RECORDATION NO. 21869 FILED

DEC 14 '98 11-20AM

21869 A, B, C, D, E, F, G, H

ALVORD AND ALVORD
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ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

RECORDATION NO. _____ FILED

DEC 14 '98 11-20AM

RECEIVED
SURFACE TRANSPORTATION BOARD

December 14, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: San Joaquin Regional Rail Commission (SJRRC 1998-USB)

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Head Lease Agreement (SJRRC 1998-USB), dated December 14, 1998, a primary document as defined in the Board's Rules for the Recordation of Documents and two (2) copies of each of the following secondary documents related thereto: namely, Memoranda of Head Lease Supplement Lot 1 (SJRRC 1998-USB), Head Lease Supplement Lot 2 (SJRRC 1998-USB), Sublease Agreement (SJRRC 1998-USB), Sublease Supplement Lot 1 (SJRRC 1998-USB), Sublease Supplement Lot 2 (SJRRC 1998-USB), Equipment Pledge Agreement Lot 1 (SJRRC 1998-USB), Equipment Pledge Agreement Lot 2 (SJRRC 1998-USB), and Loan and Security Agreement (SJRRC 1998-USB) all of which are dated December 14, 1998.

The names and addresses to the parties of the enclosed documents are:

<u>Head Lease Agreement</u>
<u>Head Lease Supplement Lot 1</u>
<u>and Head Lease Supplement Lot 2</u>

Head Lessor: San Joaquin Regional Rail Commission
5000 South Airport Way, Room 201
Stockton, California 95206

Head Lessee: State Street Bank and Trust Company of California, N.A.
Library Tower
633 W. Fifth Street, 12th Floor
Los Angeles, California 90071

Original Part 1

Sublease Agreement
Sublease Supplement Lot 1
and Sublease Supplement Lot 2

Sublessor: State Street Bank and Trust Company of California, N.A.
Library Tower
633 W. Fifth Street, 12th Floor
Los Angeles, California 90071

Sublessee: San Joaquin Regional Rail Commission
5000 South Airport Way, Room 201
Stockton, California 95206

Equipment Pledge Agreement Lot 1
and Equipment Pledge Agreement Lot 2

Pledgor: San Joaquin Regional Rail Commission
5000 South Airport Way, Room 201
Stockton, California 95206

Pledgee: State Street Bank and Trust Company of California, N.A.
Library Tower
633 W. Fifth Street, 12th Floor
Los Angeles, California 90071

Loan and Security Agreement

Borrower: State Street Bank and Trust Company of California, N.A.
Library Tower
633 W. Fifth Street, 12th Floor
Los Angeles, California 90071

Lender: AIG-FP Funding (Cayman) Limited
c/o Maples & Calder
PO Box 309
Ugland House, South Church Street
Grand Cayman, Cayman Islands
British West Indies

A description of the railroad equipment covered by the enclosed documents is attached hereto.

Also enclosed is a check in the amount of $234.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of each of the enclosed documents to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/bg
Enclosures

**SCHEDULE A LOT 1**

## DESCRIPTION OF EQUIPMENT

| Description | SJRC Equipment Numbers |
|---|---|
| Three (3) Boise | SJRC 3101 |
| Locomotive F40PH-3C | SJRC 3102 |
| Locomotives | SJRC 3103 |

**SCHEDULE A LOT 2**

## DESCRIPTION OF EQUIPMENT

| Description | SJRC Equipment Numbers |
|---|---|
| Four (4) Bombardier | SJRC 3201 |
| Imperial Bi-Level | SJRC 3202 |
| Commuter Trailer Cars | SJRC 3203 |
| | SJRC 3204 |
| Four (4) Bombardier | SJRC 3301 |
| Imperial Bi-Level | SJRC 3302 |
| Commuter Cab Cars | SJRC 3303 |
| | SJRC 3304 |

RECORDATION NO. 21869-F FILED

DEC 14 '98 11-20AM

EQUIPMENT PLEDGE AGREEMENT LOT 1
(SJRRC 1998-USB)

dated as of December 14, 1998

between

San Joaquin Regional Rail Commission
as Pledgor,

and

State Street Bank and Trust Company of California, National Association
not in its individual capacity,
but solely as Trustee, as Pledgee

Lease and Sublease of Heavy Rail Equipment

This EQUIPMENT PLEDGE AGREEMENT LOT 1 dated as of December 14, 1998, by and between San Joaquin Regional Rail Commission (the "Pledgor"), and State Street Bank and Trust Company of California, National Association, not in its individual capacity but solely as Trustee (the "Pledgee") under the Trust Agreement (SJRRC 1998-USB) dated as of December 14, 1998, between the Trustee and U.S. Bancorp Leasing & Financial ("Equity Investor").

## RECITALS:

It is a condition to the obligations of the Pledgee and the Equity Investor to enter into the transactions contemplated by the Participation Agreement (SJRRC 1998-USB) dated as of the date hereof among the Pledgor, the Equity Investor, AIG-FL Funding (Cayman) Limited as Lender, AIG-FP Special Finance (Cayman) Limited as Debt Payment Undertaker, and the Pledgee (the "Participation Agreement"), that the Pledgor and the Pledgee enter into this Equipment Pledge Agreement (this "Agreement") to secure performance by the Pledgor of the Obligations (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, and in order to induce the Pledgee and the Equity Investor to enter into the Participation Agreement, and intending to be legally bound, the parties do hereby agree as follows:

SECTION 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings given such terms in Appendix A to the Participation Agreement and the rules of usage set forth therein shall apply to this Agreement.

SECTION 2. Pledge. As collateral security for (i) the performance by the Pledgor of all of its obligations under the Head Lease, including, without limitation, Section 5(b) of the Head Lease to respect Head Lessee's right of quiet enjoyment thereunder and Section 13 of the Head Lease to transfer to Trustee or its designee all of Pledgor's residual interest in the Equipment upon compliance by the Trustee with the terms set forth in said Section 13 and (ii) the prompt payment when due of the obligations of the Pledgor under the Sublease (collectively, the "Obligations"), the Pledgor hereby mortgages, pledges, hypothecates, assigns, transfers and sets over unto the Pledgee, in the manner hereinafter provided, and grants to the Pledgee a security interest in and Lien upon the following items (collectively, the "Collateral"):

(a) each Item of Equipment identified in Schedule A hereto and all components, parts and appurtenances thereof (whether inventory, equipment or otherwise) together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated therein, and all replacements and substitutions thereof, to the extent of any and all right, title and interest now owned or held or hereafter acquired by Pledgor;

(b) all rights, claims and causes of action, if any, that the Pledgor may against any Person have in respect of the foregoing; and

(c) all proceeds (including without limitation any claims or insurance payable by reason of loss or damage to each Item of Equipment) of any or all of the foregoing;

TO HAVE AND TO HOLD the Collateral, together with all rights, titles, interests, powers, privileges and preferences pertaining or incidental thereto, unto the Pledgee, its successors and assigns, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

SECTION 3. Representations, Warranties and Agreements.

(a) The Pledgor agrees not to withdraw, liquidate, sell, convey, or in any way dispose of, or create, incur, or permit to exist any pledge, mortgage, lien, charge, encumbrance or security interest whatsoever, or cause any of the foregoing to occur in or with respect to, any of the Collateral, or any interest therein, except as provided in Section 14(d) of the Participation Agreement and except for Permitted Liens. The Pledgor agrees, at its own cost and expense, to defend the Pledgee's security interest in and to the Collateral against the claims of any Person and to ensure that the Pledgee has at all times a first priority Lien on and security interest in the Collateral, subject to no other Liens whatsoever other than Permitted Liens.

(b) The Pledgor hereby represents and warrants to the Pledgee that the Pledgor holds good title to the Collateral free and clear of all Liens other than Permitted Liens, and that this Agreement grants to the Pledgee a first priority Lien on and security interest in the Collateral, subject to no other Liens whatsoever other than Permitted Liens.

(c) The Pledgor hereby expressly waives diligence, presentment, demand for payment, protest, any requirement that any right or power be exhausted or any action be taken against the Pledgor by the Pledgee or any other Person, all notices (whether of non-payment by the Pledgor or anyone else, dishonor, protest or otherwise) with respect to any of the Obligations and notice of acceptance of this Agreement and of the incurring by the Pledgor of any of the Obligations.

SECTION 4. Remedies Upon Event of Default. (a) Upon the occurrence of a Head Lessor Event of Default or (b) upon the occurrence of a default in respect of any of the Obligations described in clause (ii) of Section 2 hereof and a declaration by the Pledgee of an Event of Default under Section 16 of the Sublease (the occurrence of (a) or (b) above, an "Equipment Pledge Default"), the Pledgee may, without limitation of all other rights and remedies available at law or in equity in such event, exercise any one or more or all, and in any order, of the following remedies, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but that each and every remedy is cumulative and is in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) the Pledgee personally, or by its agents or attorney's, will have the right (subject to compliance with Applicable Law) to take possession of all or any part of the Collateral, and having and holding the same may use, operate, sell, lease manage and control the Collateral and conduct the business thereof and collect and receive all earnings, revenues, rents, issues, proceeds and income of the Collateral and every part thereof and may maintain, repair and renew the Collateral and make replacements, alterations, additions and improvements thereto or remove and dispose of any portion of the Collateral and may otherwise exercise any and all of the rights and powers of the Pledgor in respect thereof;

(b) the Pledgee may, if at the time such action may be lawful and always subject to compliance with Applicable Law, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever, sell and dispose of the Collateral, or any part thereof, or interest therein, at any private sale or public auction to the highest bidder, with or without demand, advertisement or notice (except as may be required by law) of the date, time and place of sale, and any adjournment thereof in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Pledgee may determine, and at any place (whether or not it be the location of the Collateral or any part thereof). Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, and the Pledgee or the Equity Investor may bid and become the purchaser at any such sale;

(c) the Pledgee may proceed to protect and enforce this Agreement by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or for the enforcement of any other proper, legal or equitable remedy available under Applicable Law;

(d) the Pledgee may proceed to exercise all rights, privileges and remedies of the Pledgor as assigned to the Pledgee, and may exercise all such rights and remedies either in the name of the Pledgee or in the name of the Pledgor for the use and benefit of the Pledgee;

(e) the Pledgee may appoint, hire and employ and remunerate agents, servants, attendants, workmen and others in such terms and generally in such manner as Pledgee shall think fit, either in connection with any exercise by it of any of the foregoing powers or otherwise for any purpose connected with the Collateral or any part thereof and may discharge any person so appointed, hired or employed;

(f) the Pledgee may do all such other acts and things as Pledgee may consider necessary or desirable for the realization of any of the Collateral or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on Pledgee hereby, and may exercise and do, in relation to the Collateral hereby charged or any part

hereof, all such powers, authorities and things as Pledgee would be capable of exercising if it were the absolute beneficial owner of the same; and

(g) the Pledgee may exercise all rights, privileges and remedies authorized or permitted under Applicable Law.

SECTION 5. Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until satisfaction in full of the Obligations and (b) be binding upon the Pledgor and its successors and assigns to the extent permitted by Applicable Law. Upon the satisfaction in full of the Obligations, the lien and security interest granted hereby shall terminate. Upon any such termination, the Pledgee will, at Pledgor's cost and expense, execute and deliver to the Pledgor such documents as the Pledgor reasonably requests to evidence such termination. Pledgee (and any party that becomes an assignee of Pledgee's rights hereunder) also agrees to release, at Pledgor's cost and expense, the Lien of this Agreement as to any Item of Equipment that ceases to be an Item of Equipment leased under the Head Lease and subleased under the Sublease.

SECTION 6. Acknowledgment of Assignment for Security. In order to secure the indebtedness evidenced by the Loan Certificates and all other amounts owing to the Lender under the Operative Documents, the Pledgee has in the Loan Agreement, among other things, assigned to the Lender its rights under this Agreement. The Pledgor hereby consents to such assignment and acknowledges receipt of copies of the Loan Agreement, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent under any other circumstances.

SECTION 7. Further Assurances. The Pledgor agrees that it will join with the Pledgee in executing and will file or record such notices, financing statements or other documents as may be necessary for the perfection of the security interests granted to the Pledgee hereunder under Applicable Law, and as the Pledgee, the Equity Investor or their counsel may reasonably request, such instruments to be in form and substance satisfactory to such Persons. The Pledgor also agrees that it will do such further acts and things and execute and deliver to the Pledgee such additional conveyances, assignments, agreements and instruments as the Pledgee or the Equity Investor may at any time reasonably request in connection with the administration and enforcement of this Agreement or relative to the Collateral or any part thereof or in order to assure and confirm unto the Pledgee its rights, powers and remedies hereunder.

SECTION 8. No Waiver. No failure on the part of the Pledgee to exercise, and no delay on its part in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or the further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Applicable Law.

SECTION 9. Attorney-in-Fact. Subject to Applicable Law, the Pledgee is hereby appointed the attorney-in-fact of the Pledgor (i) for any period, for the purpose of signing documents and taking other action to perfect its security interest in the Collateral and (ii) during

any period during which an Equipment Pledge Default has occurred and has been continuing, for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instruments which the Pledgee may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, during the period specified in clause (ii) above, the Pledgee shall have the right and power to receive, endorse and collect all checks made payable to the order of the Pledgor representing any payment in respect of the Collateral or any part of any of the foregoing and to give full discharge of the same.

SECTION 10. Expenses. The Pledgor agrees to pay to the Pledgee and Equity Investor and their successors and assigns all reasonable costs and expenses (including reasonable expenses for legal services of every kind) of, or incident to, the enforcement of, or protection or preservation of any right under, any of the provisions of this Agreement, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any, of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Pledgee in respect thereof, by litigation or otherwise, and all such expenses shall be Obligations secured under this Agreement.

SECTION 11. Miscellaneous. This Agreement may be executed by the parties hereto in separate counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. The section headings set forth in this Agreement have been inserted for convenience of reference only and shall in no way restrict or modify any of the terms or provisions of this Agreement or constitute a representation or warranty by any party hereto to or for the benefit of any other Person. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Pledgor, the Pledgee and their respective successors and permitted assigns.

SECTION 12. GOVERNING LAW. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDING ALL OTHER CHOICE-OF-LAW AND CONFLICTS-OF-LAW RULES) EXCEPT THAT THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN ALL MATTERS RELATING TO THE POWER AND AGENCY OF THE PLEDGOR.

SECTION 13. Notices. All notices, demands, declarations and other communications required under the terms and provisions hereof shall be in writing (including telecopy), regardless of whether a notice is expressly required to be in writing by any provision hereof, and shall be addressed as set forth in the Participation Agreement with a copy to Equity Investor at its address set forth in the Participation Agreement, or at any other address subsequently specified in writing by any party.

SECTION 14. Waiver of Offset Rights. The Pledgee hereby expressly waives any right of offset, banker's lien or other similar rights that it might have against, or any assignment, security interest or other interest that it might have in, the Collateral.

SECTION 15. Concerning the Pledgee. It is expressly understood and agreed by and among the parties hereto that this Agreement is executed and delivered by State Street Bank and Trust Company of California, National Association, not in its individual capacity but solely in its capacity as Trustee under the Trust Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SAN JOAQUIN REGIONAL RAIL COMMISSION

By: Stacey Mortensen
Name: STACEY MORTENSEN
Title EXECUTIVE DIRECTOR

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee

By: _____
Name:
Title

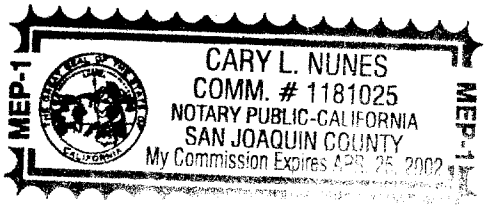
STATE OF CALIFORNIA §

COUNTY OF SAN JOAQUIN §

BEFORE ME, the undersigned notary public, on this day personally appeared Stacey Mortensen of San Joaquin Regional Rail Commission, known to me (or proved to me by presentation of such individual's driver's license) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that ~~he~~ she executed the same for the purposes and consideration therein expressed as the act and deed of San Joaquin Regional Rail Commission.

GIVEN under my hand and seal of office this 9th day of December, 1998.

(SEAL)




Cary L. Nunes
Notary Public

STATE OF CALIFORNIA §

COUNTY OF _____ §

BEFORE ME, the undersigned notary public, on this day personally appeared _____ of State Street Bank and Trust Company of California, National Association, not in its individual capacity except as otherwise expressly set forth therein, but solely as Trustee, known to me (or proved to me by presentation of such individual's driver's license) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of State Street Bank and Trust Company of California, National Association, not in its individual capacity except as otherwise expressly set forth therein, but solely as Trustee.

GIVEN under my hand and seal of office this _____ day of December, 1998.

(SEAL)

_____
Notary Public

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

SAN JOAQUIN REGIONAL RAIL COMMISSION

By: _____
Name:
Title

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee

By: _____
Name: Jeanie Mar
Title Assistant Vice President

STATE OF CALIFORNIA §

COUNTY OF LOS ANGELES §

BEFORE ME, the undersigned notary public, on this day personally appeared Jeanie Mar of State Street Bank and Trust Company of California, National Association, not in its individual capacity except as otherwise expressly set forth therein, but solely as Trustee, known to me (or proved to me by presentation of such individual's driver's license) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of State Street Bank and Trust Company of California, National Association, not in its individual capacity except as otherwise expressly set forth therein, but solely as Trustee.

GIVEN under my hand and seal of office this 10th day of December, 1998.

(SEAL)

NNA1 JONI FREDERICK
COMM. # 1056012
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires APR 16, 1999 NNA1

Notary Public

STATE OF CALIFORNIA §

COUNTY OF SAN JOAQUIN §

BEFORE ME, the undersigned notary public, on this day personally appeared _____ of San Joaquin Regional Rail Commission, known to me (or proved to me by presentation of such individual's driver's license) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of San Joaquin Regional Rail Commission.

GIVEN under my hand and seal of office this _____ day of December, 1998.

(SEAL)

_____
Notary Public

**SCHEDULE A TO**
**EQUIPMENT PLEDGE**
**AGREEMENT LOT 1**

## DESCRIPTION OF EQUIPMENT

| Description | SJRC Equipment Numbers |
|---|---|
| Three (3) Boise | SJRC 3101 |
| Locomotive F40PH-3C | SJRC 3102 |
| Locomotives | SJRC 3103 |