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ALVORD AND ALVORD
ATTORNEYS AT LAW

RECORDATION NO. 19608-B FILED 1425

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SEP 21 1995 - 12 20 PM

SUITE 200

WASHINGTON, D.C.

INTERSTATE COMMERCE COMMISSION

20006-2973

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September 21, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) original and eight (8) photostat copies of a Replacement Lease Agreement, dated as of September 1, 1995, a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to the Lease Agreement, duly filed with the Commission under Recordation Number 19608.

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

Lessor: First Security Bank of Utah, National Association
79 South Main Street
Salt Lake City, Utah 84111

Replacement Lessee: First Union Rail Corporation
c/o First Union Leasing Group
One First Union Center
301 South College Street, 20th Floor
Charlotte, North Carolina 28288

A description of the railroad equipment covered by the enclosed document is attached to the Replacement Lease as Exhibit A.

Quentin Pate - Kimbartman

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SECRETARY
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Mr. Vernon A. Williams
September 21, 1995
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Alvord", written in black ink.

Robert W. Alvord

RWA/bg
Enclosures

RLA

RECORDATION NO. 19608-B FILED 1425

SEP 21 1995 - 12 20 PM

INTERSTATE COMMERCE COMMISSION

REPLACEMENT LEASE AGREEMENT

Dated as of September 1, 1995

BETWEEN

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity except
as expressly provided herein but
solely as Owner Trustee,

Lessor

And

FIRST UNION RAIL CORPORATION,

Replacement Lessee

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF LESSOR IN AND TO THIS REPLACEMENT LEASE, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS SECURITY TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT, DATED AS OF SEPTEMBER 1, 1995 BETWEEN SAID SECURITY TRUSTEE, AS SECURED PARTY, AND LESSOR, AS DEBTOR

Memorandum of Replacement Lease Agreement filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 on September __, 1995 at __:__.M. Recordation Number _____, and deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on September __, 1995, at __:__.M.

#30109514.8

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REPLACEMENT LEASE AGREEMENT

This Replacement Lease Agreement dated as of September 1, 1995 (hereinafter referred to as the "*Replacement Lease*") between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association, with its principal office at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Corporate Trust Department, not in its individual capacity except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement (hereinafter referred to as "*Lessor*"), and FIRST UNION RAIL CORPORATION, a North Carolina corporation, with its principal office at One First Union Center, 20th Floor, 301 S. College Street, Charlotte, North Carolina 28288-0738 (hereinafter referred to as "*Replacement Lessee*").

WITNESSETH THAT:

In consideration of the mutual terms and conditions hereinafter set forth. Lessor and Replacement Lessee hereby agree as follows:

**ARTICLE 1:
ACCEPTANCE AND LEASING OF EQUIPMENT**

Lessor hereby agrees simultaneously with the redelivery, if any, of each BN Unit from BN to Lessor on a BN Lease Termination Date, to accept redelivery of such BN Unit from BN and thereafter to lease such Unit to Replacement Lessee hereunder (irrespective of such Unit's condition at such time), and Replacement Lessee hereby agrees to lease from Lessor hereunder, such Unit. Lessor hereby authorizes one or more employees of Replacement Lessee, designated by Replacement Lessee, to act on behalf of Lessor as its authorized representative or representatives, to determine the condition of the BN Units and to accept redelivery of such BN Units and to execute and deliver a certificate acknowledging redelivery of such BN Unit. Replacement Lessee hereby agrees that such acceptance of redelivery by such authorized representative or representatives on behalf of Lessor shall, without further act, irrevocably constitute acceptance by Replacement Lessee of such BN Unit for all purposes of this Replacement Lease; *provided, however*, that if any Unit which Replacement Lessee is required to accept fails to meet the return conditions of Section 18B of the BN Lease, Lessor hereby assigns any and all rights Lessor has against BN under the BN Lease to enforce compliance under such Section 18B and agrees to pay to Replacement Lessee any amounts Lessor receives from BN Lessee with respect to such return conditions. It is the intent of the parties to this Replacement Lease that this Replacement Lease be a true lease.

**ARTICLE 2:
TERM**

The primary noncancelable term of this Replacement Lease for each BN Unit redelivered by BN and accepted under Article 1 (a "Unit") shall be for a period commencing on the BN

Lease Termination Date on which such redelivery occurs (the "*Replacement Term Commencement Date*"), and ending on March 19, 2016 (such period being hereinafter referred to as the "*Replacement Lease Term*").

**ARTICLE 3:
MARKINGS**

As soon as practicable after a BN Lease Termination Date but in no event later than three months after such date, Replacement Lessee will cause each Unit to be numbered with a reporting mark covering such Unit, and will from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

"SUBJECT TO A SECURITY AGREEMENT RECORDED WITH THE
INTERSTATE COMMERCE COMMISSION"

or

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH
THE INTERSTATE COMMERCE COMMISSION"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's right, title and interest in and to such Unit and its rights under this Replacement Lease and the rights of any Financing Party holding a security interest in the Units. Except as provided herein, Replacement Lessee will not place any Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof, and will replace promptly any such word or words in such legend which may be removed, defaced, obliterated or destroyed. Replacement Lessee will not change the reporting mark of any Unit subsequent to the initial placement of the same by Replacement Lessee or any permitted assignee or sublessee, except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to Lessor by Replacement Lessee and a supplement to this Replacement Lease with respect to such new reporting marks shall be filed or recorded by Replacement Lessee, in a manner satisfactory to and at no cost to Lessor, in all public offices where this Replacement Lease shall have been filed or recorded.

Except as above provided, Replacement Lessee will not allow the name of any Person to be placed on any Unit as a designation that might reasonably be interpreted as a claim of ownership; *provided, however*, that Replacement Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by Replacement Lessee or any permitted sublessees or any of their respective Affiliates on railroad equipment used by it of the same or a similar type.

**ARTICLE 4:
PAYMENT OF RENTALS**

A. Replacement Lessee agrees to pay Lessor the rent specified on Schedule 1 for each Unit for each period during the Replacement Lease Term. No rent shall be payable by Replacement Lessee for any Unit prior to the BN Lease Termination Date for such Unit. The rent for each Unit during the Replacement Lease Term shall be paid in immediately available funds in semiannual installments, payable in arrears, commencing on the September 20 next following the BN Lease Termination Date for such Unit and payable on March 20 and September 20 of each year thereafter on or before 12:00 Noon New York City time. If any of the rent payment dates falls on a day which is not a Business Day, the rent shall be due on the next succeeding Business Day. In the event Lessor notifies Replacement Lessee in writing that the right to receive rents has been assigned in accordance with Article 17 hereof, Replacement Lessee shall make payment in the manner designated in such notice or as otherwise designated in writing by such assignee.

B. Replacement Lessee will, on demand, pay to Lessor interest at the Late Rate on any payment not paid when due. Such interest shall be paid for the time period commencing when the payment was due and ending on the day such payment is made by Replacement Lessee.

C. This Replacement Lease is a net lease and Replacement Lessee shall not be entitled to any abatement of rent or other amounts, liabilities and obligations which Replacement Lessee is obligated to pay under this Replacement Lease (collectively, "Rent"), reduction thereof or setoff against Rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of Replacement Lessee against Lessor under this Replacement Lease or otherwise, nor shall this Replacement Lease terminate, or the respective obligations of Lessor or Replacement Lessee be otherwise affected, by reason of any defect in or failure of title of Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Replacement Lessee's use of all of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any Person, the invalidity or unenforceability or lack of due authorization of this Replacement Lease, any insolvency, bankruptcy, reorganization or similar proceeding against Replacement Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that Replacement Lessee's obligations to pay Rent shall be absolute and unconditional and the Rent payable by Replacement Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Replacement Lease. To the extent permitted by applicable law, Replacement Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of

rent paid by Replacement Lessee hereunder shall be final and Replacement Lessee shall not seek to recover all or any part of such payment for any reason whatsoever. Nothing contained herein shall be construed to waive any claim which Replacement Lessee might have under any of the Replacement Lessee Agreements or otherwise or to limit the right of Replacement Lessee to make any claim it might have against Lessor or any other Person or to pursue such claim in such manner as Replacement Lessee shall deem appropriate.

**ARTICLE 5:
CAR HIRE REVENUE**

Replacement Lessee shall be entitled to all mileage, per diem, off-line and sublease revenue (collectively, the "*Car Hire Revenue*") earned by the Units during the Replacement Lease Term. For so long as no Event of Default has occurred and is continuing any Car Hire Revenue collected or received by Lessor shall be paid within thirty (30) days of receipt by Lessor to Replacement Lessee.

**ARTICLE 6:
TITLE**

Replacement Lessee acknowledges and agrees that by the execution of this Replacement Lease it does not obtain, and by payments and performance hereunder it does not, and will not, have or obtain any title to the Units or any property right or interest therein, legal or equitable, except solely as lessee hereunder and except as otherwise expressly provided herein and subject to all of the terms hereof.

**ARTICLE 7:
LOCATION, POSSESSION AND USE**

The Units will be used in the general operation of Replacement Lessee's railcar leasing business on the lines of railroads (including in connection with barge-related rail transportation) in the United States, Canada, and Mexico in the usual interchange of traffic or in through or run-through service. So long as no Event of Default shall have occurred and be continuing under this Replacement Lease, Lessor agrees that it will not take or cause to be taken any action contrary to Replacement Lessee's rights under this Replacement Lease, including the right to uninterrupted possession, use and quiet enjoyment of the Units.

**ARTICLE 8:
MAINTENANCE AND REPAIR**

Replacement Lessee, at its own cost and expense, shall maintain and repair each Unit subject to this Replacement Lease (i) in a manner consistent with maintenance practices used by Replacement Lessee or any sublessee with respect to equipment owned or leased by Replacement Lessee or such sublessee similar in type to such Unit consistent with prudent industry

maintenance practice for Class I Railroads in existence from time to time but in any case so as to maintain each such Unit in good operating order and repair and in good physical condition, ordinary wear and tear excepted, and (ii) in compliance, in all material respects, with all applicable laws and regulations, including any applicable FRA regulations and AAR Interchange Rules as applicable to continued use by Replacement Lessee; *provided, however*, that Replacement Lessee or any sublessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially adversely affect the rights or interests of Lessor or the Financing Party in such Units or under the Replacement Lease or materially adversely affect the value or utility of such Units or expose Lessor or the Financing Party to criminal sanctions or release Replacement Lessee from the obligation to return such Units in compliance with the provisions of this Replacement Lease.

ARTICLE 9: MODIFICATIONS

A. (i) In the event that during the Replacement Lease Term the AAR, DOT or any other governmental agency having jurisdiction over the operation, safety or use of railroad equipment as the result of the change of any law, rule, regulation or order requires that the Units subject to this Replacement Lease be added to, modified or in any manner adjusted (hereinafter referred to as "*Modifications*") in order to qualify them for operation in railroad interchange prior to the expiration of the Replacement Lease Term, Replacement Lessee or any sublessee shall cause such Modifications to be made at its expense within the time period required by such governmental agency and, in any event, prior to the end of the Replacement Lease Term; provided, however, that if the cost of such Modification exceeds \$2000.00 per Unit, and the Replacement Lessee determines, in its sole discretion, that causing such Modification to be made to any Unit would be uneconomical, an Event of Loss shall be deemed to have occurred with respect to such Unit and the provisions of Article 11 shall apply.

(ii) In the event that Lessor notifies Replacement Lessee that Modifications are required to be made in accordance with the provisions of Article 9 of the BN Lease, then Replacement Lessee agrees to pay for the cost of the completion of any such Modifications; provided, however, if such Modifications are made by Replacement Lessee, Lessor hereby agrees to appoint Replacement Lessee as Lessor designee under the BN Lease to receive the Supplemental Rent or Modification Amount payments required to be made by the BN Lessee with respect to such Modifications and to promptly pay to the Replacement Lessee any sums it may receive from the BN Lessee pursuant to Article 9 and 11 as Supplemental Rent or as a Modification Amount. In addition, Lessor acknowledges that Replacement Lessee has full authority to make such Modifications under the BN Lease and to enter into negotiations and discussions with BN Lessee to effect such Modifications.

B. Except for modifications required by law and as provided in the next succeeding sentence, Replacement Lessee shall not, without the prior written consent of Lessor, effect any change in the design, construction or body of the Units. Lessor's consent to modifications or additions to the Units which do not impair the value or utility of the Units shall not be unreasonably withheld, as long as such modifications or additions which are not readily removable without material damage to or diminution of the Units are considered accessions to the Units and owned by Lessor. So long as no Replacement Lease Default shall have occurred and be continuing, Replacement Lessee, at its own cost and expense, may furnish additions, modifications and improvements to any Unit during the term of this Replacement Lease, *provided* that such additions, modifications and improvements (a) are readily removable without causing material damage to such Unit and (b) do not diminish its utility, value or economic life; *provided further, however*, that Replacement Lessee will repair in a good and workmanlike manner any Unit which has suffered damage from any such removal. The optional additions, modifications and improvements made by Replacement Lessee under the preceding sentence of this paragraph shall (unless any such addition, modification or improvement is a replacement of or substitution for any such original part or unless such addition, modification or improvement is not removed by Replacement Lessee at the time of redelivery of possession by Replacement Lessee to Lessor hereunder) be owned by Replacement Lessee.

**ARTICLE 10:
COMPLIANCE WITH REGULATIONS**

Replacement Lessee shall, at its or any sublessee's expense, comply with all governmental laws, regulations and requirements, and with the AAR Interchange Rules with respect to the use and operation of the Units subject to this Replacement Lease. Replacement Lessee shall be responsible for obtaining or causing to be obtained all necessary railroad permissions, approvals and consents for use of such Units and shall bear all risk of failure to obtain such permissions, approvals and consents, or of cancellation thereof. Lessor shall take all actions reasonably requested by Replacement Lessee or any sublessee in order to assist Replacement Lessee or any sublessee in obtaining such permissions, approvals or consents at the cost and expense of Replacement Lessee or such sublessee.

**ARTICLE 11:
EVENT OF LOSS**

A. In the event that any Unit subject to this Replacement Lease shall be or become lost or stolen or, in Replacement Lessee's or any sublessee's good faith opinion, worn out, contaminated, destroyed or irreparably damaged, from any cause whatsoever, or any Unit subject to this Replacement Lease shall be taken or requisitioned for use by any Mexican governmental authority under the power of eminent domain or otherwise, for a period in excess of 360 consecutive days, or taken or requisitioned by condemnation or otherwise by the United States government, the Canadian government or by any other governmental entity resulting in loss of possession by Replacement Lessee or any sublessee for a period which shall exceed the

then remaining term of this Replacement Lease or the Replacement Lessee shall have determined a Modification to be uneconomical pursuant to Article 9A(i) above (any such occurrence or determination being hereinafter called an "Event of Loss"), Replacement Lessee shall, within thirty (30) days after it has knowledge of such Event of Loss, notify Lessor in regard thereto.

B. Following the occurrence of an Event of Loss with respect to any Unit, Replacement Lessee shall, subject to the provisions of Article 12 hereof, on the first rental payment date after the date of its notice of an Event of Loss with respect to such Unit, pay to Lessor the scheduled Stipulated Loss Value for such Unit for such rental payment date as set forth on Schedule 3 to this Replacement Lease plus, in the event such Event of Loss results from a determination by the Replacement Lessee that a Modification is uneconomical under Article 9(A)(i) above, the Makewhole Premium, if any then due and payable under Section 4.03 of the Equipment Trust Agreement plus the Rent for such Unit then due and payable plus any other amounts due hereunder in respect of such Unit.

C. Upon payment of the Stipulated Loss Value required to be paid pursuant to Article 11B hereof in respect of any Unit and all such other amounts then due under this Replacement Lease, the obligation to pay Rent for such Unit accruing subsequent to the Stipulated Loss Value payment date will terminate and such Unit will be deleted from this Replacement Lease but Replacement Lessee shall continue to pay Rent for all other Units.

D. Upon payment of the Stipulated Loss Value and any Rent or other amounts due for such Unit following an Event of Loss, Lessor's right, title and interest in and to the Unit which has suffered such Event of Loss shall immediately vest in Replacement Lessee and Lessor will take such steps as necessary to transfer such right, title and interest to Replacement Lessee (or any sublessee, as the case may be). Any transfer by Lessor to Replacement Lessee shall be "as is, where is" without any representation or warranty from Lessor except that Lessor is transferring whatever title Lessor received to each Unit and that such title is free of Lessor Liens. Following payment of the Stipulated Loss Value for any Unit and all other amounts as provided above, all proceeds due to Replacement Lessee in respect to any AAR interline settlement or insurance paid upon an Event of Loss shall be for the account of Replacement Lessee.

ARTICLE 12: SUBSTITUTION

If any Unit is determined by Replacement Lessee to have suffered an Event of Loss, Replacement Lessee has the option, within a period of time not to exceed ninety (90) days after the date of notice of such Event of Loss, in lieu of Lessor's right to receive and Replacement Lessee's obligation to pay the Stipulated Loss Value for such Unit, to substitute another Unit under this Replacement Lease (a "Replacement Unit"). In connection with any such substitution, such Replacement Unit shall have a fair market value, utility and remaining useful life at least equal to that of the Unit so replaced (assuming such Unit was in the condition required to be

maintained by the terms of this Replacement Lease). Rent for such Replacement Unit shall be the same as the Rent for such Unit that has suffered such Event of Loss. If Replacement Lessee shall not effect such replacement under this paragraph during the period of time provided herein, then Replacement Lessee shall pay on the next succeeding rental payment date the amounts specified in Article 11B.

**ARTICLE 13:
PROHIBITION OF LIENS**

Replacement Lessee shall not create or permit to exist any claims, liens, security interests or other encumbrances of any nature upon or against the Units other than Permitted Liens, and Replacement Lessee, at its own expense, will promptly discharge or cause to be duly discharged any and all sums claimed by any Person which, if unpaid, might become such a lien, charge, security interest or other encumbrance upon or with respect to any Unit (other than a Permitted Lien or Lessor Lien), and will promptly discharge any such lien, charge, security interest or other encumbrance; *provided, however*, that Replacement Lessee shall not be required to pay or discharge any such lien, charge, security interest or other encumbrance so long as the validity thereof shall be contested in good faith, by appropriate proceedings diligently conducted and without any material risk of the sale or forfeiture of such Unit.

**ARTICLE 14:
REPLACEMENT LESSEE'S RIGHTS AGAINST LESSOR**

If at any time that Replacement Lessee is required to make a payment of Stipulated Loss Value pursuant to Article 11 hereof, or if at the time that Replacement Lessee is required to make a payment of Stipulated Loss Value Replacement Lessee is also required to make any indemnity payment pursuant to Section 7 of the Certificate Purchase Agreement or Article 16 hereof, there shall exist a Lessor's Lien attributable to any act or omission of or claim against the Owner Participant, or Lessor has breached Replacement Lessee's right of quiet enjoyment and such breach results in the loss of use of any Unit of Equipment by Replacement Lessee and results in a quantifiable loss or expense to Replacement Lessee, Replacement Lessee shall be entitled to be paid by the Owner Participant or Owner Trustee, an amount sufficient to discharge such Lessor's Lien or to reimburse Replacement Lessee for the costs and expenses incurred by Replacement Lessee to lift a Lessor's Lien or for the amount of such quantifiable loss or expense to Replacement Lessee, as the case may be. Replacement Lessee shall not have the right to set-off any such amounts owed by the Owner Participant or the Owner Trustee in respect of any amounts of Rent or Stipulated Loss Value payable under this Replacement Lease.

**ARTICLE 15:
INSURANCE**

Replacement Lessee will, at all times prior to the return of the Units to Lessor, at its own expense, cause to be carried and maintained (i) property damage insurance in respect of such

Units at the time subject to this Replacement Lease and (ii) public liability insurance with respect to third-party personal and property damage, and Replacement Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies, but in any event not less comprehensive in amounts and against risks customarily insured against by Replacement Lessee or any sublessee in respect of units owned or leased by it similar in type to the Units and consistent with prudent rail leasing industry standards.

Any insurance policies carried in accordance with this Article 15 shall (i) name Lessor, the Financing Party and the Owner Participant as additional insureds and the Security Trustee as loss payees under a standard mortgage loss payable clause, as their interests may appear, (ii) provide that if any such insurance is canceled for any reason whatever, Lessor, the Financing Party and the Owner Participant shall receive 30 days' prior notice of such cancellation and (iii) provide that in respect of the interest of Lessor, the Security Trustee and the Owner Participant in such policies the property insurance shall not be invalidated by any action or inaction of Replacement Lessee or any other person and shall insure Lessor's, the Financing Party's or Owner Participant's interest, as they appear, regardless of any breach or violation by Replacement Lessee of any warranties, declarations or conditions contained in such policies. Replacement Lessee shall deliver annually during the Replacement Lease Term to Lessor, the Security Trustee and the Owner Participant a certificate from Replacement Lessee's or any sublessee's insurance brokers or insurers to the extent policies are in force and effect in accordance with the insurance requirements of this Article 15. The entire proceeds of any property or casualty insurance or third party payments for damages to any Unit (including any Association of American Railroads interline settlements) received by Lessor or the Security Trustee shall be held by such party until, with respect to such Unit, the repairs referred to in clause (a) below are made as specified therein or payment of the Stipulated Loss Value is made pursuant to clause (b) below, and such entire proceeds will be paid either: (a) to Replacement Lessee or any sublessee, as the case may be, promptly following receipt by the Security Trustee or Lessor, as the case may be, of a written application for payment to Replacement Lessee or such sublessee for repairing or restoring the Units which have been damaged signed by an authorized officer of Replacement Lessee or such sublessee certifying to the effect that: (i) Replacement Lessee or any sublessee, as the case may be, has complied with the applicable provisions of this Replacement Lease, (ii) no Default has occurred and is continuing, and (iii) any damage to such Units shall have been fully repaired or restored and such Units are in the same condition and have the same value and utility as the Units had before they were damaged (assuming the Units were in the condition required pursuant to this Replacement Lease); or (b) if this Replacement Lease is terminated with respect to such Unit because of an Event of Loss and Replacement Lessee has paid the Stipulated Loss Value due as a result thereof, such proceeds shall be promptly paid over to, or retained by, Replacement Lessee or any sublessee, as the case may be. All proceeds of insurance in respect of loss or damage to the Units shall be paid to Lessor or its assigns if an Event of Default shall have occurred and be continuing at the time such proceeds are payable.

**ARTICLE 16:
GENERAL INDEMNIFICATION**

Replacement Lessee agrees to indemnify and hold each Indemnified Person harmless from any loss, damage, liability, claim and expense, including reasonable attorneys' fees, arising out of the ownership, use or operation of the Units during the term of this Replacement Lease, including, without limitation, (i) the operation, possession, use, maintenance, improvement, modification, sublease, return, storage, disposition, repair, overhaul, testing or registration of any Unit (including, without limitation, injury, death or property damage of passengers, shippers or others, and environmental control, noise and pollution regulations) by Replacement Lessee whether or not in compliance with the terms of this Replacement Lease; (ii) the manufacture, design, purchase, acceptance, rejection, delivery or condition of any Unit (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement); and (iii) any breach of or failure to perform or observe, or any other non-compliance with, any covenant, condition or agreement to be performed by, or other obligation of, Replacement Lessee under any of the Operative Agreements, or the falsity of any representation or warranty of Replacement Lessee in any of the Operative Agreements or in any document or certificate delivered in connection therewith other than representations and warranties set forth in Section 3 of the Certificate Purchase Agreement excepting, however, any loss, damage, liability, claim or expense which is attributable to the gross negligence or willful misconduct of such Indemnified Person, its agents or employees.

Lessor shall not be liable for any loss or damage to any commodities loaded or shipped in the Units. Replacement Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage.

Each Indemnified Person shall give Replacement Lessee, promptly upon obtaining knowledge thereof, written notice of any claim or liability to be indemnified against hereunder in respect of such Indemnified Person; *provided, however*, that the failure of such Indemnified Person to so notify Replacement Lessee shall not affect the validity of the indemnified claim unless Replacement Lessee's ability to contest the claim is materially adversely affected thereby. Replacement Lessee shall be subrogated to an Indemnified Person's rights in any matter with respect to which Replacement Lessee has actually reimbursed such Indemnified Person pursuant to this Article 16 for amounts expended by it. The indemnities arising under this Article 16 shall continue in full force and effect notwithstanding the delivery of the Units or the full payment and performance of all obligations under this Replacement Lease or the expiration or termination of the term of this Replacement Lease. The foregoing indemnities will not constitute a guarantee of the residual value of any of the Units.

The following are excluded from the agreement to indemnify under this Article 16:

- (i) claims with respect to any Unit to the extent attributable to acts or events occurring after the last to occur of (x) with respect to such Unit, the earlier to occur of

the termination of the Replacement Lease or the expiration of the Replacement Lease Term and the release of the lien of the Equipment Trust Agreement on such Unit and (y) with respect to each Unit, the return of such Unit to Lessor in accordance with the terms hereof (it being understood that the date of the placement of such Unit in storage as provided in Article 18 hereof constitutes the date of return of such Unit hereunder);

(ii) claims which are Taxes or Losses, whether or not Replacement Lessee is required to indemnify therefor under Section 7 of the Certificate Purchase Agreement, Replacement Lessee's entire indemnity obligation with respect to Taxes and losses of tax benefits being fully set out in such Section 7 of the Certificate Purchase Agreement;

(iii) with respect to any particular Indemnified Person, claims to the extent attributable to the gross negligence or willful misconduct of (other than gross negligence or willful misconduct imputed as a matter of law to such Indemnified Person solely by reason of its interest in the Units), or to the breach of any contractual obligation by, or the falsity or inaccuracy of any representation or warranty of, such Indemnified Person or any of such Indemnified Person's Related Indemnitee Group;

(iv) with respect to any particular Indemnified Person, claims to the extent attributable to any breach by such Indemnified Person of the warranty of quiet enjoyment set forth in Article 7 hereof or Section 6 of the Certificate Purchase Agreement or any transfer (other than pursuant to Article 21 hereof) by such Indemnified Person of any interest in the Units or this Replacement Lease;

(v) any claim to the extent that such claim constitutes a Permitted Lien;

(vi) with respect to any particular Indemnified Person, any claim to the extent attributable to the offer, sale or disposition (voluntary or involuntary) by or on behalf of such Indemnified Person of any interest in the Trust Estate or the Trust Agreement, or any similar security, other than a transfer by such Indemnified Person of its interests in any Unit pursuant to Article 21 or 22 of this Replacement Lease;

(vii) any claim by the Owner Trustee or the Owner Participant and the Related Indemnitee Group of such Indemnified Person to the extent attributable to a failure on the part of the Owner Trustee to distribute in accordance with the Trust Agreement any amounts received and distributable by it thereunder;

(viii) any claim to the extent attributable to the authorization or giving or unreasonable withholding by such Indemnified Person of any future amendments, supplements, modifications, alterations, waivers or consents with respect to any of the Replacement Lease Agreements, other than such as have been requested by or consented to by Lessee or necessary or required to effectuate the purpose or intent of any

Replacement Lease Agreement or as are expressly required by any Replacement Lease Agreements;

(ix) any claim of the Owner Participant or the Owner Trustee to the extent that such claim would not have arisen but for the appointment of a successor or an additional Owner Trustee, unless such successor or additional Owner Trustee had been appointed in connection with the exercise of remedies pursuant to Article 21 of this Replacement Lease following the occurrence and continuance of an Event of Default;

(x) any claim which relates to a cost, fee or expense payable by a Person other than Replacement Lessee or Seller pursuant to this Replacement Lease or any other Replacement Lessee Agreement;

(xi) any claim which is an ordinary and usual operating or overhead expense of such Indemnified Person other than such expenses, incurred as a result of, or in connection with the occurrence of an Event of Default or the exercise of remedies hereunder; and

(xii) any loss, damage, liability, claim and expense, including reasonable attorneys' fees, arising out of the ownership, use or operation of the Units during the term of the BN Lease or for which such Indemnified Party is otherwise or should be indemnified or entitled to be indemnified separately for by the BN Lessee.

**ARTICLE 17:
SUBLEASE; ASSIGNMENT; SUBORDINATION**

A. So long as no Event of Default exists, without the prior written consent of Lessor, Replacement Lessee may sublease any Unit to, or permit its use by, a user incorporated in the United States, Canada or Mexico upon lines of railroads (including in connection with barge-related rail transportation) owned by such user or over which such user has trackage rights or rights for operation of their trains, and upon lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject and subordinate to all the terms and conditions of this Replacement Lease. No such assignment or sublease shall (i) relieve Replacement Lessee of its obligations under this Replacement Lease and (ii) extend beyond the then current Replacement Lease Term. No sublease shall in any way discharge or diminish any of Replacement Lessee's obligations hereunder, and Replacement Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Replacement Lease and the agreements of the Replacement Lessee to the same extent as if such sublease had not been entered into.

B. This Replacement Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. It is understood and agreed that Lessor or any Replacement Lease Assignee (as defined below) may mortgage or pledge and/or

assign this Replacement Lease with respect to some or all of the Units and the Units to any security trustee, secured party or the owner of such Units as security for a loan, lease or other financing arrangement with respect to such Units (each herein a "Replacement Lease Assignee"). Upon delivery of a written notice of assignment to Replacement Lessee, Lessor as used herein shall mean such Replacement Lease Assignee. Replacement Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Replacement Lease by Lessor or any Replacement Lease Assignee; *provided, however*, that any such consent and/or acknowledgment shall not in any manner increase or change the rights, obligations, duties or legal position of Replacement Lessee.

C. Upon notice to Replacement Lessee from any security trustee, secured party or owner, such party may require that all rent shall be paid directly to such party and/or that the Units be returned to such party, but, in the case of returned Units, only upon completion or termination of this Replacement Lease, including any optional renewal term pursuant to Article 22 hereof, but subject to the exercise of any purchase option pursuant to Article 22 hereof. This Replacement Lease may be assigned to a financial institution as security for certain obligations of Lessor. Replacement Lessee acknowledges such notice from the Security Trustee and consents to such assignment, and agrees that:

- (a) upon such assignment all rights of Lessor hereunder shall, to the extent provided for in the Equipment Trust Agreement, be exercisable by such assignee and its successor assignees; and
- (b) the rights of such assignee and such successors shall not be subject to any defense, counterclaim, or set-off that Replacement Lessee may have or assert against Lessor.

Any assignment of this Replacement Lease by Lessor or any Replacement Lease Assignee to any security trustee or secured party shall not subject that security trustee or secured party to any of Lessor's or such Replacement Lease Assignee's obligations hereunder.

ARTICLE 18: EQUIPMENT, CONDITION OF EQUIPMENT AND STORAGE

A. On the expiration of the Replacement Lease Term, Replacement Lessee will, at its own cost and expense, deliver possession of such Unit to Lessor at storage facilities (which may be facilities of Replacement Lessee or other railroad storage facilities arranged by Replacement Lessee), located in not more than three switching districts as Replacement Lessee may reasonably designate to Lessor in writing at least 60 days before the end of the Replacement Lease Term, or in the absence of such designation, as Replacement Lessee may select or, if Lessor has requested storage pursuant to Article 18C hereof, to the location determined in accordance with Article 18C hereof. Upon expiration of the Replacement Lease Term with respect to such Unit, compliance with the provisions of this Article 18 and tender of such Unit

at the location determined in accordance with this Article 18, the Replacement Lease and the obligation to pay Rent for such Unit accruing subsequent to the expiration of the Replacement Lease Term with respect to such Unit shall terminate.

With respect to each Unit for which storage is requested by Lessor pursuant to Article 18C hereof, in the event that any such Unit is not returned as hereinabove provided within 30 days (the "*30-Day Period*") after the expiration of the Replacement Lease Term with respect to such Unit, Replacement Lessee shall pay to Lessor, for each day after such 30-Day Period, an amount equal to the daily equivalent of the arithmetic average of the Rent paid for such Unit. With respect to each Unit for which storage is not requested by Lessor pursuant to Article 18C hereof, in the event that any such Unit is not returned as hereinabove provided, Replacement Lessee shall pay to Lessor, for each day after the expiration of the Replacement Lease Term, an amount equal to the daily equivalent of the arithmetic average of the Rent paid for such Unit (the "*Holdover Rent*"). If any Unit for which storage is not requested by Lessor pursuant to Article 18C hereof is not returned as hereinabove provided within 60 days (the "*60-Day Period*") after the expiration of the Replacement Lease Term, the Holdover Rent with respect to such Unit for each day after the end of such 60-Day Period until such Unit is returned as hereinabove provided shall equal 125% of the Holdover Rent that was payable for such Unit for each day during such 60-Day Period. The foregoing provision for payment shall not be in abrogation of Lessor's right under the first paragraph of this Article 18 to have such Unit returned to it.

B. Each Unit when returned to Lessor pursuant to this Article 18 shall be maintained in accordance with the maintenance provisions of Article 8 hereof, free and clear of all Liens, except for Lessor's Liens and except for Permitted Liens to the extent that such Permitted Liens (x) are actively being contested by Replacement Lessee, or any sublessee, in good faith and by appropriate proceedings diligently conducted, and (y) do not materially adversely affect Lessor's ability to sell or re-lease the Units.

C. Upon the expiration of the Replacement Lease Term with respect to each Unit, upon written request of Lessor received at least 60 days prior to the end of the Replacement Lease Term, Replacement Lessee shall permit Lessor to store such Unit, free of charge, except as provided below, at such location used by Replacement Lessee for the storage of surplus rolling stock as shall be reasonably designated by Replacement Lessee, for a period (the "*Storage Period*") beginning on the later of (a) the expiration of the Replacement Lease Term and (b) the date on which such Unit is delivered pursuant to this Article 18, and ending not more than 30 days after the later of the expiration of the Replacement Lease Term with respect to such Units or the date on which 50% of all Units to be returned at the expiration of the Replacement Lease Term have been returned.

Any storage facilities provided by Replacement Lessee pursuant to this Article 18 shall, in all cases, be at the cost to Lessor of insurance and Replacement Lessee's out-of-pocket costs in connection with providing any services not contemplated hereby to be provided during the

Storage Period and at the risk of Lessor. During the Storage Period, Replacement Lessee will permit Lessor or any person designated by Lessor to inspect the Units; *provided, however*, that such inspection shall not interfere with the normal conduct of Replacement Lessee's business and such person shall be insured to the reasonable satisfaction of Replacement Lessee with respect to any risks incurred in connection with any such inspections and Replacement Lessee (except in the case of Replacement Lessee's gross negligence or willful misconduct) shall not be liable for any injury to, or the death of, any person exercising, on behalf of Lessor, the rights of inspection granted pursuant hereto. Replacement Lessee shall not be required to store the Units for more than 30 days after the Storage Period. If Replacement Lessee stores any Unit after the Storage Period, such storage shall be at the sole expense and risk of Lessor.

On not more than one occasion with respect to each stored Unit and upon not less than 15 days' prior written notice from Lessor to Replacement Lessee, Replacement Lessee will, during the Storage Period, transport such Unit, in groups of not less than fifty Units, at Replacement Lessee's cost and expense, to a destination or interchange point, f.o.b. such destination or interchange point, on Replacement Lessee's or any sublessee's lines specified by Lessor whereupon Replacement Lessee shall have no further liability or obligation with respect to such Units.

ARTICLE 19: INSPECTION

Each of Lessor, the Security Trustee, the Debt Participant (or any authorized representative thereof) shall, at its sole cost and expense, at any reasonable time during normal business hours and without interfering with Replacement Lessee's or any sublessee's operations, have the right to enter the premises of Replacement Lessee or any permitted sublessee for the purpose of inspecting the Units to ensure Replacement Lessee's compliance with its obligations hereunder. Each of Lessor, the Security Trustee, the Debt Participant (or any authorized representative thereof) shall enter and occupy Replacement Lessee's or sublessee's property at Lessor's sole risk and shall be subject at all times to Replacement Lessee's and sublessee's operating and safety requirements. Any injury, death or property damage arising out of such entry, occupancy and inspection, even if caused or contributed to by Replacement Lessee's or sublessee's negligence, gross or otherwise, shall be the entire responsibility of Lessor, and Lessor will indemnify and hold harmless Replacement Lessee or such sublessee from any and all such liabilities.

ARTICLE 20: DISCLAIMER

Without waiving any claim Replacement Lessee may have against any seller, supplier or manufacturer, REPLACEMENT LESSEE ACKNOWLEDGES AND AGREES THAT (I) EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO REPLACEMENT LESSEE, (II) REPLACEMENT LESSEE IS SATISFIED THAT EACH UNIT IS SUITABLE

FOR ITS PURPOSES, (III) NEITHER LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (IV) LESSOR LEASES SUCH UNIT "AS IS," "WHERE IS," "WITH ALL FAULTS," AND LESSOR DISCLAIMS ANY OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OR OPERATION OR MERCHANTABILITY THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR COMPLIANCE OF ANY UNIT WITH ANY APPLICABLE LAW AND (V) NEITHER LESSOR NOR THE OWNER PARTICIPANT SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LIABILITY IN TORT, STRICT OR OTHERWISE), it being agreed that all such risks, as between Lessor and Replacement Lessee, are to be borne by Replacement Lessee. Lessor shall have no responsibility or liability to Replacement Lessee or any other Person with respect to any of the following; (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any patent or latent defects in any Unit (whether or not discoverable by Replacement Lessee or any Indemnified Person); (iv) any claim based on strict liability, in tort or otherwise; (v) any claim based on patent, trademark or copyright infringement; (vi) any claim based on liability arising under applicable environmental or noise or pollution control law or regulation; (vii) any liability or loss related to the failure by Replacement Lessee to comply with its obligations under this Replacement Lease or any other Operative Agreement; (viii) any interruption of service, loss of business or anticipated profits or consequential damages; or (ix) the subleasing, delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. Replacement Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Replacement Lessee and Lessor that the Units described therein are in all the foregoing respects satisfactory to Replacement Lessee, and Replacement Lessee will not assert any claim of any nature whatsoever against Lessor or any Indemnified Person based on any of the foregoing matters.

**ARTICLE 21:
DEFAULT**

A. The occurrence of any of the following events shall be an Event of Default by Replacement Lessee:

(i) Rent payment defaults for a period exceeding ten business days after receipt by Replacement Lessee of written notice thereof;

(ii) any other payment default under this Replacement Lease for in excess of thirty (30) days after receipt by Replacement Lessee of written notice of such payment default;

(iii) failure of Replacement Lessee to perform or observe covenants or agreements under this Replacement Lease or any other Replacement Lessee Agreement for in excess of thirty (30) days after receipt by Replacement Lessee of written notice of such noncompliance, unless Replacement Lessee shall be diligently proceeding to correct such failure, such failure cannot be cured within thirty (30) days, such failure does not materially impair Lessor's interest in the Units and such failure is actually corrected within 360 days;

(iv) any material representation or warranty (except with respect to tax indemnification) made by Replacement Lessee in this Replacement Lease or any other Replacement Lessee Agreement is untrue or incorrect in any material respect at the time made, and such untruth or incorrectness continues to be material and unremedied for a period of thirty (30) days after receipt by Replacement Lessee of written notice thereof, *provided* that, if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute an Event of Default for so long as Replacement Lessee is diligently proceeding to remedy such incorrectness, such default cannot be cured within thirty (30) days, such default does not impair in any material respect Lessor's interest in the Units and such untruth or incorrectness is actually corrected within 360 days;

(v) either Replacement Lessee or Guarantor shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, reorganization, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(vi) an involuntary case or other proceeding shall be commenced against either Replacement Lessee or Guarantor seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, reorganization, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days, or an order for relief shall be entered against Replacement Lessee or Guarantor under the federal bankruptcy or reorganization laws as now or hereafter in effect, unless the debtor-in-possession, trustee in bankruptcy or person with similar authority shall have assumed this Replacement Lease within such 90 days; or

(vii) an "Event of Default" shall have occurred and be continuing under the Guaranty Agreement or the Guaranty Agreement shall cease to be in full force and effect for any reason.

B. Upon the occurrence of an Event of Default, Lessor may:

(i) proceed by appropriate court action, either at law or in equity, to enforce performance by Replacement Lessee of the applicable covenants of this Replacement Lease or to recover damages for the breach thereof;

(ii) by notice in writing to Replacement Lessee terminate this Replacement Lease, whereupon all rights of Replacement Lessee to the use of the Units shall absolutely cease and terminate as though this Replacement Lease had never been made, but Replacement Lessee shall remain liable as herein provided; and thereupon Lessor may by its agents enter upon the premises of Replacement Lessee or other premises where any of the Units may be and take possession of all or any of such Units in accordance with applicable laws and thenceforth hold, possess, sell (at public or private sale), operate, keep idle, lease to others and enjoy the same free from any right of Replacement Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to Replacement Lessee for such action or inaction, or except as required by clause (y) below, for any proceeds arising therefrom;

but Lessor shall, nevertheless, have a right to recover from Replacement Lessee:

(x) any and all amounts which under the terms of this Replacement Lease may be then due or which may have accrued to the date of such termination (computing Rent for any number of days less than a semiannual period by multiplying the Rent of such semiannual period by a fraction of which the numerator is such number of days and the denominator is 180); and

(y) as damages for the loss of the bargain and not as a penalty an amount equal to:

(a) Rent from the date of termination to the next Rent payment date (computed by multiplying the Rent for such period by a fraction of which the numerator is such number of days and the denominator is 180); plus

(b) the excess, if any, of the Stipulated Loss Value as of the next Rent payment date over the amount of the Fair Market Sales Value of such Unit (as is, where is) provided that such Fair Market Sales Value shall be an amount determined by Lessor, in Lessor's sole discretion, and provided further, that if a Unit has not been redelivered to Lessor such Fair Market Sales Value shall be zero (0) at such time;

provided, however, that in the event Lessor shall have sold any Unit in a commercially reasonable manner as recognized in any jurisdiction, Lessor, in lieu of collecting any amounts payable to Lessor by Replacement Lessee pursuant to the preceding clause (b) with respect to such Unit, may, if it shall so elect, demand that Replacement Lessee pay Lessor and Replacement Lessee shall pay to Lessor on the date of such sale, as liquidated damages for the loss of the bargain and not as a penalty, an amount equal to the excess, if any, of:

(1) Rent from the date of termination to the next Rent payment date (computed by multiplying the Rent of such period by a fraction of which the numerator is such number of days and the denominator is 180) plus the Stipulated Loss Value for such Unit as of the next Rent payment date over

(2) the net proceeds of such sale.

In addition, Replacement Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return or disposition of any Unit. At any sale of the Units Lessor may bid for and purchase such property.

Should Replacement Lessee fail to make any payment or to do any act as provided by this Replacement Lease after an Event of Default has occurred and is continuing, then Lessor shall have the right (but not the obligation), without notice to Replacement Lessee of its intention to do so and without releasing Replacement Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Units or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the reasonable judgment of Lessor appears to affect the Units, and in exercising any such rights Lessor may insure any liability and expend whatever amounts in its reasonable discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Replacement Lessee within ten days of notice thereof.

The remedies in this Replacement Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

The failure of Lessor to exercise the rights granted it hereunder upon the 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.

**ARTICLE 22:
PURCHASE OPTION**

For so long as no Event of Default shall have occurred and be continuing, Replacement Lessee shall have the option to purchase, upon no less than 90 days' prior irrevocable written notice to Lessor on the expiration of the Replacement Lease Term, all then remaining Units under this Replacement Lease, at the sole discretion of Replacement Lessee, at a price equal to the fixed price set forth on Schedule 2 to this Replacement Lease. In the event that a BN Lease Termination Date does not occur with respect to a Unit, Replacement Lessee shall have no right to purchase such Unit or to lease such Unit under this Replacement Lease. Lessor shall transfer title to any Unit purchased without any representation or warranty except that Lessor is transferring whatever title it received from the Seller free of all Lessor Liens.

**ARTICLE 23:
LIMITATION OF LESSOR'S LIABILITY**

It is expressly agreed and understood that all representations, warranties and undertakings of Lessor hereunder (except as expressly provided herein) shall be binding upon Lessor only in its capacity as Owner Trustee under the Trust Agreement and in no case shall First Security Bank of Utah, National Association be personally liable for or on account of any statements, representations, warranties, covenants or obligations stated to be those of Lessor hereunder, except that Lessor (or any successor Owner Trustee) shall be personally liable for its gross negligence or willful misconduct or for its breach of its covenants, representations and warranties contained herein to the extent covenanted or made in its individual capacity.

**ARTICLE 24:
REPORTING AND RECORDS**

On or before June 30 in each year, commencing with the calendar year next following the date on which a Unit is accepted under this Replacement Lease, Replacement Lessee, or any sublessee, will cause to be furnished to Lessor an accurate statement, as of the preceding December 31, showing (i) the number of Units (and the road numbers for such Units) that (a) are then leased hereunder and (b) have suffered an Event of Loss during the preceding 12 months (or since the date of this Replacement Lease in the case of the first such statement) and (ii) whether an Event of Default has occurred and is continuing.

Replacement Lessee will perform or cause a sublessee to perform all record keeping functions related to the use of the Units by Replacement Lessee or any sublessee, as the case may be, and other railroads that Replacement Lessee or any sublessee, as the case may be, in the normal course of business, from time to time, performs for similar equipment owned or leased by Replacement Lessee. Replacement Lessee agrees to make such information available to Lessor from time to time as Lessor may reasonably request.

**ARTICLE 25:
GOVERNING LAWS; SUBMISSION TO JURISDICTION**

A. The terms of this Replacement Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York. This Replacement Lease contains all of the terms and conditions agreed to between the parties, and no other prior agreements, oral or otherwise, concerning the subject matter of this Replacement Lease, shall be deemed to exist or bind any party hereto. The terms of this Replacement Lease and the rights and obligations of the parties may be changed only by a written instrument executed by all parties to this Replacement Lease.

B. Lessor and Replacement Lessee each hereby irrevocably submits itself to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York and to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County, for the purposes of any suit, action or other proceeding arising out of this Replacement Lease, the subject matter hereof or any of the transactions contemplated hereby brought by Lessor, Replacement Lessee, the Security Trustee, the holders of equipment trust certificates issued under the Equipment Trust Agreement or the Owner Participant or their respective successors or assigns.

**ARTICLE 26:
SEVERABILITY**

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

**ARTICLE 27:
FURTHER ASSURANCES; FINANCIAL INFORMATION**

Replacement Lessee will promptly and duly execute and deliver to Lessor and the Financing Party such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Replacement Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor and the Financing Party hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions.

**ARTICLE 28:
NOTICES**

Any notices required or made hereunder shall be provided in writing by certified mail, return receipt requested, to:

To Lessor: First Security Bank of Utah, National Association
79 South Main Street
Salt Lake City, Utah 84111
Attention: Corporate Trust Department

With copies to: Boatmen's Equipment Finance, Inc.
800 Market Street, Suite 1650
St. Louis, Missouri 63101
Attention: Steven R. Powell

To Replacement Lessee: First Union Rail Company
c/o First Union Leasing Group
One First Union Center
301 South College Street, 20th Floor
Charlotte, North Carolina 28288-0738
Attention: Linda H. Minter

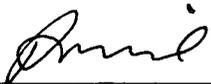
With a copy to: First Union Rail
Suite 3005
6250 River Road
Rosemont, IL 60018
Attention: John J. Thomas
Vice President

**ARTICLE 29:
DEFINITIONS**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings specified in Appendix A to the Certificate Purchase Agreement.

IN WITNESS WHEREOF, the parties have executed this Replacement Lease Agreement as of the 1st day of September, 1995.

FIRST UNION RAIL CORPORATION

By: 

Name: Paul W. Van Wie

Title: Chief Executive Officer

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, not in its individual
capacity except as otherwise expressly
provided but solely as Owner Trustee

By: _____

Name:

Title:

STATE OF N.C.)
) ss.:
COUNTY OF Iredell)

On this 19th day of September, 1995, before me personally appeared Paul W. Van Wie, to me personally known, who being duly sworn, did depose and say that such person is Chief Executive Officer of First Union Rail Corporation and that the foregoing Replacement Lease Agreement was signed on behalf of said corporation on September 1, 1995 by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

[Seal] Commission Expires 3-12-97

Linda H. Minter
Notary Public

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of September, 1995, before me personally appeared _____, to me personally known, who being duly sworn, did depose and say that such person is _____ of First Security Bank of Utah, National Association and that the foregoing Replacement Lease Agreement was signed on behalf of said association on September __, 1995 by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such association.

[Seal] _____

Notary Public

IN WITNESS WHEREOF, the parties have executed this Replacement Lease Agreement as of the 1st day of September, 1995.

FIRST UNION RAIL CORPORATION

By: _____

Name:

Title:

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, not in its individual
capacity except as otherwise expressly
provided but solely as Owner Trustee

By:  _____

Name:

Brett R. King

Title:

Trust Officer

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of September, 1995, before me personally appeared _____, to me personally known, who being duly sworn, did depose and say that such person is _____ of First Union Rail Corporation and that the foregoing Replacement Lease Agreement was signed on behalf of said corporation on September ___, 1995 by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

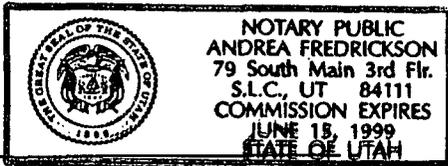
[Seal] _____

Notary Public

STATE OF Utah)
) ss.:
COUNTY OF Salt Lake)

On this 18th day of September, 1995, before me personally appeared Brett R. King, to me personally known, who being duly sworn, did depose and say that such person is Trust Officer of First Security Bank of Utah, National Association and that the foregoing Replacement Lease Agreement was signed on behalf of said association on September 8 1995 by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such association.

[Seal]



Andrea Fredrickson
Notary Public

RLA

EXHIBIT A

DESCRIPTION OF EQUIPMENT

EQUIPMENT	QUANTITY	EQUIPMENT COST PER UNIT	REPORTING MARKS
New 100-ton Triple Covered Hopper cars with 4,750 cubic foot capacity and designed for 286,000 pound gross weight on rail	994	\$52,000	BN471500-BN471525 BN471527-BN472074 BN472077-BN472078 BN472080-BN472122 BN472124-BN472212 BN472214-BN472499

#30109514.8

REPLACEMENT LEASE

DEFINITIONS

GENERAL PROVISIONS

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require, and such meanings shall be equally applicable to both the singular and the plural forms of the terms herein defined. In the case of any conflict between the provisions of this Appendix A and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the permitted successors and assigns of such parties.

DEFINED TERMS

"Act" shall mean the Securities and Exchange Act of 1933, as amended.

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term *"control"* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms *"controlling"* and *"controlled"* shall have meanings correlative to the foregoing.

"After-Tax Basis" shall mean with respect to any indemnity payment due or advance required hereunder, the payment of such additional amount as is necessary to hold the recipient of any such indemnity payment or advance harmless from all foreign, federal, state and local income taxes payable by or not refundable to such recipient in respect of the receipt or accrual of the indemnity payment or advance and such additional amount, taking into account any income tax benefits realized by such recipient from any payment by such recipient of the liability giving rise to the indemnity payment or advance and of any such foreign, federal, state and local taxes that are so payable, in each case assuming that any such taxes are paid at the highest gross marginal rates applicable to the recipient.

"*Assignment of Warranties*" shall mean the Assignment of Warranties dated the Closing Date, between the Seller and the Owner Trustee covering the Equipment, substantially in the form of Exhibit C to the Certificate Purchase Agreement, as amended, supplemented or otherwise modified from time to time.

"*Beneficial Interest*" shall have the meaning specified in Section 5.1 of the Participation Agreement.

"*Bill of Sale*" shall mean the bill of sale, dated the Closing Date, from the Seller to the Owner Trustee covering the Equipment, substantially in the form of Exhibit B to the Participation Agreement.

"*BN Lease*" or "*BN Lease Agreement*" or "*BN Equipment Lease*" shall mean the Lease Agreement, dated as of September 1, 1995 relating to the Equipment, among the Lessor, BN Lessee and the Seller, as amended, supplemented or otherwise modified from time to time.

"*BN Lease Termination Date*", for a Unit shall mean the date on which such Unit is redelivered to Lessor by BN Lessee in compliance with the terms of the BN Lease at the end of the Primary Lease Term, as defined in the BN Lease, the First Fixed Rate Renewal Term, as defined in the BN Lease, or the Second Fixed Rate Renewal Term, as defined in the BN Lease, as the case may be, upon Seller's failure to exercise its renewal or purchase options under Section 22 of the BN Lease.

"*BN Lessee*" shall mean Burlington Northern Railroad Company, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"*BN Lessee Agreements*" shall mean the Operative Agreements to which BN Lessee is or will be a party.

"*BN Renewal Term*" shall have the meaning specified in Article 22 of the BN Lease.

"*BN Unit*" shall mean each unit of Equipment which has been accepted by BN under the BN Lease on the Closing Date and any Equipment substituted for such units in accordance with the terms of the BN Lease.

"*Business Day*" shall mean any day other than a Saturday, Sunday or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, Fort Worth, Texas, Charlotte, North Carolina, Chicago, Illinois, the city in which the principal place of business of the Debt Participant and the Owner Participant is located and each city and state in which the principal corporate trust office of the Owner Trustee or the Security Trustee is located.

"*Certificate*" shall have the meaning set forth in the recitals to the Certificate Purchase Agreement.

"Certificate of Acceptance" shall mean the Certificate of Acceptance in form and substance attached as Exhibit A to the Certificate Purchase Agreement.

"Certificate Purchase Agreement" shall mean the Certificate Purchase Agreement dated as of September 1, 1995, among the Replacement Lessee, the Debt Participant, the Owner Participant, the Owner Trustee and the Security Trustee.

"Closing" shall have the meaning specified in Section 2.3(b) of the Participation Agreement.

"Closing Date" shall have the meaning specified in Section 2.1 of the Participation Agreement.

"Commitment" with respect to the Owner Participant shall have the meaning specified in Section 2.2 of the Certificate Purchase Agreement and with respect to the Debt Participant shall have the meaning specified in Section 2.4 of the Certificate Purchase Agreement.

"Consent and Agreement" shall mean the Consent and Agreement, dated as of September 1, 1995 signed by BN Lessee and Seller.

"Debt Participant" shall mean CCG Trust Corporation, a Barbados corporation, together with its successors and assigns.

"Default" in respect of a Lease shall mean an Event of Default under such Leases or an event which with notice or lapse of time or both would become an Event of Default under such Lease.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Replacement Lease, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed in any item thereof which are the property of the Lessor pursuant to the terms of the Replacement Lease, and *"Unit"* shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor paid by the Owner Trustee to the Seller pursuant to Section 2 of the Participation Agreement and as set forth in Schedule 1 to the Participation Agreement with respect to such Unit.

"Equipment Trust Agreement" shall mean the Equipment Trust Agreement, dated as of September 1, 1995, between the Owner Trustee and the Security Trustee.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Event of Default" in respect of a Lease shall mean an Event of Default as specified in Article 21 of such Lease.

"*Event of Loss*" for a Unit shall have the meaning specified in Article 11 of the Lease relating to such Unit.

"*Fair Market Sales Value*" for a Unit shall mean the cash price obtainable for such Unit in an arm's length sale between an informed and willing purchaser under no compulsion to purchase and a willing seller under no compulsion to sell.

"*Financing*" shall mean any agreement, arrangement or transaction which the Owner Participant, the Owner Trustee or any Affiliate thereof engages in or enters into with any Person for the purpose of the financing or refinancing of the Owner Trustee's acquisition of its interest in the Equipment or which results in any Person other than the Owner Participant, the Owner Trustee, the Lessee and the Seller having any right, title or interest in or to the Equipment.

"*Financing Document*" shall mean any document or documents pursuant to any Financing and shall include without limitation the Certificate Purchase Agreement, the Equipment Trust Agreement and any Certificate.

"*Financing Party*" shall mean any Person (including the Debt Participant, the Holders of the Certificates from time to time and Security Trustee and other than the Owner Participant or the Owner Trustee) who shall be a party to any agreement in connection with any Financing.

"*Guarantor*" shall mean First Union National Bank of North Carolina, a national banking association.

"*Guaranty Agreement*" shall mean the Guaranty Agreement dated as of the date hereof from the Guarantor in favor of Lessor guaranteeing all the obligations of Replacement Lessee under the Replacement Lessee Agreements, as the same may be amended, modified or supplemented.

"*Indemnified Person*" for the purposes of Article 16 of a Lease shall mean the Owner Participant, each Financing Party, the Security Trustee, the Owner Trustee and each of their respective officers, employees, successors and permitted assigns, agents and servants, *provided* that as a condition of any obligations of Lessee to pay any indemnity or perform any action under Article 16 of such Lease with respect to any Persons who are not signatories to the Lease, such Persons at the written request of Lessee shall expressly agree in writing to be bound by all the terms of Article 16 of such Lease. In the event that any Indemnified Person fails, after notice to such Indemnified Person referring to this sentence, to comply in any material respect with any duty or obligation under Article 16 of a Lease, such Indemnified Person shall not be entitled to indemnity under Article 16 of such Lease.

"*Indemnified Taxes*" shall have the meaning specified in Section 7(a) of the Certificate Purchase Agreement.

"Investments" shall mean the following: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest having a final maturity of one year or less from the date of purchase thereof; (ii) open market commercial paper with a maturity of 180 days or less of any company incorporated and doing business under the laws of the United States of America or one of the states thereof rated A-1 or higher by Standard & Poor's Corporation ("S&P") or P-1 or higher by Moody's Investors Service, Inc. ("Moody's") or an equivalent rating by a successor thereto or by a similar rating service substituted therefor which is acceptable to both the Owner Trustee and the Security Trustee; (iii) certificates of deposit, banker's acceptances or commercial paper of any domestic commercial bank which has total assets in excess of \$1 billion and which has outstanding at least one issue of securities rated in at least one of the three highest categories by S&P or one of the two highest categories by Moody's having a final maturity of one year or less from the date of purchase thereof; (iv) a money market fund registered under the Investment Company Act of 1940, as from time to time amended, the portfolio of which is limited to United States government obligations and U.S. agency obligations and (v) repurchase agreements in respect of securities described in clause (i) as to which the Security Trustee has arranged to take delivery of the purchased securities to its segregated trust account at a Federal Reserve Bank.

"Late Rate" shall mean the lesser of 2% over the Prime Rate and the maximum interest rate from time to time permitted by law.

"Lease Default" shall mean an Event of Default under a Lease or an event which with notice or lapse of time or both would become an Event of Default under such Lease.

"Leases" shall mean the BN Lease and the Replacement Lease.

"Lessor" shall mean the Owner Trustee.

"Lessor's Liens" shall mean any Lien affecting, on or in respect of the Equipment, a Lease or the Trust Estate arising as a result of (i) claims against or affecting Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Operative Agreements, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Operative Agreements, or not permitted under the Operative Agreements or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Trust Estate which are not indemnified against by the Lessee pursuant to the Certificate Purchase Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant (without the consent of the Replacement Lessee) of all or any portion of their respective interests in the Equipment, the Trust Estate or the Operative Agreements, other than a transfer pursuant to Article 11, 15, 21 or 22 of either of the Leases.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, lease, exercise of rights, claim, disposition of title or other charge of any kind of property.

"Loss" shall mean "Tax Loss" as defined in Section 7 of the Certificate Purchase Agreement.

"Makewhole Premium" shall have the meaning assigned to such term in the Equipment Trust Agreement. Any Makewhole Premium shall be calculated by the Debt Participant.

"Modification Amount" or *"Modification Repayment"* shall mean all amounts due from time to time from the BN Lessee to the Replacement Lessee in respect of Modifications.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation, by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation, (ii) in the case of a partnership, by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, by the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Operative Agreements" shall mean the Certificate Purchase Agreement, the Bill of Sale, the Assignment of Warranties, the Trust Agreement, the Leases, the Equipment Trust Agreement, the Certificates, the Consent and Agreement, the Guaranty Agreement, the Owner Participant Guaranty and the Participation Agreement.

"Owner Participant" shall mean Boatmen's Equipment Finance, Inc., a Missouri corporation, and its permitted successors and assigns.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is or will be a party.

"Owner Participant Guarantor" shall mean The Boatman's National Bank of St. Louis, a national banking association.

"Owner Participant Guaranty" shall mean the Guaranty dated as of the date hereof from the Owner Participant Guarantor in favor of BN Lessee guaranteeing all the obligations of Owner Participant under the Owner Participant Agreements, as the same may be amended, modified or supplemented.

"*Owner Trustee*" shall mean First Security Bank of Utah, National Association, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement and its successors thereunder.

"*Owner Trustee Agreements*" shall mean the Operative Agreements to which the Owner Trustee, either in its individual or fiduciary capacity, is or will be a party.

"*Participation Agreement*" shall mean the Participation Agreement dated as of September 1, 1995, among the BN Lessee, the Seller, the Owner Participant and the Owner Trustee.

"*Permitted Liens*" with respect to the Equipment and each Unit thereof, shall mean: (i) the interest of the Replacement Lessee and the Owner Trustee under the Replacement Lease; (ii) the interest of the Replacement Lessee and any sublessee as provided in any sublease permitted pursuant to Article 17 of the Replacement Lease; (iii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount of validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture, loss, or loss of use of any Unit or any interest therein; (iv) any Liens or mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of Replacement Lessee's (or if a sublease is then in effect, any sublessee's) business securing obligations which are not due and payable or the amount of validity of which is being contested so long as there exists no material risk or sale, forfeiture, loss or loss of use of any Unit; (v) Liens arising out of any judgment or award against the Replacement Lessee (or any sublessee permitted pursuant to Article 17 of the Replacement Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; (vi) salvage rights of insurers under insurance policies maintained pursuant to Article 15 of the Replacement Lease; and (vii) any other Lien with respect to which the Replacement Lessee (or any sublessee) shall have provided a bond adequate in the reasonable opinion of the Owner Trustee.

"*Person*" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"*Prime Rate*" shall mean the rate announced from time to time by The Chase Manhattan Bank, N.A., in New York, New York as its prime commercial lending rate.

"*Related Indemnatee Group*" shall mean, with respect to any Indemnified Person, the respective directors, officers, employees, successors and permitted assigns, agents and servants of such Indemnified Person, as applicable, together with such Indemnified Person, as the case may be.

"*Rent*" shall have the meaning specified in Article 4 of the Replacement Lease.

"*Replacement Lease*" shall mean the Replacement Lease Agreement, relating to the Equipment, dated as of September 1, 1995, between the Lessor and Replacement Lessee, as amended, supplemented or otherwise modified from time to time.

"*Replacement Lease Assignee*" shall have the meaning specified in Article 17 section B of the Replacement Lease Agreement.

"*Replacement Lease Default*" shall mean an Event of Default under the Replacement Lease or which with notice or lapse of time or both would become an Event of Default under the Replacement Lease.

"*Replacement Lease Term*" for a Unit shall mean the primary noncancelable term of the Replacement Lease specified in Article 2 thereof for such Unit.

"*Replacement Lessee*" shall mean First Union Rail Corporation, a North Carolina corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"*Replacement Lessee Agreements*" shall mean the Operative Agreements to which the Replacement Lessee is a party.

"*Replacement Lessee Purchase Options*" shall have the meaning specified in Article 22 of the Replacement Lease.

"*Replacement Term Commencement Date*" for a Unit shall mean the BN Lease Termination Date on which such Unit is redelivered under the BN Lease and is simultaneously accepted under the Replacement Lease.

"*Responsible Officer*" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer, who in the normal performance of his operational responsibility would have knowledge of such matters and the requirements with respect thereto.

"*Security Trustee*" shall mean Shawmut Bank Connecticut, National Association, a national banking association.

"*Seller*" shall mean BN Leasing Corporation, a Delaware corporation, and its successors and assigns.

"*Seller Agreements*" shall mean the Operative Agreements to which the Seller is a party.

"*Stipulated Loss Value*" payable with respect to an Event of Loss for any Unit as of any date of determination shall mean the amount determined by multiplying the Equipment

Cost for such Unit by the percentage set forth in Schedule 3 to the Certificate Purchase Agreement opposite the determination date on which such Stipulated Loss Value will be paid.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" for a Lease shall have the meaning specified in Article 9 of such Lease.

"Tax" or *"Taxes"* shall have the meaning specified in Section 7(a) of the Certificate Purchase Agreement.

"Tax Assumptions" shall have the meaning specified in Section 7(b) of the Certificate Purchase Agreement.

"Tax Indemnities" shall have the meaning specified in Section 7(a) of the Certificate Purchase Agreement.

"Transferee" shall have the meaning specified in Section 5.1(a) of the Participation Agreement.

"Trust" shall have the meaning specified in the Trust Agreement.

"Trust Agreement" shall mean that certain Trust Agreement, dated as of September 1, 1995, between the Owner Participant and the Owner Trustee, in the capacities described therein, as amended, supplemented or otherwise modified from time to time.

"Trust Estate" shall mean all the estate, right, title and interest of the Owner Trustee in, to and under the Equipment and the Operative Agreements, including, without limitation, all funds advanced to the Owner Trustee by the Owner Participant, all installments and other payments of Rent and/or Supplemental Rent, insurance proceeds, Stipulated Loss Values, condemnation awards, purchase price, sale proceeds, and all other proceeds of any kind for or with respect to the Equipment and the Operative Agreements.

"Unit" shall have the meaning given such term in Article 2 of the Replacement Lease for all purposes with respect to such Replacement Lease and Certificate Purchase Agreement and for all other purposes shall mean each unit or item of equipment.