

# Southern Pacific Transportation Company

JOHN J. CORRIGAN  
GENERAL SOLICITOR

ARNOLD I. WEBER  
JOHN MACDONALD SMITH  
RICHARD S. KOPF  
SENIOR GENERAL ATTORNEYS

ROBERT S. BOGASON  
DOUGLAS E. STEPHENSON  
MICHAEL A. SMITH  
LOUIS P. WARCHOT  
GREG CUNNINGHAM  
WILLIAM E. SAUL  
STUART E. VAUGHN  
ANN FINGARETTE HASSE  
GENERAL ATTORNEYS

WRITER'S DIRECT DIAL NUMBER  
(415) 541-1752

Southern Pacific Building - One Market Plaza  
San Francisco, California 94105  
(415) 541-1000

THORMUND A. MILLER  
VICE PRESIDENT AND GENERAL COUNSEL

HAROLD S. LENTZ  
DAVID W. LONG  
CAROL A. HARRIS  
CRAIG J. WHITNEY  
JOHN K. WYMA  
GARY A. LAAKSO  
ASSISTANT GENERAL ATTORNEYS

JONATHAN M. FIL  
DORENE M. CURTIS  
STEPHEN A. ROBERTS  
W. GEORGE WAILES  
CURT A. SCHULTZ  
LAWRENCE P. RIFF  
CLAUDE F. KOLM  
ATTORNEYS

September 11, 1984

14437

RECORDATION NO. .... Filed 1425

4-276A011

OCT 2 1984 10 05 AM

INTERSTATE COMMERCE COMMISSION

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Twelfth Street and Constitution  
Avenue, N.W.  
Washington, D.C. 20423

RE: Personal Property Lease Agreement dated August 29, 1984, between The First National Bank of Kansas City and Southern Pacific Transportation Company

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303, enclosed herewith for filing and recording are an original and three (3) counterparts of Personal Property Lease Agreement dated August 29, 1984, between The First National Bank of Kansas City (Lessor) and Southern Pacific Transportation Company (Lessee) (hereinafter referred to as the "Lease").

In connection with the recording of the enclosed Lease, this letter identifies the Equipment referred to in the Lease as follows:

<u>Number of Units</u>	<u>Description</u>
150	Tri-level auto racks; Whitehead and Kales Company (a division of Thrall Car Manufacturing Company), builder; lettered SP and numbered 75603-75752.

The following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

ICC OFFICE OF  
THE SECRETARY  
OCT 2 9 52 AM '84  
MOTOR OPERATING UNIT

*J. D. Hall*

*Cambridge*

Mr. James H. Bayne  
Page Two  
September 11, 1984

Name and Address of Lessor:

The First National Bank of Kansas City  
14 West 10th Street  
P. O. Box 38  
Kansas City, Missouri 64141

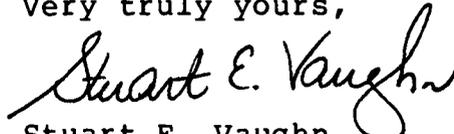
Name and Address of Lessee:

Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

Enclosed is Southern Pacific Transportation Company voucher in the amount of \$50 to cover the cost of filing the enclosed Lease.

When the recording of the Lease has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative, and return three (3) counterparts to her.

Very truly yours,

  
Stuart E. Vaughn

Enclosures

THE FIRST NATIONAL BANK OF KANSAS CITY

14437  
RECORDATION NO. .... Filed 1425

PERSONAL PROPERTY LEASE AGREEMENT

OCT 2 1984 - 10 03 AM

INTERSTATE COMMERCE COMMISSION

Lease No. 1014

This Lease Agreement, made this 29th day of August, 1984, by and between THE FIRST NATIONAL BANK OF KANSAS CITY, a National Bank (hereinafter referred to as "Lessor"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called "Lessee"),

WITNESSETH:

In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. LEASE. Lessor leases to Lessee, and Lessee leases and hires from Lessor, the personal property (hereinafter called "Equipment") described in the Personal Property Lease Schedule or Schedules (hereinafter called "Schedule") executed by the parties concurrently herewith or hereafter with reference hereto. Each such Schedule shall be a separate lease upon the terms contained herein and in such Schedule.

Lessee has selected the type, quantity, and supplier of the Equipment specified in each such Schedule, and Lessor agrees to order such Equipment from such supplier. Lessor shall not be liable for specific performance or for damages if for any reason the supplier fails to or delays in filling the order or meeting the conditions thereof. Lessee hereby authorizes Lessor to insert the serial number and any descriptive matter necessary to properly identify the specific personal property so leased on the Certificate of Inspection of Equipment pertaining thereto.

2. TERM. The term of each lease hereunder shall commence upon the date and shall extend for the period of time stated in the Schedule.

3. RENT. The rent for the Equipment described in a Schedule shall be the amount set forth in such Schedule. Lessee shall pay the rent to Lessor without deduction or offset, in the amounts and at the times set forth in each Schedule, at Lessor's principal offices or at such other place as Lessor from time to time may designate in writing.

The obligation of the Lessee to pay said rent and the additional amounts required by Paragraph 12 and Paragraph 26, if any, is absolute and unconditional and shall not be subject to any abatement whatsoever, whether by reason of any damage to or loss or destruction of the Equipment or by reason of any defect in or failure of title of the Lessor to the Equipment or any interruption from whatsoever cause in the use, operation or possession of the Equipment or for any other reason unless the obligation to pay the same shall be terminated pursuant to the express provisions of this lease. Payment of any additional amounts required by any provision of this lease shall be made at said place only to the extent that such payments are not being, or have not been, made by the Lessee directly and are instead being paid to the Lessor by way of reimbursement or to provide the Lessor with the funds necessary to make such payments.

4. USE. Lessee shall use the Equipment in a careful and proper manner and only for the purposes contemplated by the manufacturer, and shall comply with all laws, ordinances and regulations relating to the use, operation or maintenance of the Equipment. If at any time during the term of the lease Lessor supplies Lessee with labels, plates or other markings stating that the Equipment is owned by Lessor, Lessee shall affix and keep the same in a prominent place on the Equipment. So long as Lessee is not in default in any obligation to the Lessor, Lessee may use the Equipment in the regular course of its business or the business of any subsidiary or affiliate of the Lessee and may permit other rail carriers to use same for any lawful purpose. Such use shall be confined to the United States.

5. LESSEE'S INSPECTION. Within 48 hours after Lessee's receipt of the Equipment (or each item of Equipment if any lease involves more than one item), Lessee shall inspect the Equipment to determine whether or not the Equipment conforms to the specifications selected by Lessee. Unless Lessee shall within such period of time give written notice to Lessor setting forth any defect or objection to the type or condition of the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected such Equipment and that it conforms to Lessee's specifications and is in good condition and without defects. Lessee agrees to indemnify, exonerate and save harmless Lessor from all claims, damages, actions, expenses (including attorneys' fees) and liabilities of any kind arising out of or connected with the failure or refusal of Lessee to accept, or the delay of Lessee in accepting, the Equipment. Lessee's acceptance of the Equipment after inspection thereof does not establish the absence of any defect in any equipment insofar as the manufacturer or supplier thereof is concerned.

6. INSPECTION BY LESSOR. Lessor shall have the right to inspect the Equipment at its sole cost, risk and expense. Lessee shall upon request of Lessor, give Lessor written notice of the location of the Equipment and shall, during normal business hours and upon such reasonable notice as Lessor may give, make the Equipment available to Lessor for inspection. Lessee shall also give immediate notice to Lessor of any attachment, tax lien or other judicial process affecting any item of Equipment.

7. ALTERATIONS. Lessee shall not, without prior written approval of Lessor, which approval shall not be unreasonably withheld, make any addition or improvement to any Equipment which is not readily removable without causing material damage to any Equipment. Lessee shall be entitled from time to time during the term of this Lease to acquire and install, at Lessee's expense, such additions and improvements to any Equipment readily removable without causing material damage to any Equipment and which do not impair the value or utility of any Equipment as originally delivered hereunder to Lessee.

8. MAINTENANCE AND REPAIR. Lessee, at its sole cost and expense, shall keep and maintain the Equipment in such operating order, repair and condition, as shall be suitable for interchange with other rail carriers, and shall furnish any and all parts, mechanisms and devices to keep the Equipment in good mechanical and working order.

9. LOSS AND DAMAGE. Lessee hereby assumes and shall bear the entire risk of loss, theft and damage to the Equipment from any and every cause whatsoever, and no such loss, theft or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this lease, which shall continue in full force and effect.

In the event of loss, theft or damage of any kind whatsoever to the Equipment or any part thereof, Lessee, at its option, shall (a) repair or restore the Equipment to good condition and working order; or (b) replace the same with like property in good repair, condition and working order; or (c) pay Lessor in cash the "stipulated loss value" as specified in the Schedule. Upon such payment to Lessor, any lease hereunder shall terminate only with respect to the item of Equipment for which Lessee has paid, and Lessee shall become entitled to said Equipment in its then existing condition without any warranty of Lessor, express or implied, with respect to any matter whatsoever. Lessor shall not be obligated to undertake, by litigation or otherwise, the collection of any claim against loss or damage to the leased Equipment.

10. INSURANCE. Lessee shall, at its own expense, with respect to the Equipment maintain insurance insuring the

respective interests of Lessor and Lessee and covering (a) physical damage to the Equipment and (b) liability for personal injury, death and property damage resulting from the operation, ownership, use and possession of the Equipment. All such insurance shall be in reputable companies satisfactory to Lessor. Policies covering physical damage risks shall be in an amount not less than the stipulated loss value of Equipment. The Lessee shall maintain third-party liability covering personal injury, death and property damage liability as a result of one accident in the amount of \$5,000,000. Lessor shall be named insured and, with respect to physical damage coverage, a named loss payee in all insurance policies required under this Paragraph. All such policies shall provide for at least thirty (30) days' written notice to Lessor of any cancellation or material alteration of such policies. Lessee shall furnish Lessor certificates or other evidence satisfactory to Lessor of compliance by Lessee with the provisions hereof, but Lessor shall be under no duty to examine such certificates or to advise Lessee in the event its insurance is not in compliance herewith. Lessee covenants that it will not use or operate or permit the use or operation of any Equipment at any time when the insurance required by this Paragraph is not in force with respect to such Equipment. Lessee's obligation to maintain insurance with respect to any Equipment shall commence on the actual day of delivery of the Equipment and shall continue until the Equipment is sold or the lease of the Equipment terminates, whichever is sooner. Lessee may self-insure with respect to the insurance referred to in subparagraphs (a) or (b) above, subject to Lessor's approval of Lessee's plan of self-insurance, which approval shall not be unreasonably withheld; provided, however, that such self-insurance shall be deemed approved automatically by Lessor if the amount of such self-insurance does not exceed one percent of the net worth of Lessee.

11. TAXES. Lessee shall obtain such licensing and registration of the Equipment as shall be at any time required by law, and Lessee shall pay and discharge when due all license and registration fees, assessments and sales, use, property, and other tax or taxes now or hereafter imposed by any federal, state or local government upon the Equipment, ownership, leasing, renting, sale, possession or use of the Equipment, whether the same be assessed against the Lessor or Lessee, together with any penalties or interest in connection therewith. If any tax, license or registration fee is assessed to Lessor, Lessee, at its expense, will do any and all things required to be done by Lessor in connection with such licensing or registration of the levy or assessment of any tax, including the billing or payment thereof. Notwithstanding the foregoing, Lessor agrees that Lessee shall have no obligation for any taxes on Lessor's income or for any franchise or other taxes in lieu of such taxes on Lessor's income, even if those taxes may be measured in whole or in part by the value of property owned

by Lessor. Additionally, Lessor shall pay all late fees, fines, penalties, interest or similar charges on any taxes mentioned in this Paragraph where such late fees, fines, penalties, interest or similar charges result from delay or negligence by Lessor.

12. PAYMENTS BY LESSOR. Should Lessee fail to procure or maintain such insurance or to pay any licensing or registration fees, assessments, charges or taxes, or to keep the Equipment or any part thereof in the repair, condition and working order required by Paragraph 8 hereof, Lessor shall have the right, but shall not be obligated, and without notice to or demand upon Lessee, and without releasing Lessee from any obligation hereunder, to effect such insurance or pay any such fees, assessments, charges or taxes, or place and keep the Equipment in such repair, condition and working order, as the case may be, which in the sole judgment of Lessor appears to be necessary so as to preserve, protect or insure the Equipment. All such sums as Lessor shall in its absolute discretion incur or expend in exercising such rights shall be, without demand, immediately due and payable by Lessee and shall bear interest at the rate of ten percent per annum.

13. DISCLAIMER OF WARRANTIES. Lessor makes no warranties or representations, express or implied, as to any matter whatsoever, including, without limitation, the condition, merchantability, or fitness for a particular purpose, of the Equipment or any part thereof. Lessee acknowledges that Lessor has made no such representations or warranties, and that Lessee has selected both the Equipment and the sellers thereof. Lessor will, however, take such steps as may reasonably be within its power to make available to Lessee any manufacturer's or similar warranty applicable to the Equipment. Lessor authorizes Lessee to obtain whatever service to the Equipment or any part thereof the manufacturer customarily renders, provided that no such service shall be at the expense of Lessor

14. INDEMNITY. Lessee assumes all risk and liability for injuries or damage from the use, operation or storage of the Equipment. Lessee shall indemnify Lessor from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with, or resulting from the Equipment or any part thereof, including, without limitation, the manufacture, selection, delivery, possession, use, operation or return thereof. The indemnities and assumptions of liability contained in this Paragraph 14 shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law or otherwise.

15. DEFAULT. The occurrence of any of the following events shall constitute an event of default under this Lease:

(a) The non-payment by Lessee of any sum required to be paid under any lease hereunder by Lessee for a period of ten days after the same shall become due and owing;

(b) The default by Lessee of any other obligation, covenant or condition of any lease hereunder which is not cured within ten days after notice of such default from Lessor;

(c) Any affirmative act of insolvency by Lessee or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of debtors;

(d) The filing of any involuntary petition under any bankruptcy, reorganization or insolvency law, against Lessee, or the appointment of any receiver or trustee to take possession of any properties of Lessee;

(e) The subjection of any of Lessee's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency;

(f) The occurrence of any event described in paragraph 15 (c), (d), or (e) hereof with respect to any guarantor or any other party liable for payment or performance of any lease hereunder;

(g) Any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Lessee pursuant to or in connection with any lease hereunder proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or is found to have omitted any substantial contingent or unliquidated liability or claim against Lessee.

16. REMEDIES. Upon the happening of any event of default, Lessor may, in its sole discretion, exercise one or more of the following remedies with respect to any or all leases hereunder:

(a) Take possession of the Equipment, without demand or notice and without court order or legal process, Lessee hereby waiving any and all damages caused by such taking of possession of the Equipment in any reasonable manner and agreeing that any such taking of possession shall not constitute a termination of any lease hereunder unless written notice to that effect is given by Lessor to Lessee; and thereafter Lessor may lease the same or any portion thereof for such periods, rentals, and to such persons as Lessor in its sole discretion shall elect, or Lessor may sell the same or any portion thereof at public or private sale, without demand or notice of intention to sell. The proceeds of any such renting,

after deducting all costs and expenses incurred in connection with the recovery, repair, storage and renting of the Equipment or any part thereof, shall be applied in payment of the rent and other obligations due from Lessee to Lessor hereunder, Lessee remaining responsible for any deficiency. The proceeds of any such sale, after deducting all costs and expenses incurred in connection with the recovery, repair, storage and sale of the Equipment, and any rentals or other obligations of Lessee then due hereunder, shall be applied against the stipulated loss value of the Equipment sold. If such sale proceeds, after the permitted deductions, are less than the stipulated loss value Lessee shall remain responsible for such deficiency and shall immediately pay Lessor the difference;

(b) Terminate any or all leases hereunder and recover from Lessee a sum equal to the excess, if any, of the amount of rent and charges equivalent to rent reserved in the lease for the balance of the term over the then reasonable rental value of the Equipment for the same period;

(c) Bring legal action to recover all rents or other amounts then accrued or thereafter accruing from Lessee to Lessor under any lease hereunder;

(d) Terminate any lease or other agreement between Lessor and Lessee;

(e) Declare the remaining unpaid rentals hereunder due and payable, immediately, without the necessity of any notice or demand; and

(f) Pursue any other remedy which Lessor may have at law or in equity. The foregoing remedies shall not be exclusive but shall be cumulative and may be enforced separately or concurrently. In the event of default Lessee will pay to Lessor all costs and expenses, including reasonable attorneys' fees expended by Lessor in the enforcement of its rights or remedies hereunder.

17. OFFSET. Lessee hereby waives any and all existing and future claims and offsets against any rent or other payments due or to become due hereunder and agrees to pay such rent and other payments due hereunder from time to time, regardless of any offset or claim or defense which may be asserted by Lessee or on its behalf. Any deposits or other sums at any time credited by or due from the Lessor to any person liable under this Lease or any securities of such person in the possession of the Lessor may be treated as security and any account maintained by such person with the Lessor may be debited for payment or set-off against the amount due or to become due under this Lease without further consent or notice.

18. SURRENDER. Upon the termination of any lease hereunder, whether by its terms or by acceleration, Lessee shall return each item of Equipment to Lessor in the condition, repair and working order required by Paragraph 8 hereof. The Lessee will at its own cost and expense, deliver possession of the Equipment to the Lessor upon such tracks of the Lessee or any subsidiary or affiliate of Lessee as the Lessor and Lessee shall mutually agree to. Lessee shall pay to Lessor, on demand, for any damages to such Equipment occasioned by other than ordinary wear and tear resulting from proper use thereof.

19. ASSIGNMENT. Lessee shall not, without the prior written consent of Lessor, assign, transfer, pledge or hypothecate any lease hereunder, the Equipment or any part thereof, or any interest therein, or sublet or lend the Equipment or any part thereof.

Nothing in this Section 19 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired all, or substantially all, of the railroad properties of the Lessee; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease. Lessor may assign, pledge, or in any other way transfer any lease hereunder, either in whole or in part, but the Lessee shall be under no obligation to any assignee, pledgee or transferee of the Lessor except upon written notice of such assignment from the Lessor.

20. OWNERSHIP OF EQUIPMENT. The Equipment is and shall at all times be and remain the sole and exclusive personal property of Lessor, notwithstanding that the Equipment or any part thereof may now be or hereafter become in any manner affixed or attached to, or embedded in, or permanently resting upon, real property or any building thereon, or attached in any manner to what is permanent. Lessee shall have no right, title or interest in the Equipment or any part thereof except such rights as are created under any lease hereunder.

If the property subject to this Lease is installed or housed in any building, or on premises owned by the Lessee or rented or leased to it, then Lessee hereby grants to Lessor, its agents, servants or attorneys, the right and license to enter upon the real estate or premises to view and inspect the property subject to this Lease at any time without notice and if Lessee is in default in any of the covenants contained in

this Lease, the Lessee hereby assigns, licenses or subleases to Lessor any and all right of possession of the premises upon which the property is stored or housed, which Lessee now has or may hereafter obtain, and, at its option, Lessor may have a receiver appointed to take, control and manage the equipment and/or the right of possession of the real estate whereon the property subject of this Lease is situated or affixed.

21. WAIVER. Any waiver, permit, consent or approval of any kind or character on the part of Lessor of any breach or default or other condition or covenant under any lease hereunder must be in writing and signed by Lessor, and shall be effective only to the extent specifically set forth therein. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under any lease hereunder shall impair any such right, power or remedy of Lessor, nor shall it be construed to be a waiver of any such breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

22. AMENDMENTS. This agreement and any Schedule executed with reference hereto shall not be amended, altered or changed, except by a written agreement signed by Lessor and Lessee. Subject only to any such amendments, this agreement and each such Schedule constitutes the entire agreement of the parties hereto as to each lease.

23. LATE CHARGES. Should Lessee fail to pay any part of the rent or any other sum owed to Lessor under the provisions of any lease hereunder when the same shall become due, whether by acceleration or otherwise, Lessee shall, on Lessor's demand, pay interest to Lessor at the rate of ten percent per annum on such delinquent payment from the due date thereof until the date such rent or other payment is received by Lessor together with a service charge of \$5.00.

24. APPLICABLE LAW. This agreement and each Schedule with reference thereto has been executed and delivered in the State of Missouri, and such execution and delivery shall be deemed to be the transaction of business within the State of Missouri by Lessee and Lessor for the purposes of conferring jurisdiction upon courts located within that State. This agreement and any Schedule executed with reference thereto shall be governed by and construed under the laws of the State of Missouri.

25. FINANCIAL STATEMENTS. Lessee shall annually, within one hundred twenty (120) days after the close of Lessee's fiscal year, furnish to Lessor financial statements of Lessee (including a balance sheet as of the close of such year and income and surplus statements for such year) prepared in accordance with generally accepted accounting principles and

certified by Lessee's independent public accountants. If required by Lessor, Lessee shall also provide quarterly financial statements of Lessee, similarly prepared for each of the first three quarters of each fiscal year, which shall be certified (but subject to normal year-end audit adjustments) by Lessee's chief financial officer and furnished to Lessor within ninety (90) days following the end of the quarter.

## 26. INVESTMENT TAX CREDIT AND DEPRECIATION.

(a) Except to the extent otherwise agreed in a writing signed by Lessor and Lessee, Lessee acknowledges that under and subject to the provisions of Section 38 and Section 168 and related provisions of the Internal Revenue Code, as in effect and subject to interpretations issued prior to enactment of the Tax Reform Act of 1984, Lessor intends to claim or cause to be claimed on Lessor's tax returns (including consolidated returns in which Lessor may be included) (i) the full investment tax credit of ten percent (10%) based upon a qualified investment equal to one hundred percent (100%) of Lessor's Cost of the Equipment leased hereunder and (ii) accelerated cost recovery deductions with respect to ninety-five percent (95%) of Lessor's Cost of the Equipment over five years. If under any circumstances by reason of any act (which shall not include the fulfillment of the obligations of this lease), failure to act or misrepresentation by Lessee all or any portion of such full investment tax credit or deductions shall be lost by or shall not be allowed to Lessor or its affiliated group for any reason whatsoever (including, without limitation, disallowance of claimed investment tax credit, deductions or recapture), Lessee agrees to pay to Lessor as supplemental rent a sum which, after deduction of all federal income taxes required to be paid by Lessor or its affiliated group in respect of the receipt thereof, shall provide to Lessor net funds equal to the amount of such investment tax credit or deductions lost or not allowed. Such supplemental rents shall be paid to Lessor by Lessee upon written demand made at any time after Lessor's payment of the tax attributable to the investment tax credit or deductions so lost or not allowed. If any interest is payable to the Government in connection with the payment of any taxes due by reason of such investment tax credit or deduction lost or not allowed, the amount of such interest shall also, upon Lessor's demand, be paid by Lessee to Lessor as supplemental rent.

## 27. CONTEST PROVISIONS.

(a) If the Internal Revenue Service proposes an adjustment in any item of income, deduction, or credit of the Lessor which if agreed to by the Lessor would result in a Loss for which the Lessee would be required to indemnify the Lessor pursuant to Paragraph 26 hereof in an aggregate amount in excess of \$50,000, the Lessor shall within 30 days notify the

Lessee in writing of such proposed adjustment, describing such proposed adjustment in reasonable detail; provided, however, that failure to give such notice shall not relieve the Lessee of its obligations to indemnify the Lessor under this Agreement, unless such failure prevents the Lessee from exercising its contest rights under this Paragraph 27. If so requested by the Lessee in writing within 30 days after the date of such notice and if Lessee at the same time provides the Lessor an opinion of independent counsel to the Lessee reasonably acceptable to the Lessor ("Tax Counsel") that a reasonable basis in law and in fact in favor of allowance of the item proposed to be adjusted exists, the Lessor shall contest the proposed adjustment, including contest in a court of competent jurisdiction if the Lessee shall so request. The Lessor shall not pay the proposed adjustment until 30 days have elapsed from the time it has given the notice referred to in the preceding sentence. The Lessor shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any such action shall initially be by way of judicial proceedings or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) in undertaking any judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Although the Lessor agrees to consult with the Lessee on matters relating to the contest, the Lessor shall have full control over any contest pursuant to this Paragraph 27. If at any time, whether before or after commencing to take any action required by this Paragraph 27, the Lessor declines or fails to take required action to permit adjudication on the merits in a forum selected by the Lessor with respect to all or any portion of a proposed adjustment, the Lessor shall so advise the Lessee in writing, and the Lessee shall be relieved of its obligation to indemnify the Lessor under this Agreement with respect to all or such portion of the proposed adjustment as may be specified in such notice.

(b) Notwithstanding the foregoing, the Lessor shall not be required to take any action pursuant to this Paragraph 27 unless and until the Lessee shall have agreed to pay to the Lessor on demand all reasonable costs and expenses which the Lessor may incur in connection with contesting any proposed adjustment (including reasonable fees and disbursements of Lessor's counsel). If the Lessor determines to contest any adjustment by paying the additional taxes (including the amount of any interest, fines, penalties, or additions to tax but excluding late filing and fraud fines, penalties, and additions to tax and late payment and negligence fines, penalties, and additions to tax caused solely by acts, failures to act, or omissions by Lessor) and suing for a refund, the Lessee shall reimburse the Lessor upon receipt of a written demand therefor in an amount equal to such additional taxes. Upon receipt by

the Lessor of a refund of any amounts paid by it based on or relating to an adjustment in respect of which it shall have been paid by the Lessee, the Lessor shall pay to the Lessee an amount which shall equal the amount of such refund, plus any interest received by the Lessor on such amount from the taxing authority.

(c) In the case of actions or proceedings pursuant to this Paragraph 27, the Lessee shall be obligated to pay to the Lessor the amount specified in Paragraph 26 hereof within 15 days after the Lessor has taken all the action that it has agreed in this Paragraph 27 to take and has notified the Lessee in writing of the final administrative or judicial determination with respect to the adjustment in question.

28. NUMBER. Whenever the context of this lease requires, the singular number includes the plural; whenever the word Lessor is used herein it shall include all assignees of Lessor. In the event this lease shall be executed by more than one Lessee, the liability of each shall be joint and several.

29. NOTICES. Any notice hereunder may be given by hand, telex, telecopy (or similar transmission), certified or registered mail, or prepaid overnight air courier service and shall in each case be effective when first received. Any notice required or permitted to be given by either party hereto shall be addressed as follows:

(a) if to the Lessor, at 14 West 10th Street, P.O. Box 38, Kansas City, Missouri 64141, Attention: Leasing Department;

(b) if to the Lessee, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention: Vice President and Treasurer;

or addressed to any such party at such other address as such party shall hereafter furnish to the other party in writing.

30. OPTIONS. For all Equipment under Lease, Lessee will have the right, but not the duty, at the end of the lease term hereof to purchase all, but not less than all, of the Equipment at a price equal to 30% of original cost of the Equipment. Lessee will also have the right, but not the duty, at the end of the lease term hereof to re-lease all, but not less than all, of the Equipment at a rent equal to 40% of the base term rental rate for a two-year period and with one year renewals thereafter at the same rate. Lessee's right to exercise any one year renewal shall be conditioned upon it first obtaining an independent appraisal at the time of such renewal that the previous lease term for the Equipment, including all prior renewals, plus the then proposed one year renewal does not exceed 80% of the overall economic useful life of the

Equipment. Prior to execution of this Lease Lessor shall obtain at its own cost an appraisal which shall establish that the purchase option specified above exceeds the estimated fair market value of the Equipment at the end of the base lease term.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, Lessee

THE FIRST NATIONAL BANK OF  
KANSAS CITY, Lessor

By *W.A. Smith*  
Title Vice President and Treasurer

By *Larry J. Kelly*  
Title S.P.

THE FIRST NATIONAL BANK OF KANSAS CITY  
PERSONAL PROPERTY LEASE SCHEDULE

Lease No. 1014

This Schedule is executed with reference to that certain Personal Property Lease Agreement between the parties hereto dated August 29, 1984, the terms of which are hereby incorporated by reference, and constitutes a separate lease between the parties upon the terms and conditions herein and in said Personal Property Lease Agreement contained.

1. EQUIPMENT LEASED: 150 tri-level auto racks manufactured by Whitehead and Kales Company, a division of Thrall Car Manufacturing Company.

2. LESSOR'S COST: "Lessor's Cost" shall mean and be equal to the aggregate amount of manufacturer's invoices, including sales taxes, if any, paid by Lessor in connection with the acquisition of one or more of the items of Equipment, as context shall require. Lessor's Cost of all the Equipment shall not exceed \$5,788,125 without Lessor's prior written consent.

3. TERM: The term of this lease for each item of Equipment shall commence on the date it is delivered to Lessee as evidenced by Lessee's execution of a completed Certificate of Inspection of Equipment in the form attached hereto as Exhibit A and shall expire on December 27, 1994, unless sooner terminated as provided in the Personal Property Lease Agreement.

4. RENTAL: From, and including, the date on which Lessor pays the purchase price for an item of Equipment to its manufacturer to, and including, December 27, 1984, the interim rent for each item of Equipment shall be equal to the product of (a) the daily equivalent of the annual rental rate set forth below (assuming 360-day years) and (b) the number of days between, and including, such dates. The interim rent shall be due and payable by Lessee on December 28, 1984. For the period commencing on December 28, 1984, the rent for each item of Equipment shall be due and payable by Lessee in ten (10) consecutive annual installments, in arrears, each equal to 13.38941% of the Lessor's Cost of such item of Equipment.

The foregoing rents were calculated on the assumption that the weighted average date for payment by Lessor of the purchase price of all the Equipment will be October 1, 1984.

If the weighted average payment date proves to be other than that assumed, then Lessor may adjust rents and stipulated loss values to maintain its after-tax rate of return and after-tax cash flow.

5. STIPULATED LOSS VALUE: The stipulated loss value of the Equipment, during the term of this lease expressed as a percentage of Lessor's Cost is as follows:

Delivery Date-12/27/84	104.524%
12/28/84-12/27/85	101.676%
12/28/85-12/27/86	97.412%
12/28/86-12/27/87	91.454%
12/28/87-12/27/88	83.655%
12/28/88-12/27/89	74.355%
12/28/89-12/27/90	64.460%
12/28/90-12/27/91	56.886%
12/28/91-12/27/92	48.656%
12/28/92-12/27-93	39.715%
12/28/93 and thereafter	30.000%

The stipulated loss value of each item of Equipment shall be the product of the applicable stipulated loss value percentage above times the Lessor's Cost of that item. The in arrears rental payment next following the event giving rise to Lessee's obligation to pay a stipulated loss value shall also be paid by Lessee.

Approved and agreed to this 29th day of August, 1984.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, Lessee

THE FIRST NATIONAL BANK OF  
KANSAS CITY, Lessor

By *David Smith*  
Title Vice President and Treasurer

By *James J. Kelly*  
Title SVP

0864F

CERTIFICATE OF INSPECTION OF EQUIPMENT

Re: Personal Property Lease  
Agreement dated August 29th, 1984  
between The First National Bank of  
Kansas City and Southern Pacific  
Transportation Company

This is to certify that I have inspected \_\_\_\_\_  
1. (Quantity)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. (Class of equipment, such as locomotives, box cars, etc.) (Serial numbers)  
built by \_\_\_\_\_ at its \_\_\_\_\_  
\_\_\_\_\_ plant as per Order No. \_\_\_\_\_ of  
, and find that the said \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3. (Enter same as "2") \_\_\_\_\_ are constructed fully in  
accordance with said order and the specifications and drawings which are a part thereof.

Furthermore, that each of said units of equipment has had applied thereto two plates or  
stencils, one on each side, reading as follows: The First National Bank of Kansas City  
Owner, Lessor

Date: \_\_\_\_\_, 1984 \_\_\_\_\_

Inspector for Southern Pacific Transportation  
Company