1990	72.012653
March 31, 1991	72.049394
June 30, 1991	72.146798
September 30, 1991	72.239900
December 31, 1991	63.784235
March 31, 1992	63.925449
June 30, 1992	64.143219
September 30, 1992	64.358257
December 31, 1992	55.051700
March 31, 1993	55.324213
June 30, 1993	55.684862
September 30, 1993	56.044624
December 31, 1993	45.799172
March 31, 1994	46.227049
June 30, 1994	46.756010
September 30, 1994	47.286246
December 31, 1994	35.972488
March 31, 1995	36.422835
June 30, 1995	36.979043
September 30, 1995	25.000001
December 31, 1995	25.000001

The above percentages have been computed without regard to recapture of investment tax credit. Consequently, if the Event of Loss or the date of termination of the Lease upon an Event of Default giving rise to the payment of Casualty Value with respect to an Item of Equipment occurs before an anniversary of the date of acceptance of such Item under the Lease set forth below, Casualty Value shall be determined by adding the corresponding percentage below of such Item's Purchase Price to the applicable Percentage set forth above:

<u>Anniversary of Date of Acceptance under the Lease</u>	<u>Percentage of Purchase Price to be added to the Above Percentage</u>
First	16.103
Second	12.882
Third	9.662
Fourth	6.441
Fifth	3.221