



THE CONNECTICUT BANK AND TRUST COMPANY, N.A.

RECORDATION NO. 13930 Filed 1425

RECORDATION NO. 13930-A Filed 1425

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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

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FEE OPERATION

No. 1
Date FEB 1 1983
Fee \$ 100.00

February 1, 1983

ICC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir or Madam:

Enclosed for recordation with the Interstate Commerce Commission pursuant to the provisions of Section 11303 of Title 49 of the United States Code are one original and two counterparts of each of the following documents:

1. Mortgage, Loan and Security Agreement dated as of January 15, 1983 ("Mortgage") between The Connecticut Bank and Trust Company, N.A., not in its individual capacity, except as expressly provided therein, but solely as trustee under a Trust Agreement dated as of January 15, 1983 between it and Lifton Equity Investments, Inc., as beneficiary thereunder, as Borrower ("Borrower"), and Sun Life Assurance Company of Canada (U.S.), as Lender ("Lender"), which evidences, among other things, the mortgage and assignment as security by the Borrower to the Lender of the Borrower's right, title and interest in, to and under (i) certain railroad cars described in Exhibit A to the Mortgage and all proceeds thereof and (ii) an Equipment Lease dated as of January 15, 1983 between the Borrower, as Lessor, and St. Louis Southwestern Railway Company, as Lessee ("Lessee"), and all payments to become due thereunder.

2. Equipment Lease dated as of January 15, 1983 ("Lease") between the Borrower, as Lessor ("Lessor"), and the Lessee, which evidences, among other things, the lease from the Lessor to the Lessee of railroad cars used or intended for use in connection with interstate commerce.

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

Counterpart - James McAllister

1. The Connecticut Bank and Trust Company, N.A. (having its address at One Constitution Plaza, Hartford, Connecticut 06115), as Mortgagor under the Mortgage and as Lessor under the Lease, not in its individual capacity, except as expressly provided therein, but solely as trustee under a Trust Agreement dated as of January 15, 1983 between it and Litton Equity Investments, Inc. (having its address at 600 Summer Street, Stamford, Connecticut 06904), as beneficiary under said Trust Agreement.

2. Sun Life Assurance Company of Canada (U.S.) (having its address at One Sun Life Executive Park, Wellesley, Massachusetts 02181), as Mortgagee under the Mortgage.

3. St. Louis Southwestern Railway Company (having its address at Southern Pacific Building, One Market Plaza, San Francisco, California 94105), as Lessee under the Lease.

The equipment covered by the enclosed documents consists of 20 Eight-Unit IMPACK Articulated Skeletal Flatcars manufactured by Itel Corporation, Rail Division, bearing the road numbers of St. Louis Southwestern Railway Company SSW-90059 through SSW-90078, inclusive, and 9 Four-Unit IMPACK Articulated Skeletal Flatcars, manufactured by Itel Corporation, Rail Division, bearing the road numbers of St. Louis Southwestern Railway Company SSW-99050 through SSW-99058, inclusive. The equipment referred to in this paragraph bears the legend "THE CONNECTICUT BANK AND TRUST COMPANY, AS TRUSTEE: LESSOR AND OWNER: AND SUN LIFE ASSURANCE COMPANY OF CANADA U.S.: SECURED PARTY AND LIEN HOLDER UNDER A MORTGAGE SECURITY AND LOAN AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C".

Also enclosed is a check in the amount of \$100 for payment to the Interstate Commerce Commission of the required filing fees.

Please accept the enclosed documents for recordation and make the appropriate entries to the index of documents and to the index of parties. Please return the original of each of the enclosed documents, stamped with a recordation number, together with the usual letter of the Commission confirming recordation, to the delivering messenger of Mudge Rose Guthrie & Alexander, 20 Broad Street, New York, New York 10005, for transmittal to the undersigned.

Very truly yours,

**THE CONNECTICUT BANK AND TRUST
COMPANY, N.A.**, not in its
individual capacity but
solely as trustee under the
Trust Agreement to which
reference is hereinbefore
made

By *J. Quaker*
Title: *Asst. Secretary*

RECORDATION NO. 13930-1

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INTERSTATE COMMERCE COMMISSION

CERTAIN OF THE RIGHTS OF THE LESSOR UNDER THIS EQUIPMENT LEASE AND IN ALL LEASED EQUIPMENT COVERED HEREBY HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, SUN LIFE ASSURANCE COMPANY OF CANADA (U.S.), AS LENDER UNDER A MORTGAGE, LOAN AND SECURITY AGREEMENT DATED AS OF JANUARY 15, 1983. THIS EQUIPMENT LEASE HAS BEEN EXECUTED IN COUNTERPARTS. SEE SECTION 24(e) HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF THE VARIOUS COUNTERPARTS.

EQUIPMENT LEASE

DUPLICATE

Dated as of January 15, 1983

DUPLICATE

between

THE CONNECTICUT BANK AND TRUST COMPANY, N.A.,
not in its individual capacity, but solely
as trustee under a Trust Agreement
dated as of January 15, 1983 between it and Litton Equity
Investments, Inc.,
as beneficiary,
as Lessor

and

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
as Lessee

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EQUIPMENT LEASE

EQUIPMENT LEASE dated as of January 15, 1983 (this Lease) between **THE CONNECTICUT BANK AND TRUST COMPANY, N.A.**, a national association, not in its individual capacity but solely as trustee (the Lessor) under a Trust Agreement dated as of January 15, 1983 between it and Litton Equity Investments, Inc., as beneficiary, and **ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**, a Missouri corporation (the Lessee).

SECTION 1. Construction of References; Definitions.

In this Lease, unless the context otherwise requires:

(a) All references in this Lease to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.

(b) The terms defined in this Section or elsewhere in this Lease shall, for purposes of this Lease and all Exhibits hereto, have the meanings assigned to them in this Section or elsewhere and include the plural as well as the singular and the singular as well as the plural.

(c) Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(d) The following terms shall have the following meanings for all purposes of this Lease:

Abatements shall have the meaning set forth in Section 5 hereof.

Basic Lease Rate Factor shall mean, with respect to each Leased Item, 8.23%.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Basic Rent Dates shall mean February 1 and August 1 of each year.

Beneficiary shall mean Litton Equity Investments, Inc., a Nevada corporation.

Business Day shall mean any day other than a Saturday, Sunday or other day on which banks in the City of New York, New York or the City of San Francisco, California are authorized to close.

Casualty Value shall have the meaning, with respect to each Leased Item, set forth in Exhibit C hereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Claims shall have the meaning set forth in Section 14 hereof.

Closing Date shall mean, with respect to each Leased Item, the date on which payment for such Leased Item is made to the Vendor pursuant to Section 4 of the Participation Agreement, which date shall occur upon not less than three Business Days prior written notification of such date delivered by the Lessee to the Lessor, the Beneficiary and the Lender or on such other date or dates as shall be agreed upon by the Lessee, the Lessor, the Beneficiary and the Lender. Without such notice, the Closing Dates with respect to Leased Items in Groups of Equipment with the numerical designations 1, 2 and 3 shall occur on February 1, 1983, February 28, 1983 and March 31, 1983, respectively.

Code shall mean the Internal Revenue Code of 1954, as amended.

Contingent Lease Agreement shall mean the Contingent Lease Agreement dated as of January 15, 1983 among the Lessor, the Beneficiary, the Lender and the Contingent Lessee.

Contingent Lessee shall mean Southern Pacific Transportation Company, a Delaware corporation.

Cut-Off Date shall mean the earlier of (i) the date on which all Items of Equipment become Leased Items or (ii) May 15, 1983.

Daily Lease Rate Factor shall mean, with respect to each Leased Item, 0.0457222%.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default.

Document Closing Date shall have the meaning set forth in the Participation Agreement.

Equipment, and individually an **Item** or **Item of Equipment**, shall mean the items of equipment described in Exhibit A hereto.

Estimated Lessor's Cost shall mean, with respect to each Leased Item, the amount set forth in Exhibit A hereto.

Event of Default shall have the meaning set forth in Section 19 hereof.

Event of Loss with respect to any Leased Item shall mean any of the following events: (i) loss of such Leased Item or of the use thereof due to theft, disappearance, destruction, damage beyond repair or rendition of such Leased Item permanently unfit for commercial operation for any reason whatsoever; (ii) any damage to such Leased Item which results in an insurance settlement with respect to such Leased Item on the basis of a total loss; (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Leased Item (**Requisition of Use**) by the act of the United States government or any state or local authority within the United States or any instrumentality or agency of the foregoing should such Requisition of Use be for an indefinite period or be for a stated period extending beyond the Expiration Date; (iv) as a result of any rule, regulation, order or other action by any governmental body having jurisdiction, the use of such Leased Item in the normal course of business shall have been prohibited, or such Leased Item shall have been declared unfit for use, for a period of six consecutive months, unless the Lessee, prior to the expiration of such six-month period, shall have undertaken and, in the opinion of the Lessor, the Beneficiary and the Lender, shall be diligently carrying forward all steps which are necessary or desirable to permit the normal use of such Leased Item by the Lessee or, in any event, if use shall have been prohibited, or such Leased Item shall have been declared unfit for use, for a period of twelve consecutive months; and (v) such Leased Item shall be returned to the manufacturer thereof other than for modification in the event of patent infringement or for repair or replacement (any such return being herein referred to as **Return to Manufacturer**). The date of such Event of Loss shall be the date of such theft, disappearance, destruction, damage or Requisition of Use for such period.

Expiration Date shall mean August 1, 1990.

Fair Market Rental Value of the Leased Items shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease.

Fair Market Value of a Leased Item shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (i) a lessee currently in possession, or (ii) a used equipment or scrap dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use (including dismantling, shipping and reconstruction) shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Leased Item, shall be taken into account in making such determination.

First Basic Rent Date shall mean August 1, 1983.

First Termination Date shall mean August 1, 1988.

Groups and Groups of Equipment shall mean the classifications of Leased Items determined, as follows, according to the date of acceptance of, and payment for, each Leased Item:

<u>Group of Equipment</u>	<u>Date of Acceptance and Payment</u>
1	February 1, 1983
2	February 2, 1983 - February 28, 1983
3	March 1, 1983 - May 15, 1983

Improvement shall mean any accessory, equipment or device affixed to or installed upon a Leased Item or any improvement, modification, alteration or addition thereto.

Investment shall have the meaning set forth in the Participation Agreement.

Last Basic Rent Date shall mean February 1, 1990.

Late Payment Rate shall mean a rate per annum equal to 13.25%, but in no event at a rate per annum greater than that permitted by applicable law.

Leased Equipment, and individually a **Leased Item**, shall have the meanings set forth in Section 2 hereof.

Lender shall mean Sun Life Assurance Company of Canada (U.S.), a Delaware corporation.

Lender's Counsel shall mean Mudge Rose Guthrie & Alexander, 20 Broad Street, New York, New York 10005, as special counsel.

Lessor's Cost shall mean, with respect to each Leased Item, the amount set forth in the Certificate of Acceptance therefor.

Liens and Lessor's Liens shall have the meanings set forth in Section 6 hereof.

Loan Agreement shall mean the Mortgage, Loan and Security Agreement dated as of January 15, 1983 between the Lender and the Lessor.

Nonseverable Improvement shall mean any Improvement which is defined as a "Nonseverable Improvement" within the meaning set forth in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529 as amended or supplemented from time to time, if the conditions of section 4(4).03(B) of said Revenue Procedure are satisfied and the Nonseverable Improvement is described in at least one of the subparagraphs of section 4(4).03(C) of said Revenue Procedure.

Notes shall mean those promissory notes, defined as the **Notes** in the Loan Agreement, issued in connection with the purchase of the Leased Equipment.

Participation Agreement shall mean the Participation Agreement dated as of January 15, 1983 among the Lessor, the Beneficiary, the Lender, and the Lessee.

Parts shall mean all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature, which may from time to time be incorporated or installed in or attached to any Leased Item.

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

Proceeds of Re-letting shall have the meaning set forth in Section 20 hereof.

Purchase Documents shall mean those documents defined as **Purchase Documents** in the Participation Agreement.

Replacement Parts shall have the meaning set forth in Section 10 hereof.

Requisition of Use, see Event of Loss.

Return to Manufacturer, see Event of Loss.

Severable Improvement shall mean any Improvement which is defined as a "Severable Improvement" within the meaning set forth in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time.

Taxes shall have the meaning set forth in Section 9 hereof.

Termination Date shall have the meaning set forth in Section 16 hereof.

Termination Value shall, with respect to the Leased Equipment, have the meaning set forth in Exhibit D hereto.

Trust Agreement shall mean the Trust Agreement dated as of January 15, 1983 between the Lessor and the Beneficiary.

Trust Estate shall have the meaning set forth in the Trust Agreement.

Vendor shall mean the Person or Persons from whom the Lessor received title to the Leased Items.

SECTION 2. Acceptance and Lease of Equipment.

Subject to the satisfaction of the terms and conditions of Section 9 of the Participation Agreement, the Lessor hereby agrees to accept delivery from the Vendor under the applicable Purchase Documents and simultaneously to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, such Items of Equipment described in Exhibit A hereto as the Lessor shall have acquired, or become obligated to pay for, pursuant to the Purchase Documents (**Leased Equipment**, and individually a **Leased Item**). Upon satisfaction of the aforementioned terms and conditions and delivery of Items of Equipment to the Lessor from the Vendor on each Closing Date, which shall occur on or before the Cut-Off Date, the Lessee will either (a) cause an authorized representative of the Lessee to inspect the same and, if such Items are found to be in good order, to accept such Items on behalf of the Lessor as its authorized representative pursuant to Section 4 hereof and on its own behalf as Lessee and to execute and deliver a Certificate of Acceptance with respect thereto, or (b) if the Lessee, acting in good faith, should find that such Items are not in good order, return the same to the Vendor. Each Item of Equipment delivered to the Lessee in accordance with the Purchase Documents shall be subject to the terms and conditions of

this Lease from the date the Lessor shall have acquired, or become obligated to pay for, such Item of Equipment.

SECTION 3. Term and Rent.

(a) **Term.** The term of this Lease shall begin, with respect to each Item of Equipment, on the date such Item of Equipment shall become a Leased Item hereunder, and shall end, with respect to such Leased Item, on the Expiration Date, unless this Lease shall have been terminated or extended with respect to such Leased Item by the terms hereof.

(b) **Basic Rent.** The Lessee shall pay to the Lessor, as basic rent (herein referred to as **Basic Rent**) for each Leased Item, the following:

(1) on the First Basic Rent Date, (i) an amount equal to the Daily Lease Rate Factor with respect to such Leased Item for each day elapsed from, and including, the Closing Date with respect to such Leased Item to, but excluding, the First Basic Rent Date, and (ii) an amount equal to the Basic Lease Rate Factor with respect to such Leased Item multiplied by the Lessor's Cost of such Leased Item;

(2) on each Basic Rent Date thereafter to, and including, the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor with respect to such Leased Item multiplied by the Lessor's Cost of such Leased Item; and

(3) on each Basic Rent Date occurring during any Lease Extension Period, an amount equal to the Fair Market Rental Value of such Leased Item, determined in accordance with Section 17 hereof.

Anything herein contained to the contrary notwithstanding (including, without limitation, the provisions of Section 3(e) hereof), each payment of Basic Rent hereunder occurring during the original term of this Lease shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date, any payments then required to be made on account of the principal of, premium, if any, and interest on the Notes then outstanding. In addition, the Lessee agrees not to prepay any payment of Basic Rent except as specifically provided by the terms hereof.

(c) **Supplemental Rent.** The Lessee shall pay to the Lessor the following amounts (herein referred to as **Supplemental Rent** and, together with all Basic Rent, as **Rent**):

(1) on demand, any amount payable hereunder (other than Basic Rent, Casualty Value and Termination Value) or

under the Participation Agreement which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease or under the Participation Agreement to the Lessor or others;

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and

(3) on demand, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year and actual days elapsed) at the Late Payment Rate on any payment of Rent (other than Rent payable under this clause) not paid when due for any period during which the same shall be overdue.

The expiration or other termination of the Lessee's obligation to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Anything herein contained to the contrary notwithstanding (including, without limitation, the provisions of Section 3(e) hereof), any payment of Casualty Value or Termination Value hereunder shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date or other date on which such Casualty Value or Termination Value shall be payable, any payments required to be made therefrom on account of the principal of, premium, if any, and interest on the Notes then outstanding.

(d) So long as any Notes shall remain outstanding and unpaid, all payments of Rent hereunder shall be made so that the Lender (to the extent entitled to receive the same) shall have immediately available funds (in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts) no later than 1:00 P.M. New York, New York time on the date payable hereunder, and all payments of Basic Rent and Supplemental Rent due or to become due hereunder, except with respect to any of the Indemnified Persons' respective rights as to indemnification by the Lessee hereunder or under the Participation Agreement and except with respect to any of the Indemnified Persons' respective rights as to the proceeds of liability insurance maintained by the Lessee pursuant to Section 13 hereof, shall be paid to the Lender at its address set forth herein or at such other address or to such other Person as the Lender may direct by notice in writing to the Lessee. Upon payment of all outstanding Notes, all payments of Rent thereafter made hereunder shall be made as aforesaid except that such payments shall be made to the Person to whom such amounts are then payable.

(e) In the event that (i) any of the Closing Dates occur on dates other than January 31, 1983, February 28, 1983 and March 31, 1983, respectively, or (ii) the Lessor's Cost of the Leased Items paid for on each such Closing Date is other than \$3,130,000, \$2,504,000 and \$500,800, respectively, or (iii) less than all of the Items of Equipment described in Exhibit A hereto are accepted by the

Lessee under this Lease on or prior to the Cut-Off Date, or (iv) a change in any tax law, tax regulation or tax rate shall be enacted and become effective prior to the Cut-Off Date which alters or eliminates any of the tax benefits referred to in Section 11 of the Participation Agreement, the Lessee and the Lessor agree that the Basic Lease Rate Factor, the Casualty Values and the Termination Values shall be adjusted (subject to the provisions of Sections 3(b) and 3(c) hereof with respect to the minimum amounts thereof) to such amounts as shall cause the Beneficiary's after-tax return on and rate of recovery of investment and periodic net cash flows (computed on the same assumptions, including tax rates, as were utilized by the Beneficiary in originally evaluating the transactions contemplated by this Lease) to equal at least that which would have been realized by the Beneficiary if none of the events specified in the foregoing clauses (i) through (iv) had occurred. The Lessor and the Lessee agree to execute an amendment to this Lease to reflect each such adjustment; provided that such adjustment shall be effective for all purposes of this Lease regardless of whether such amendment is actually executed and delivered.

SECTION 4. Appointment of Agent.

(a) **Appointment of Authorized Agent.** For purposes of accepting delivery of each Item of Equipment from the Vendor on the applicable Closing Date, the Lessor hereby appoints the Lessee as authorized representative of the Lessor. Until such authority shall have been terminated pursuant to paragraph (b) of this Section, such authorized representative shall be authorized to take possession of each Item of Equipment upon the delivery thereof to the Lessee by the Vendor on the applicable Closing Date, to accept on behalf of the Lessor all Purchase Documents, if any, delivered at such time with respect to such Item of Equipment, either to accept delivery of such Item of Equipment on behalf of the Lessor if it is found to be in good order or to return to the Vendor such Item of Equipment if it is found not to be in good order, and to take such other action on behalf of the Lessor as shall be required to accept delivery of or to return such Item of Equipment. The Lessee hereby agrees that the acceptance of delivery of such Item of Equipment by the Lessee as such authorized representative shall, without further act, irrevocably constitute acceptance by the Lessee of such Item of Equipment for all purposes of this Lease.

(b) **Termination of Appointment of Authorized Agent.** The authority of the authorized representative granted pursuant to paragraph (a) of this Section shall terminate upon the earlier of (i) Lessee's receipt of notice of termination from the Lessor or (ii) the Cut-Off Date.

SECTION 5. Net Lease.

This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (**Abatements**) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, against the Vendor, or against any other Person for whatever reason. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Leased Equipment or any part thereof from whatsoever cause, or the interference with the use thereof by the Lessor or any Person, or the invalidity or unenforceability or lack of due authorization of this Lease or of the Purchase Documents or the lack of right, power or authority of the Lessor to enter into this Lease or of the Vendor to enter into any of the Purchase Documents to which it is a party, or any failure of the Lessor to perform any obligation of the Lessor to the Lessee or any other Person under this Lease or any instrument or document executed in connection herewith, or any failure of the Vendor to perform any obligation of the Vendor to be performed under the Purchase Documents, or any Lien arising by reason of the bankruptcy, insolvency or reorganization of the Vendor, or any other factor relating to or arising in respect of the bankruptcy, insolvency or reorganization of the Vendor or any other Person or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

SECTION 6. Return of Leased Equipment.

On the date of the expiration or termination of this Lease with respect to a Leased Item, the Lessee, at its own risk and expense, shall deliver possession of such Leased Item to the Lessor at any destination upon the lines of any railroad owned or operated by the Lessee or its affiliates (or upon lines of railroad over which the Lessee or any of its affiliates has trackage rights) specified in writing by the Lessor, such Leased Item to be in the condition in which it is required to be maintained pursuant to Section 10 hereof. The Leased Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances (**Liens**), other than Liens either (i) created or granted by the Lessor, including any such Liens created or granted in connection with the purchase or financing of the Leased Equipment, or (ii) resulting from claims against the Lessor not related to the Lessor's ownership of the Leased Equipment or to the

Lessor's administration of the Trust Estate (Liens described in clauses (i) and (ii) above being herein referred to as Lessor's Liens).

SECTION 7. Warranty of the Lessor.

(a) **Lessor Warranty.** The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Leased Equipment shall not be interrupted by the Lessor.

(b) **Disclaimer of Warranties.** The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied with respect to this Lease or the Leased Equipment, and the Lessor shall not be deemed to have modified in any respect the obligations of the Lessee pursuant to Section 5 hereof, which obligations are absolute and unconditional. **THE LESSEE EXPRESSLY AGREES TO LEASE THE LEASED EQUIPMENT "AS IS". NEITHER THE LESSOR NOR THE BENEFICIARY SHALL BE DEEMED TO HAVE MADE, AND THE LESSOR AND THE BENEFICIARY HEREBY DISCLAIM, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE LEASED EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LEASED EQUIPMENT, ITS VALUE OR CONFORMITY OF THE LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE AGREEMENT OR AGREEMENTS RELATING THERETO, NOR SHALL THE LESSOR OR THE BENEFICIARY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT),** but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder, all of the Lessor's rights under any applicable manufacturer's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; **provided, however,** that the Lessee shall indemnify the Lessor and hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received by the Lessee as payment under any such warranty shall be applied **first,** to restore the Leased Equipment to the condition required by Section 10 hereof; **second,** to compensate the Lessor and the Beneficiary for any damage suffered or liability incurred in connection with the warranted event; and **third,** any excess shall be paid to the Lessee.

SECTION 8. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Leased Equipment or any part thereof, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, at its

own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested by the Lessee in good faith (and for the payment of which adequate reserves have been provided) with due diligence and by appropriate proceedings, if counsel chosen by the Lessor and reasonably acceptable to the Lessee shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor and (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent (and for the payment of which adequate reserves have been provided).

SECTION 9. Taxes.

Whether or not any of the transactions contemplated hereby are consummated, the Lessee shall pay, and shall indemnify, protect, save and keep harmless the Lessor (in both its individual and fiduciary capacities), the Beneficiary, the Trust Estate, the Lender (as assignee and secured party) and any subsequent holder of a Note (referred to in this Section collectively, together with their respective agents, servants, successors and assigns, as **Indemnified Persons** and individually as an **Indemnified Person**) from and against, any and all fees, taxes (including, without limitation, income, franchise, excise, sales, use, occupational, capital, value-added, property and stamp taxes and taxes imposed in respect of items of tax preference), levies, assessments, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties (except penalties caused by the fraud or negligence of such Indemnified Person), fines or interest thereon (all of the foregoing being herein collectively called **Taxes**) imposed against such Indemnified Person, the Lessee or the Leased Equipment or any part thereof by any Federal, state or local government or taxing authority or by any foreign government, foreign governmental sub-division or other foreign taxing authority (i) upon or with respect to the Leased Equipment or any part thereof or any interest therein, or (ii) upon or with respect to the manufacture, acquisition, construction, installation, purchase, delivery, ownership, lease, sublease, possession, rental, use, operation, transportation, return, sale, replacement, storage or disposition of the Leased Equipment or any part thereof, or (iii) upon or with respect to the rentals, receipts, earnings, or gains arising from the Leased Equipment or any part thereof or the income or proceeds with respect to the Leased Equipment, including, without limitation, principal, interest and other amounts payable on the Notes, or (iv) upon or with respect to this Lease, the Notes, the Participation Agreement, the Trust Agreement, or the Loan Agreement, including the performance of any of the transactions contemplated hereby or thereby, or the issuance, acquisition or transfer of the Notes or the establishment of the trust established by the Trust Agreement or the beneficial interest

of the Beneficiary therein, **excluding, however,** (1) Taxes imposed by the United States of America based on, or measured by, the net income of any Indemnified Person, and (2) the aggregate of all United States state and local Taxes which are based on, or measured by, the net income of any Indemnified Person up to the amount of any such Taxes which would be payable to the state, city and municipality in which the principal office of such Indemnified Person is located if no income were apportioned to any other state; **provided, however,** that neither of such exclusions shall apply to Taxes imposed on the trust established by the Trust Agreement, the Trust Estate or the Owner Trustee (as defined in the Trust Agreement) in its capacity as Lessor except (a) Excluded Taxes (as defined below) on the fees and expenses payable to the Lessor for acting as trustee under the Trust Agreement, (b) Excluded Taxes payable on account of amendments or modifications to the Trust Agreement effected without the Lessee's consent, and (c) Excluded Taxes on the trust established by the Trust Agreement, the Trust Estate or the Owner Trustee (as defined in the Trust Agreement) which are imposed for the account of the Beneficiary, the Lender or their assigns but only to the extent that such Excluded Taxes relieve such party from its liability for Excluded Taxes otherwise payable by it; **provided further, however,** that the Lessee agrees to pay any such Taxes referred to in the foregoing clauses (1) and (2) (**Excluded Taxes**) which are in substitution for or relieve the Lessee from any Taxes or indemnity therefor which the Lessee would otherwise be obligated to pay under this Section 9.

With respect to any payment or indemnity under this Section 9, such payment or indemnity shall include any amount to the extent necessary to hold any Indemnified Person receiving such payment harmless on a net after-tax basis (taking into account any tax benefit or detriment realized by such Indemnified Person as a result of such payment) from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America or any foreign government, foreign governmental subdivision or other foreign taxing authority. In case any report or return is required to be filed with respect to any obligation of the Lessee under this Section 9 or arising out of this Section 9, the Lessee will either make such report or return in such manner as will show the ownership of the Leased Equipment in the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be reasonably satisfactory to the Lessor.

Upon the commencement of any proceeding (including the written claim or written threat of any proceeding) against an Indemnified Person involving one or more Taxes, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice of such commencement to the Lessee. The Lessee shall be entitled (a) in any proceeding that involves solely a claim for one or more Taxes, to assume responsibility for and control thereof, (b) in any proceeding involving a claim for one or more Taxes and other claims related or unrelated to the transactions contemplated by the

Operative Documents, to assume responsibility for and control of such claim for a Tax to the extent that the same may be and is severed from such other claims (and such Indemnified Person shall use reasonable efforts to obtain such severance unless, in the opinion of counsel for such Indemnified Person, such severance and assumption of responsibility and control by the Lessee has a reasonable possibility of adversely affecting the resolution of such other claims) or (c) in any other case, to be consulted by such Indemnified Person with respect to proceedings subject to the control of such Indemnified Person. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume the responsibility for and control of any such judicial proceedings if (1) the potential indemnity payments involved are less than \$25,000 in the aggregate, (2) a Default or an Event of Default shall have occurred and be continuing, (3) such proceedings will involve any reasonable danger of the sale, forfeiture or loss of the Leased Equipment or any part thereof, (4) such Tax relates in any way to the business of any Indemnified Person other than the leasing of equipment, or (5) the Lessee shall not have furnished such Indemnified Person with an opinion of independent counsel reasonably satisfactory to such Indemnified Person to the effect that there exists a meritorious basis for contesting that Tax. Such Indemnified Person may participate at its own expense in any proceeding controlled by the Lessee pursuant to the preceding provisions.

The Indemnified Person shall supply the Lessee with such information requested by the Lessee as in the reasonable opinion of counsel to such Indemnified Person is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this Section 9. Unless the Lessee is excluded from control of a proceeding involving an Indemnified Person pursuant to the preceding paragraph or a Default or Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a settlement or other compromise with respect to any Tax without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Tax under this Section 9.

If an Indemnified Person shall obtain a repayment of any Tax paid by the Lessee pursuant to this Section 9, such Indemnified Person shall promptly pay to the Lessee the amount of such repayment, together with any interest (other than interest for the period, if any, after such Tax was paid by such Indemnified Person until such Tax was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such repayment.

The provisions of this Section 9 shall survive the expiration or termination of this Lease, the Notes, the Participation Agreement, the Trust Agreement and the Loan Agreement.

SECTION 10. Maintenance and Operation; Compliance and Use; Replacement Parts; Improvements; Equipment Marking; Personal Property.

(a) **Maintenance and Operation.** The Lessee shall operate the Leased Equipment only in the manner for which it was designed and intended and shall maintain, inspect, service, repair and overhaul the Leased Equipment in accordance with the standards set forth by the Association of American Railroads and the Federal Railroad Administration so as to keep the Leased Equipment in as good operating condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted. Throughout the term of this Lease, the possession, operation and maintenance of the Leased Equipment shall be at the sole risk and expense of the Lessee.

(b) **Compliance and Use.** The Lessee agrees that the maintenance, use and operation of the Leased Equipment will not be in violation of any statute, law, ordinance, regulation, mandatory standard or directive of any governmental agency applicable to the maintenance, use or operation of such Leased Equipment (including the standard practices of the Association of American Railroads and the rules of the United States Department of Transportation and the Interstate Commerce Commission), which violation could have a material adverse effect on the ownership of the Leased Equipment by the Lessor or its use and operation by the Lessee or could subject the Lessor or the Beneficiary to any civil or criminal penalty. The Lessee further agrees that the Leased Equipment will at all times be located and used within the continental United States, except that not more than ten percent (10%) of the Leased Equipment may be located and used in Mexico and/or Canada from time to time; provided, however, that such location and use in Mexico and/or Canada does not preclude any Leased Item from constituting rolling stock described in Section 48(a)(2)(B)(ii) of the Code or cause such Leased Item to be property which is "used predominantly outside the United States" within the meaning of Section 168(f)(2) of the Code.

(c) **Replacement Parts.** Except as otherwise provided in the succeeding paragraph (d) of this Section, the Lessee, at its own cost and expense, will promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereinafter called **Replacement Parts**). The Lessee shall notify the Lessor and the Beneficiary of any Replacement Part having a per item cost in excess of \$75,000. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, the Lessee may, at its own cost and expense, remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that the Lessee shall, at its own cost and expense, replace such Parts (with Replacement Parts) as promptly as practicable. All Replacement Parts shall be free and clear of all Liens and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts

replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. All Parts at any time removed from any Leased Item shall remain the property of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to such Leased Item and which meet the requirements for Replacement Parts specified above. Immediately upon any Replacement Part becoming incorporated or installed in or attached to any Leased Item as above provided, without further act, (i) title to the removed Part shall thereupon vest in the Lessee, free and clear of all rights of the Lessor, and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in the Lessor, and (iii) such Replacement Part shall become subject to this Lease and be deemed part of such Leased Item for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to such Leased Item. The Lessee agrees to execute and file such documents as may be reasonably required to create, perfect and maintain the Lender's mortgage and security interest in any such Replacement Part and the Lessor's ownership in any such Replacement Part.

(d) (i) **Improvements.** The Lessee may, without the prior written consent of the Lessor, but solely at Lessee's expense, either (1) repair any Leased Item by the installation of a Replacement Part, or (2) affix, install or make any Nonseverable Improvement or Severable Improvement as the Lessee may deem desirable in the proper conduct of its business, **provided** no such Improvement diminishes the value, utility and condition of such Leased Item below the value, utility and condition thereof immediately prior to the making, affixing or installing of such Improvement, assuming such Leased Item was then of the value or utility and in the condition required to be maintained pursuant to Section 10 hereof.

(ii) **Nonseverable Improvement.** Title to any Nonseverable Improvement shall, upon installation or affixation, vest in the Lessor and thereupon such Nonseverable Improvement shall become a part of the Leased Equipment for all purposes hereof and become subject to this Lease (whether or not the Lessor elects to finance such Nonseverable Improvement). If any such Nonseverable Improvement with respect to any Leased Item shall have a cost (including installation) in excess of \$75,000, the Lessee at its sole cost and expense shall promptly furnish the Lessor with a bill of sale in form and substance reasonably satisfactory to the Lessor, conveying title to such Nonseverable Improvement, together with all warranties of the manufacturers or vendors of such Nonseverable Improvement, to the Lessor. The Lessee shall give the Lessor and the Beneficiary at least 30 days prior written notice before any Nonseverable Improvement is made and the Lessor shall have the option (but not the obligation) of financing the cost of such Nonseverable Improvement on terms acceptable to the Lessee (in which case the Basic Lease Rate Factor, the Casualty Values and the Termination Values will be increased in such manner as shall be agreed upon by the Lessor and the Lessee). Within 15 days after the giving of such notice, the

Lessor shall notify the Lessee in writing whether or not it elects to finance the cost of such Nonseverable Improvement. If the Lessor elects not to finance such Nonseverable Improvement, the Lessee will either obtain the required financing for the Lessor on terms that will not affect the treatment of this Lease as a true lease for Federal income tax purposes or the Lessee will itself finance such Nonseverable Improvement. If the Lessee obtains the required financing for the Lessor, the Lessee shall promptly give the Lessor, the Lender and the Beneficiary written notice of the terms of such financing and the Lessee and the Lessor hereby agree that the Basic Lease Rate Factor, the Casualty Values and the Termination Values shall be adjusted to such amounts as shall cause the Beneficiary's after-tax return on and rate of recovery of investment and periodic net cash flows (computed on the same assumptions, including tax rates, as were utilized by the Beneficiary in originally evaluating the transactions contemplated by this Lease) to equal at least that which would have been realized by the Beneficiary if such financing had not been required. The Lessor and the Lessee hereby agree to execute an amendment to this Lease to reflect each such adjustment; **provided** that such adjustment shall be effective for all purposes of this Lease regardless of whether such amendment has been actually executed and delivered. If the Lessee itself finances the Nonseverable Improvement, the Lessor agrees that the Lessee may claim the deduction for amortization or cost recovery and the investment tax credit available under the Internal Revenue Code of 1954, as amended, in respect of such Nonseverable Improvement and that the Lessor will not take any action inconsistent with such claim. Notwithstanding any provision herein to the contrary, the financing of any Nonseverable Improvement pursuant hereto shall be subject and subordinate to the rights of the Lender, as secured party and lienholder.

(iii) **Severable Improvement.** Title to any Severable Improvement shall remain in, and be acquired at the expense of, the Lessee. So long as no Event of Default shall have occurred and be continuing hereunder, the Lessee may remove any Severable Improvement at any time prior to the expiration or termination of this Lease, **provided** that the Lessee shall restore the affected Leased Item to its condition prior to the addition of such Severable Improvement, ordinary wear and tear excepted as provided in Section 10(a) hereof (assuming that at such prior time such Leased Item was in the condition and repair required to be maintained pursuant to Section 10(a) hereof). The Lessor shall have the option to purchase for cash any Severable Improvement owned by the Lessee at the expiration or termination of this Lease. If the Lessor elects to exercise such option, the Lessor shall, not later than the date of the return of the Leased Equipment pursuant to Section 6 hereof, give the Lessee written notice of its election to purchase such Severable Improvement on a date specified in such notice occurring within 10 days after such return. The purchase price of such Severable Improvement shall be the Fair Market Value as of the date of such purchase. If the Lessor elects to purchase such Severable Improvement, the Lessee will on or prior to the date of such purchase, upon receipt of the purchase

price, furnish or cause to be furnished to the Lessor (x) a bill of sale in form and substance reasonably satisfactory to the Lessor, conveying title to such Severable Improvement, together with all warranties of the manufacturer(s) or vendor(s) of such Severable Improvement, and (y) such evidence of title as the Lessor may reasonably request. Notwithstanding anything in this Lease to the contrary, if this Lease shall be declared to be in default pursuant to Section 20 hereof, any interest of the Lessee in any Severable Improvement at such time shall, without further act, become the property of the Lessor.

(e) **Equipment Marking.** The Lessee agrees, at its own cost and expense, to (i) cause each item of equipment comprising a Leased Item to be kept numbered with the identification or serial number therefor as specified in the Certificate of Acceptance therefor, and (ii) affix and maintain on each Leased Item a stencil or decal bearing the following marking:

**THE CONNECTICUT BANK AND TRUST
COMPANY, N.A., AS TRUSTEE: LESSOR AND
OWNER; SUN LIFE ASSURANCE COMPANY OF
CANADA (U.S.): SECURED PARTY AND
LIENHOLDER UNDER A MORTGAGE, LOAN AND
SECURITY AGREEMENT FILED UNDER
SECTION 11303 OF TITLE 49 OF THE
UNITED STATES CODE**

and such other markings supplied to it by the Lessor as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to the Leased Equipment, the rights of the Lessor under this Lease and the rights of the Lender with respect to the Leased Equipment. The Lessee will not place the Equipment in operation or exercise any control or dominion over the same until such marking has been placed thereon. The Lessee will not change the identifying number of any Leased Item except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor, the Beneficiary and the Lender and filed, recorded and deposited by or on behalf of the Lessor and the Lender in all public offices where this Lease shall have been filed, recorded and deposited. The Lessee will replace promptly any such marking which may be removed, defaced or destroyed.

SECTION 11. Inspection.

The Lessor, the Beneficiary and the Lender shall have the right, but not the duty, to inspect the Leased Equipment. Upon the request of the Lessor, the Beneficiary or the Lender, the Lessee shall, at any reasonable time, make the Leased Equipment, and the Lessee's records pertaining to the Leased Equipment, available to the requesting party for inspection.

SECTION 12. Loss or Destruction; Requisition of Use.

(a) **Event of Loss.** Upon the occurrence of an Event of Loss with respect to any Leased Item, the Lessee shall notify the Lessor and the Beneficiary thereof, and on the Basic Rent Date next following the date of such Event of Loss (unless such Event of Loss occurs within 30 days prior to such Basic Rent Date, in which case, within 30 days after such Basic Rent Date, **provided** that, in such case, the Lessee shall pay interest on the Casualty Value payable pursuant to this Section 12(a) at a rate per annum equal to 12.25% from, and including, such Basic Rent Date to, but excluding, the date of payment of such Casualty Value, and **provided further** that the Lessee shall pay on such Basic Rent Date any Rent becoming due between the date of such Event of Loss and the date of payment of such Casualty Value) the Lessee shall pay to the Lessor the Casualty Value of such Leased Item determined as of the Basic Rent Date immediately following such Event of Loss, together with any Rent when due. If an Event of Loss occurs after the Last Basic Rent Date (including during any Lease Extension Period), the Casualty Value shall be determined as of the Last Basic Rent Date and shall be payable within 60 days after such Event of Loss. Upon making such payment in respect thereof and all Rent due and owing with respect thereto, the Lessor shall execute and deliver to Lessee a bill of sale for such Leased Item, transferring such Leased Item on an **as-is, where-is** basis, without recourse, representation or warranty, express or implied, and the Lessee's obligation to pay further Basic Rent for such Leased Item shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for such Leased Item shall remain unchanged.

In the case of a Requisition of Use with respect to a Leased Item which does not constitute an Event of Loss, such Requisition of Use shall not terminate this Lease with respect to such Leased Item and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums, attributable to the period the Leased Item is subject to this Lease, received by reason of any such Requisition of Use referred to in the preceding sentence.

(b) **Risk of Loss; No Release of Obligations.** Except as provided in this Section, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage to the Leased Equipment or any part thereof or any Event of Loss relating thereto.

SECTION 13. Insurance.

(a) **Public Liability and Property Damage Insurance.** The Lessee will carry at its own expense public liability insurance totaling an amount not less than \$50,000,000 per occurrence and

property damage insurance in an amount not less than \$20,000,000 per occurrence (i) with such reasonable deductibles (\$8,000,000 at the time of delivery of this Lease) which are not more than deductibles with respect to, and in amounts which are not less than, the public liability and property damage insurance applicable to similar equipment on which the Lessee carries insurance and (ii) of the type and in the amount usually carried by corporations engaged in the same or a similar business, similarly situated with the Lessee, and owning or operating similar equipment and which covers risks of the kind customarily insured against by such corporations; **provided** that, subject to the preceding clauses (i) and (ii), the Lessee may self-insure with respect to public liability and property damage.

(b) **Insurance Against Loss or Damage to the Leased Equipment.** The Lessee shall maintain in effect, at its own expense "all-risks" property or hazard insurance which is of the type and with such reasonable deductibles and in substantially the amount usually carried by corporations engaged in the same or similar business and similarly situated with the Lessee; **provided** that the Lessee may self-insure with respect to damage to the Leased Items to the same extent as it self-insures with respect to similar equipment on which it carries insurance; **provided further, however,** that the aggregate amount of such insurance and such self-insurance shall be at least equal to the Casualty Value of all Leased Items subject to this Lease from time to time.

(c) **Lessor, Beneficiary and Lender as Additional Insureds; Notice.** Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies (i) shall be amended to name the Lessor, as owner of the Leased Equipment, the Beneficiary and the Lender as additional named insureds, as their respective interests may appear, (ii) with respect to proceeds of insurance maintained pursuant to paragraph (b) and designated as relating to the Leased Equipment, (a) shall be made payable to the Lessee in the event any such insurance proceeds are \$250,000 or less provided no Default shall have occurred and be continuing and, so long as any of the Notes shall be outstanding and unpaid, to the Lender (and after all obligations with respect to the Notes have been fulfilled, to the Lessor) in the event such insurance proceeds are in excess of \$250,000 or in the case a Default shall have occurred and be continuing, and (b) shall be applied by the Lessee, or shall be disbursed by the Lender (or the Lessor, as the case may be) to the Lessee or other appropriate Person, in payment of the costs actually incurred with respect to repairs made to the Leased Equipment so as to restore it to the operating condition required by Section 10 hereof, or shall be disbursed as otherwise required by this Lease, (iii) shall provide that if the insurers cancel such insurance for any reason whatever, or any substantial change is made in the coverage which affects the interests of the Lessor and the Lender, or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced (except any reduction accompanied by a concomitant increase in self-insurance), such cancellation, change, lapse or reduction shall not be effective

as to the Lessor, the Beneficiary or the Lender for 30 days after receipt by the Lessor, the Beneficiary and the Lender, respectively, of written notice by such insurers of such cancellation, change, lapse or reduction, and (iv) shall provide that in respect of the interests of the Lessor, the Beneficiary and the Lender in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the Lessor, the Beneficiary or the Lender, as the case may be) and shall insure the Lessor's, the Beneficiary's and the Lender's interests, as they appear, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person (other than by the Lessor, the Beneficiary or the Lender, as the case may be). Each liability policy (i) shall be primary without right of contribution from any other insurance which is carried by the Lessor, the Beneficiary or the Lender to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Leased Equipment and (ii) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. The Lessee shall arrange for appropriate certification as to the satisfaction of the requirements set forth above in this paragraph to be delivered promptly (and in any case not later than the Document Closing Date) to the Lessor, the Beneficiary and the Lender by each insurer with respect thereto.

(d) **Reports, etc.** On or before the Document Closing Date, and annually on May 15 in each year, the Lessee shall furnish to the Lessor, the Beneficiary and the Lender a report describing in reasonable detail the insurance then carried and maintained on the Leased Equipment and certifying that such insurance complies with the terms hereof and a certificate of the insurers as to such insurance. In addition, the Lessee will cause its broker to confirm the amount of public liability insurance maintained pursuant to paragraph (a) on May 15 and November 15, in each year. The Lessee will advise the Lessor, the Beneficiary and the Lender in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Lessee which might invalidate or render unenforceable, in whole or in part, any insurance required hereby. The Lessee will also advise the Lessor, the Beneficiary and the Lender in writing at least 30 days prior to the expiration or termination date of any insurance carried and maintained pursuant to this Section.

SECTION 14. Indemnification.

Whether or not the transactions contemplated hereby are consummated, the Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation,

legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred by or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other Person, in any way relating to or arising out of this Lease, the Participation Agreement or any document contemplated hereby or thereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Leased Equipment or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); **provided, however,** that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of any Leased Item arising from acts or events which occur after possession of such Leased Item has been redelivered to the Lessor in accordance with Section 6 hereof, or (b) any Claim resulting from acts which constitute the willful misconduct or gross negligence of the Lessor. If any Claim is made against the Lessee or the Lessor in writing, the party receiving notice of such Claim shall promptly notify the other. **THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE LEASED EQUIPMENT OR ANY PART THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF THE LESSEE.**

SECTION 15. Sublease; Possession.

The Lessee shall not, without the prior written consent of the Lessor and the Lender, which consent shall not be unreasonably withheld, sublet or otherwise relinquish possession of any Leased Item or any part thereof; **provided, however,** that the Lessee may in the normal course of its business, without the prior written consent of the Lessor and the Lender, interchange any Leased Item with other carriers in accordance with the interchange rules of the American Association of Railroads. No sublease or other relinquishment of possession of any Leased Item shall be permitted hereunder unless the rights of the sublessee or other Person with respect thereto are expressly subject and subordinate to the rights of the Lessor and the Lender. No sublease or other relinquishment of possession of any Leased Item shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder.

SECTION 16. Voluntary Termination.

(a) **Right to Terminate, Procedures.** The Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days prior written notice to the Lessor, to terminate this Lease with respect to all, but not less than all, Leased Items, such termination to be effective on the Basic Rent Date next following the expiration of the 180-day notice period but in no event prior to the First Termination Date (the **Termination Date**); **provided, however,** that no Default or Event of Default shall have occurred and be continuing hereunder and that, in the reasonable judgment of the Lessee, the Leased Items shall have become economically obsolete or unserviceable or surplus to the Lessee's requirements. During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall, use their best efforts to obtain bids for the purchase of the Leased Items. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell the Leased Items, on an **as is, where is** basis without recourse or warranty, for cash to whomsoever shall have submitted the highest bid prior to such date (other than the Lessee or any affiliate of the Lessee) and shall transfer to such purchaser all of the Lessor's right, title and interest in and to the Leased Items, and thereupon the Lessee shall deliver the Leased Items to the Lessor in accordance with the terms of Section 6 hereof. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of the Leased Items. The total sale price realized at such sale shall be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value of the Leased Items, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in selling the Leased Items. In the event no such sale takes place, the Lessee shall pay to the Lessor the Termination Value of the Leased Items, computed as of the Termination Date, plus any reasonable expenses incurred by the Lessor in connection therewith and the Basic Rent payment then due, and shall deliver the Leased Items to the Lessor in accordance with the terms of Section 6 hereof. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder due and payable after, but not on or before, the Termination Date shall cease. If the Termination Date occurs after the Last Basic Rent Date (including during any Lease Extension Period), the Termination Value shall be determined as of the Last Basic Rent Date.

(b) **Election by Lessor Not to Sell.** Notwithstanding the foregoing, upon receipt of all bona fide bids for the purchase of the

Leased Items, the Lessor may, with the prior written consent of the Lender, elect not to sell the Leased Items to the highest bidder on the Termination Date, in which case the Lessee shall deliver the Leased Items to the Lessor in accordance with the terms of Section 6 hereof. In addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent due on such Termination Date with respect to the Leased Items then subject to this Lease and the amount, if any, by which the Termination Value of the Leased Items plus the amount of any reasonable expenses incurred by the Lessor directly or indirectly in connection therewith exceeds such highest bid. Upon such redelivery and the payment of such amount, if any, the obligation of the Lessee to pay the Basic Rent with respect to the Leased Items accruing under this Lease due and payable after, but not on or before, the Termination Date shall cease.

SECTION 17. Lease Extension.

(a) Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to extend this Lease with respect to all, but not less than all, Leased Items for three successive periods of two years each (each a **Lease Extension Period**), the first such Lease Extension Period beginning on the day following the Expiration Date and ending on August 1, 1992 (the **First Lease Extension Expiration Date**), the second such Lease Extension Period beginning on the day following the First Lease Extension Expiration Date and ending on August 1, 1994 (the **Second Lease Extension Expiration Date**), and the third such Lease Extension Period beginning on the day following the Second Lease Extension Expiration Date and ending on August 1, 1996 (the **Third Lease Extension Expiration Date**), at the Fair Market Rental Value thereof, determined as of the Expiration Date or the applicable Lease Extension Expiration Date and payable as provided in paragraph (b) of Section 3 hereof.

(b) Not less than 210 days prior to the Expiration Date or the applicable Lease Extension Expiration Date, the Lessee may indicate, by written notice to the Lessor and the Beneficiary, the Lessee's interest in exercising the Lessee's lease extension option described above, which notice shall set forth the Lessee's estimate of the Fair Market Rental Value of the Leased Equipment as of the Expiration Date or the applicable Lease Extension Expiration Date. If, on or before a date 180 days prior to the Expiration Date or the applicable Lease Extension Expiration Date, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Leased Equipment, the Lessee's option to extend this Lease shall terminate. If, on or before a date 180 days prior to the Expiration Date or the applicable Lease Extension Expiration Date, the Lessee and the Lessor have agreed upon a determination of the Fair Market Rental Value of the Leased Equipment, the Lessee may exercise its option to extend the term of this Lease with respect to the Leased Equipment at the Fair Market Rental Value thereof by

delivering written notice of such exercise to the Lessor and the Beneficiary not less than 180 days prior to the Expiration Date or the applicable Lease Extension Expiration Date.

SECTION 18. Purchase Option.

(a) Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to purchase all, but not less than all, the Leased Items at the Expiration Date or, provided the term of this Lease shall have been extended pursuant to Section 17 hereof, at the date of expiration of any Lease Extension Period (any such expiration date being referred to in this Section as the **Purchase Date**), for a purchase price (the **Purchase Price**) equal to the Fair Market Value of the Leased Items determined on and as of such Purchase Date.

(b) Not less than 210 days prior to the Purchase Date, the Lessee shall indicate, by written notification to the Lessor and the Beneficiary, the Lessee's interest in exercising the Lessee's purchase option described in this Section and setting forth, in such written notification, the Lessee's estimate of the Fair Market Value as of the Purchase Date of the Leased Items. If, on or before a date 180 days prior to the Purchase Date, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Leased Items, the Lessee's option to purchase the Leased Items shall terminate. If, on or before a date 180 days prior to the Purchase Date, the Lessee and the Lessor have agreed upon a determination of the Fair Market Value of the Leased Items, the Lessee may exercise its option to purchase the Leased Items for the Purchase Price by delivering written notice of such exercise to the Lessor and the Beneficiary not less than 180 days prior to the Purchase Date.

(c) On the Purchase Date if no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall purchase from the Lessor, and the Lessor shall sell to the Lessee, without recourse or warranty, the Leased Items. Upon payment of such Purchase Price by the Lessee to the Lessor in the manner specified by the Lessor, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Leased Items are free and clear of all Liens by or in favor of any Person claiming by, through or under the Lessor) for the Leased Items, and such documents as may be required to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 19. Events of Default.

The term **Event of Default**, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within five days after the same shall become due; or

(b) The Lessee shall fail to carry and maintain insurance on or with respect to the Leased Equipment in accordance with the provisions of Section 13 hereof; or

(c) The Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease, the Participation Agreement or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith or pursuant hereto or thereto, and such failure shall continue for 20 days after knowledge thereof by the Lessee; or

(d) Any representation or warranty made by the Lessee in this Lease, the Participation Agreement or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith or pursuant hereto or thereto shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(e) The Contingent Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under the Contingent Lease Agreement or any agreement, document or certificate delivered by the Contingent Lessee in connection therewith or pursuant thereto, and such failure shall continue for 20 days after knowledge thereof by the Contingent Lessee; or

(f) Any representation or warranty made by the Contingent Lessee in the Contingent Lease Agreement or any agreement, document or certificate delivered by the Contingent Lessee in connection therewith or pursuant thereto shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(g) The Lessee or the Contingent Lessee shall be in default under any obligation for the payment of borrowed money or for the deferred purchase price of, or the payment of any rent under any lease agreement covering, real or personal property costing over \$1,000,000, and the applicable grace period with respect thereto shall have expired and the obligation has been declared in default thereunder and accelerated pursuant to the terms thereof; or

(h) The Lessee shall (except as expressly permitted by the provisions of this Lease) attempt to sell, transfer, encumber, part with possession of, assign or sublet the Leased Equipment or any part thereof; or

(i) The Lessee or the Contingent Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee or the Contingent Lessee shall not pay or generally be unable to pay, or admit in writing its inability to pay, its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

(j) The Lessee or the Contingent Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law (as now or hereafter in effect), or the Lessee or the Contingent Lessee shall consent to the entry of an order for relief in an involuntary case under any such law; or

(k) An order, judgment or decree shall be entered by any court having jurisdiction in the premises for relief in respect of the Lessee or the Contingent Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law (as now or hereafter in effect), or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Lessee or the Contingent Lessee or for any substantial part of its property, or sequestering any substantial part of the property of the Lessee or the Contingent Lessee, or ordering the winding up or liquidating of the affairs of the Lessee or the Contingent Lessee, and any such order, judgment or decree shall remain in force undismissed, unstayed or unvacated for a period of 60 days after the date of entry thereof; or

(l) A petition against the Lessee or the Contingent Lessee in a proceeding under applicable bankruptcy laws or other insolvency laws (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's or the Contingent Lessee's obligations), as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's or the Contingent Lessee's obligations) providing for reorganization or liquidation of corporations which may apply to the Lessee or the Contingent Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or the Contingent Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days; or

(m) So long as any Note shall be outstanding and unless expressly waived by the Lender, the Lessee shall fail to maintain for the Lender a prior mortgage on and a duly perfected first priority security interest in any Leased Item, subject only to Liens permitted by Section 8 hereof; or

(n) Final judgment for the payment of money in excess of \$5,000,000 shall be rendered against the Lessee or the Contingent Lessee and the same shall remain undischarged for a period of 90 days during which execution of such judgment shall not be effectively stayed; or

(o) The Contingent Lease Agreement shall at any time for any reason cease to be in full force and effect or the Contingent Lessee shall renounce the same or deny that it has any liability thereunder.

SECTION 20. Remedies.

(a) Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(i) Proceed by appropriate court action, 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;

(ii) Proceed to enforce performance by the Contingent Lessee of the applicable covenants of the Contingent Lease Agreement;

(iii) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Leased Equipment or any part thereof shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Leased Items to the possession of the Lessor at such single location within the 48 contiguous states of the United States as the Lessor shall designate and in the condition required upon the return thereof pursuant to and in accordance with the terms hereof, or the Lessor, at its option, may, to the extent permitted by applicable law, enter upon the premises where the Items are located and take immediate possession of and remove the same by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Leased

Items to the Lessor pursuant to this paragraph the Lessor shall, as soon as commercially practicable, proceed to either sell or re-let the Leased Items in a commercially reasonable manner. If the Lessor re-lets the Leased Items, the present value of the rental which shall be payable to the Lessor in connection with such re-letting for the period from the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default to the end of the term of this Lease computed on the basis of a 12.5% per annum discount (compounded for the periodicity of the payment of rents under such re-letting) shall be referred to hereinafter as the **Proceeds of Re-letting**. The proceeds of such sale or the Proceeds of Re-letting, as the case may be, shall be applied by the Lessor (A) **first**, to pay all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) **second**, to pay to the Lessor an amount equal to any unpaid Rent due and payable and the Casualty Value, to the extent not previously paid, and (C) **third**, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that all Basic Rent then due and payable with respect to the Leased Items and the Casualty Value in respect of the Leased Items have not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (1) the amount by which (X) the sum of (a) all Basic Rent then due and payable with respect to the Leased Items, (b) the Casualty Value or portion thereof not theretofore paid, and (c) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price or the Proceeds of Re-letting, as the case may be, of the Leased Items, and (2) interest at the Late Payment Rate on the full amount of Basic Rent and Casualty Value, computed from the date or dates such Basic Rent or the Casualty Value is payable hereunder until such Basic Rent or Casualty Value is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto and whether or not suit is instituted.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any 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 and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION 21. Notices.

All communications, consents and notices provided for herein shall be in writing and shall become effective when delivered (if sent by messenger or courier) or three days after deposit in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department (with copies to the Beneficiary, at its address as specified in the Participation Agreement, and to the Lender), (b) if to the Lessee, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention: Treasurer, (c) if to the Contingent Lessee, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention: Treasurer, and (d) if to the Lender, at One Sun Life Executive Park, Wellesley, Massachusetts 02181, Attention: Investment Department, Private Placement Section; or at such other address as any of the foregoing Persons may from time to time designate by notice duly given in accordance with the provisions of this Section to such other Persons.

SECTION 22. Successors, Assigns and Indemnified Parties.

This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (1) the Lessor and its successors, assigns and agents, and, where the context so requires, (i) the Beneficiary, (ii) the Lender, as assignee and secured party, and (iii) the successors, assigns and agents, of the Beneficiary and the Lender, and (2) the Lessee and its successors and, to the extent permitted hereby, assigns. With respect to the provisions of Sections 7 and 14 hereof, the Lessor, in its individual capacity, the Beneficiary, the Trust Estate, the Lender, as assignee and secured party, and any subsequent holder of a Note and the successors, assigns, agents and servants of the foregoing shall each be indemnified thereunder as though specifically named therein as "Lessor" and, with respect to clause (b) of the proviso to Section 14 hereof, the willful misconduct or gross negligence of the Lessor or any one such Indemnified Person shall not affect the rights of any other Indemnified Person thereunder.

SECTION 23. Limitations of Liability.

(a) It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and, to the extent permitted hereby, assigns that this Lease is executed by The Connecticut Bank and Trust Company, N.A. not individually or personally but solely as trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, N.A. or the Beneficiary, or for the purpose or with the intention of binding The Connecticut Bank and Trust Company, N.A. or the Beneficiary personally, but are made and intended for the purpose of binding only the Trust Estate, that this Lease is executed and delivered by The Connecticut Bank and Trust Company, N.A. solely in the exercise of the powers expressly conferred upon The Connecticut Bank and Trust Company, N.A. as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations under this Lease may, in certain instances, be taken by the Lessor only upon specific authority of the Beneficiary, that nothing herein contained shall be construed as creating any liability on The Connecticut Bank and Trust Company, N.A. or the Beneficiary, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, The Connecticut Bank and Trust Company, N.A. or the Beneficiary to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as The Connecticut Bank and Trust Company, N.A. or the Beneficiary individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate for the performance of any obligation under this Lease; provided that nothing in this Section 23 shall be construed to limit in scope or substance those representations and warranties made expressly by The Connecticut Bank and Trust Company, N.A. in its individual capacity in the Participation Agreement. The term Lessor as used in this Lease shall include any trustee succeeding The Connecticut Bank and Trust Company, N.A. as trustee under the Trust Agreement or the Beneficiary if the trust created by the Trust Agreement is revoked. Any obligation of the Lessor under this Lease may be performed by the Beneficiary, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the trustee thereunder.

(b) It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and, to the extent permitted hereby, assigns that this Lease is executed by the Lessee in its corporate capacity and nothing herein contained shall be construed as creating any liability on any incorporator or any

past, present or future subscriber to the capital stock of, or stockholder, officer or director of, the Lessee to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor, the Beneficiary and each and every person now or hereafter claiming by, through or under the Lessor and the Beneficiary.

SECTION 24. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; **provided, however,** that, so long as any of the Notes shall be outstanding and unpaid, no such waiver, alteration, modification, amendment or supplement shall make any change, and no termination shall be made, without the consent of the Lender.

(b) All agreements, indemnities, representations and warranties contained in this Lease, the Participation Agreement or any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(c) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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 provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) This Lease represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior understandings. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only.

(e) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts. The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be duplicates and be marked "Duplicate". To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original".

(f) This Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

(g) The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Lease.

(h) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Lease shall be effective on the latest of such dates.

(i) If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Lessor may, but shall not be obligated to, make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Payment Rate, shall be deemed Supplemental Rent payable by Lessee on demand.

(j) Wherever in this Lease reference is made to adjustment of the Basic Lease Rate Factor, the Casualty Values and the Termination Values to such amounts as shall cause the Beneficiary's after-tax return on and rate of recovery of investment and periodic cash flows (computed on the same assumptions, including tax rate, as were utilized by the Beneficiary in originally evaluating the transactions contemplated by this Lease) to equal at least that which would have been realized by the Beneficiary if a specified condition had not been fulfilled, the Beneficiary shall provide the Lessee with a statement of the amount of such adjustment, showing in reasonable detail the computation of such amount; **provided, however,** that upon written request of the Lessee, the Beneficiary shall deliver a certificate of a senior responsible officer confirming that the computation of the amount set forth in the statement to which such request relates has been reviewed for accuracy by the internal auditors of the Beneficiary, under the supervision of such senior responsible officer, and that the computations made by the Beneficiary, as set forth in such statement, are accurate and have been made in compliance with the relevant provisions of this Lease. The Lessee shall have the right, upon request by it and at the Lessee's expense, to have Matrix Leasing International, Inc. (or such other independent third party selected by the Beneficiary as shall be acceptable to the Lessee) review the computations made by the Beneficiary to determine the accuracy thereof and to report as to any discrepancy therein. In the case of any material discrepancy, the Beneficiary shall, at the request of the Lessee, consult with the Lessee and such third party with respect thereto; **provided, however,** that neither the Lessee nor any third party shall have any right to inspect the tax returns or any other document of the Beneficiary in order to confirm the basis

or accuracy of such computations or any determination by the Beneficiary, and the determination shall be made by the Beneficiary.

IN WITNESS WHEREOF, the Lessor and the Lessee have each caused this Lease to be duly executed by their respective officers thereunto duly authorized, all as of the dates set forth below.

**THE CONNECTICUT BANK AND TRUST
COMPANY, N.A.** not in its individual
capacity, but solely as trustee
under a Trust Agreement dated as of
January 15, 1983,
as Owner Trustee

DUPLICATE

By *V. G. Krumholz*
Title: _____
Date: _____

**ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,**
as Lessee

By _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the Lessor and the Lessee have each caused this Lease to be duly executed by their respective officers thereunto duly authorized, all as of the dates set forth below.

**THE CONNECTICUT BANK AND TRUST
COMPANY, N.A.** not in its individual
capacity, but solely as trustee
under a Trust Agreement dated as of
January 15, 1983,
as Owner Trustee

By _____

Title: _____

Date: _____

**ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,**
as Lessee

DUPLICATE

By OKM. Miller

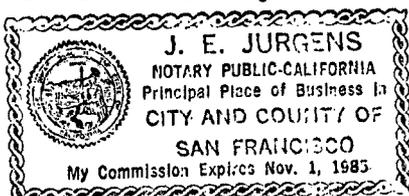
Title: CHAIRMAN OF THE BOARD

Date: JAN 31 1983

STATE OF CALIFORNIA)
City and : ss.:
County of San Francisco)

On this 31st day of January, 1983, before me personally appeared D.K. McNear, to me personally known who being by me duly sworn, says that he[~~she~~] is ~~present~~ Chairman of **ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he[~~she~~] acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]



Title: _____

My commission expires _____

**EXHIBIT A
to Lease**

DESCRIPTION OF EQUIPMENT

The Equipment shall consist of the following equipment:

<u>Items of Equipment</u>	<u>Estimated Lessor's Cost Per Item</u>
20 Eight-Unit IMPACK Articulated Skeletal Flatcars (Serial numbers SSW-90059 through SSW-90078, inclusive)	\$250,400
9 Four-Unit IMPACK Articulated Skeletal Flatcars (Serial numbers SSW-90050 through SSW-90058, inclusive)	125,200
 Total Estimated Lessor's Cost	 \$6,134,800

**EXHIBIT B
to Lease**

CERTIFICATE OF ACCEPTANCE

under

EQUIPMENT LEASE dated as of January 15, 1983 (the Lease) between **THE CONNECTICUT BANK AND TRUST COMPANY, N.A.**, not in its individual capacity, but solely as trustee, as lessor (the Lessor) under a Trust Agreement dated as of January 15, 1983, and **ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**, as lessee (the Lessee), having an Expiration Date of August 1, 1990 and providing for the payment of Basic Rent based upon a Basic Lease Rate Factor of 8.23% which is subject to adjustment as therein stated

and under

PURCHASE ORDER dated September 22, 1982 (the Purchase Order) between Itel Corporation, Rail Division (the Vendor) and Southern Pacific Transportation Company, as assigned by Southern Pacific Transportation Company to the Lessee and by the Lessee to the Lessor.

(1) The Equipment.

The Lessee, as lessee under the Lease and as authorized representative of the Lessor for purposes of accepting delivery of the Equipment pursuant to the Purchase Order, hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost thereof and bears the signature of an officer or employee of the Lessee), constituting Leased Items of the Group of Equipment indicated below, have been delivered by the Vendor to the Lessee at the location set forth below, inspected by the Lessee, found to be in good order and in conformity with the specifications of the Purchase Order and accepted under the Lease and under the Purchase Order, all on the date set forth below.

Group of Equipment:

Location of Acceptance:

Date of Acceptance:

**EXHIBIT B
to Lease**

(2) Representations by the Lessee.

The Lessee hereby represents and warrants to the Lessor and the Lender, as such term is defined in the Lease, that on the date hereof:

(a) The representations and warranties of the Lessee set forth in the Participation Agreement, as such term is defined in the Lease, are true and correct in all material respects as though made on and as of the date hereof.

(b) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee, in the Lease and in the Participation Agreement to be satisfied or complied with on or prior to the date hereof.

(c) No Default or Event of Default under the Lease has occurred and is continuing on the date hereof.

(d) Each Item of Equipment is new and unused on the date title thereto is acquired by the Lessor and has not been put into, or made available for, use or operation by the Lessee prior to the date hereof.

(e) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to the Items of Equipment as are required to be obtained under the terms of the Lease.

(3) The Lessee hereby confirms that the following legend has been affixed to each car:

**THE CONNECTICUT BANK AND TRUST
COMPANY, AS TRUSTEE: LESSOR AND
OWNER; SUN LIFE ASSURANCE COMPANY OF
CANADA U.S.: SECURED PARTY AND
LIENHOLDER UNDER A MORTGAGE, SECURITY
AND LOAN AGREEMENT FILED UNDER THE
INTERSTATE COMMERCE ACT, SECTION 20C**

The Lessee confirms to the Vendor that, by execution of this Certificate of Acceptance, the Lessee and the Lessor become liable, subject to the provisions of the Assignment of Purchase Agreement, dated as of January 15, 1983, between the Lessee and the Lessor, to pay the Vendor the purchase price provided for in the Purchase Order with respect to the Items of Equipment described in Schedule 1 attached hereto.

**EXHIBIT B
to Lease**

IN WITNESS WHEREOF, the Lessee has caused this Certificate of Acceptance to be duly executed by one of its officers thereunto duly authorized this _____ day of _____, 1983.

**ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,**

as Lessee

By _____

Title: _____

Accepted on the date set forth above on behalf of the Lessor:

**THE CONNECTICUT BANK AND TRUST
COMPANY, N.A., as trustee
as Lessor**

By **ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,
as Authorized Representative**

By _____

Title: _____

**SCHEDULE 1 TO
CERTIFICATE OF ACCEPTANCE**

Group of Equipment:

Description of Equipment and Lessor's Cost:

<u>Description (includes serial number)</u>	<u>Lessor's Cost</u>
---	--------------------------

Total Lessor's Cost \$ _____

**ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,
as Lessee**

By _____

Title: _____

**EXHIBIT C
to Lease**

The Casualty Value of each Leased Item shall be the percentage of the Lessor's Cost of such Leased Item set forth opposite the applicable Basic Rent Date below:

<u>Basic Rent Date</u>	<u>Casualty Value(a) (b)</u>
8/1/83	78.815160%
2/1/84	77.641566
8/1/84	73.499122
2/1/85	71.515399
8/1/85	66.072732
2/1/86	62.943131
8/1/86	56.918467
2/1/87	52.938579
8/1/87	46.666757
2/1/88	41.921853
8/1/88	35.715863
2/1/89	30.336550
8/1/89	24.078275
2/1/90	20.124762
8/1/90	20.000000

(a) The percentages of Lessor's Cost set forth above have been computed without regard to recapture of investment tax credit. Consequently, such percentages applicable on any Basic Rent Date with respect to an Event of Loss occurring before the first, second, third, fourth or fifth anniversary of the Closing Date with respect to any Leased Item shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of the Lease, the Casualty Value determined as of such Basic Rent Date shall be the sum of such percentages:

<u>Anniversary of Closing Date</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
First	19.230770%
Second	15.384616%
Third	11.538462%
Fourth	7.692308%
Fifth	3.846154%

(b) In the event the Basic Lease Rate Factor is adjusted pursuant to the provisions of Section 3(e) or Section 10(d) of the Lease or Section 11 of the Participation Agreement, the Casualty Values shall be adjusted accordingly.

**EXHIBIT D
to Lease**

The Termination Value of the Leased Equipment shall be the percentage of Lessor's Cost set forth opposite the applicable Basic Rent Date below:

<u>Basic Rent Date</u>	<u>Termination Value (a) (b)</u>
8/1/83	78.599712%
2/1/84	77.188387
8/1/84	72.594073
2/1/85	70.135527
8/1/85	64.003898
2/1/86	60.162412
8/1/86	53.211709
2/1/87	48.282859
8/1/87	40.847939
2/1/88	34.916981
8/1/88	27.310799
2/1/89	20.508371
8/1/89	12.612827
2/1/90	5.202110
8/1/90	5.102041

(a) The percentages of Lessor's Cost set forth above have been computed without regard to recapture of investment tax credit. Consequently, such percentages applicable on any Basic Rent Date with respect to a Termination Date occurring before the first, second, third, fourth or fifth anniversary of the last Closing Date with respect to the Leased Equipment shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of the Lease, the Termination Value determined as of such Basic Rent Date shall be the sum of such percentages:

<u>Anniversary of Closing Date</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
First	19.230770%
Second	15.384616%
Third	11.538462%
Fourth	7.692308%
Fifth	3.846154%

(b) In the event the Basic Lease Rate Factor is adjusted pursuant to the provisions of Section 3(e) or Section 10(d) of the Lease or Section 11 of the Participation Agreement, the Termination Values shall be adjusted accordingly.