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19687
RECORDATION NO. FILED 1425

NOV 3 1995 1 20 AM

November 3, 1995

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

19687
RECORDATION NO. FILED 1425

NOV 3 1995 1 20 AM

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) copies each of a Loan and Security Agreement, dated as of November 1, 1995, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177, and a Bill of Sale, dated November 3, 1995, a secondary document related thereto.

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

Loan and Security Agreement

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

Secured Party: Colonial Life & Accident Insurance Company
2211 Congress Street
Portland, Maine 04122-0590

Vertical handwritten notes on the left margin, including "Part" and "C. Alford" (likely referring to Elias C. Alvord).

Mr. Vernon A. Williams
November 3, 1995
Page 2

Bill of Sale

Seller: National Railway Equipment Co.
14400 South Robey Street
Dixmoor, Illinois 60426

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

A description of the railroad equipment covered by the enclosed documents is:

Eleven (11) GP38-2 locomotives bearing reporting marks and road numbers CNW 4701 through CNW 4711, inclusive.

Also enclosed is a check in the amount of \$42.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

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

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures



Interstate Commerce Commission
Washington, D.C. 20423-0001

11/3/95

Office Of The Secretary

Robert W. Alvord
Alvord And Alvord
918 Sixteenth Street, NW., Ste. 200
Washington, DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/3/95 at 1:20PM, and assigned recordation number(s) 19687 and 19687-A.

Sincerely yours.

Vernon A. Williams
Secretary

Enclosure(s)

(0100840062)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

REGISTRATION NO. 9687 FILED 1425
NOV 3 1995 1 20 AM
MICHIGAN SECRETARY OF STATE

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of November 1, 1995 between First Security Bank of Utah, National Association, as trustee (the "Debtor") under that certain Trust Agreement dated as of November 1, 1995 between it and National Railway Equipment Company, an Illinois corporation ("NREC"), and Colonial Life & Accident Insurance Company, a South Carolina insurance company (the "Secured Party").

W I T N E S S E T H:

WHEREAS, Debtor is the owner of eleven (11) remanufactured general purpose locomotives, which locomotives are more fully described in Exhibit A hereto (such locomotives, as remanufactured, together with any and all accessions, additions, improvements, substitutions and replacements from time to time incorporated or installed on such items which are the property of the Owner Trustee pursuant to the terms of the Lease, hereinafter called individually, an "Item of Equipment" and collectively, the "Equipment");

WHEREAS, Debtor has acquired the locomotives from NREC;

WHEREAS, NREC originally entered into the Lease with the Original Lessee and has assigned its rights in the Lease to Debtor; and

WHEREAS, Debtor proposes to finance the cost of its acquisition of the Equipment by issuing one note to Secured Party, and to secure its obligations under such note by a grant hereunder to Secured Party of a security interest in the Equipment and the Lease;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, unless the context otherwise requires, for all purposes of this Agreement the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Agreement" shall mean this Loan and Security Agreement as the same may be amended, supplemented or modified, from time to time.

"Applicable Fraction" for the purposes of Section 4.3 and Section 4.5 of this Agreement shall mean a fraction having a numerator of one and a denominator equal to eleven (i) minus the number of Items of Equipment for which a Casualty Occurrence Payment or an obsolescence payment has been made pursuant to Section 4.3 or Section 4.5 and applied as provided in said Section 4.3 or Section 4.4 to reduce the principal and interest payable on the Note, and (ii) plus the number of Replacement Units which have replaced an Item of Equipment which has suffered a Casualty Occurrence as provided in Section 4.4 of this Agreement.

"Assignment" shall mean the Assignment-Full Recourse dated as of the 3rd day of November, 1995 between NREC and Debtor assigning NREC's rights as original lessor under the Lease to Debtor.

"Basic Rent" shall mean quarterly rental as provided for in Section 3 of the Lease.

"Bill of Sale" shall have the meaning given such term in the Participation Agreement.

"Business Day" shall have the meaning specified in Section 9.1 hereof.

"Called Principal" means, with respect to the Note, the principal of the Note that is to be prepaid pursuant to Section 8.2(c) or has become or is declared to be immediately due and payable pursuant to Section 6.2(a), as the context requires.

"Casualty Occurrence" shall have the meaning specified in Section 4.2 hereof.

"Casualty Occurrence Payment" shall have the meaning specified in Section 4.3 hereof.

"Casualty Occurrence Payment Date" shall have the meaning specified in Section 4.3 hereof.

"Closing Date" shall have the meaning specified in Section 2.1 hereof.

"Collateral" shall have the meaning specified in Section 3 hereof.

"Default" means any event or condition that given notice, the lapse of time or both may constitute an Event of Default.

"Discounted Value" means, with respect to the Called Principal of the Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the

Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Note is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Dollars" and "\$" mean the lawful and freely transferable currency of the United States of America.

"Equipment" shall have the meaning specified in the Recitals hereof.

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

"Event of Default" shall have the meaning specified in Section 6.1 hereof.

"Excepted Rights in Collateral" shall have the meaning specified in Section 3.3 hereof.

"GAAP" shall mean at any time the generally accepted United States accounting principles at such time.

"Guaranty" shall mean that certain Guaranty dated as of November 1, 1995 from NREC to Secured Party.

"ICC" shall mean the Interstate Commerce Commission of the United States.

"Installment Payment Date" shall mean each date when an installment of principal and interest is due and payable under the Note.

"Item of Equipment" shall have the meaning specified in the Recitals hereof.

"Lease" shall mean the Lease of Railroad Equipment dated as of November 1, 1991 originally between NREC and the Original Lessee, as amended from time to time, and now between Debtor, as assignee of NREC's rights as lessor under the Lease, and the Lessee, as successor by merger to the Original Lessee.

"Lease Event of Default" shall mean an event of default as defined and set forth in Section 10 of the Lease.

"Lessee" shall mean Union Pacific Railroad Company, a Utah corporation, and successor by merger to the Original Lessee, as lessee under the Lease.

"Liabilities" shall have the meaning given such term in Section 3 hereof.

"Loan" means the loan made by Secured Party to Debtor pursuant to Section 2 hereof evidenced by the Note.

"Note" shall mean the secured promissory note executed and delivered hereunder by Debtor substantially in the form of Exhibit B annexed hereto and any successor note thereto issued pursuant to this Agreement.

"Notice and Acknowledgement of Assignment" shall mean the notice and acknowledgement of assignment executed by Secured Party, Debtor and the Lessee, substantially in the form of Exhibit C annexed hereto.

"Original Lessee" shall mean Chicago and North Western Transportation Company, a Delaware corporation.

"Participation Agreement" shall mean that certain Participation Agreement dated as of November 1, 1995 among Debtor, Secured Party and NREC, as the same may be amended, modified or supplemented from time to time

"Owner Trustee" shall have the meaning given such term in the Trust Agreement.

"Person" shall mean and include any individual, business trust, partnership, joint venture, firm, corporation, association, joint stock company, trust or other enterprise or any government or political agency sub-division or agency, department or instrumentality thereof.

"Premium" means an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of the Note over the amount of such Called Principal, provided that the Premium may in no event be less than zero.

"Reinvestment Yield" means, with respect to the Called Principal of the Note, the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page 678" on the Telerate Access Service (or such other display as may replace Page 678 on Telerate Access Service) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal

Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded U.S. Treasury security with the duration closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the duration closest to and less than the Remaining Average Life.

"Related Documents" shall mean, collectively, this Agreement, the Lease, the Note, the Guaranty, the Notice and Acknowledgement of Assignment, the Assignment, the Bill of Sale, the Participation Agreement, and the Trust Agreement.

"Remaining Average Life" means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"Remaining Scheduled Payments" means, with respect to the Called Principal of the Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Note, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Sections 6.2(a) or 8.2(c).

"Replacement Unit" shall have the meaning set forth in Section 4.4 of this Agreement.

"Responsible Officer" shall mean the President, and any Vice-President or any other Person authorized by Secured Party to act with respect to the administration of this transaction.

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

"Settlement Date" means, with respect to the Called Principal of the Note, the date on which such Called Principal is to be prepaid pursuant to Section

8.2(c) or has become or is declared to be immediately due and payable pursuant to Section 6.2(a), as the context requires.

"Trust Agreement" shall mean that certain Trust Agreement dated as of November 1, 1995 between the Owner Trustee and NREC, as the same may be amended, modified or supplemented from time to time.

"Trust Company" shall have the meaning given such term in the Participation Agreement.

"Voting Stock", as applied to the stock of any corporation, shall mean stock of any class or classes (however designated) having ordinary voting power for the election of a majority of the directors of such corporation, other than stock having such power only by reason of the happening of a contingency.

Section 2. ISSUANCE OF THE NOTE.

2.1. Loan. On the 3rd day of November, 1995 (the "Closing Date"), Lender shall loan to Debtor Four Million Nine Hundred Twenty Thousand Two Hundred Eighty and 80/100 Dollars (\$4,920,280.80) (the "Loan"). The Loan shall be evidenced by one Note, substantially in the form of Exhibit B, dated October 1, 1995 in the principal amount of Four Million Nine Hundred Twenty Thousand Two Hundred Eighty and 80/100 Dollars (\$4,920,280.80).

2.2. Representations, Warranties and Covenants.

(a) Debtor. Debtor represents, warrants and covenants that:

(i) Organization. Debtor is a duly organized, validly existing national banking association, in good standing under the laws of the United States of America and has all requisite trust power and authority under such laws to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(ii) Trust Power. Debtor has full trust power and authority to execute, deliver and perform the Related Documents.

(iii) Authority of Debtor, Enforceability. This Agreement, the Note, the Assignment and all other Related Documents have each been duly authorized, executed and delivered by Debtor and, together with the Lease, constitute the legal, valid and binding obligations of Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except to the extent that

enforcement is subject to general principles of equity (including but not limited to all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(iv) Governmental Authority. No authorization, consent or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery or performance by Debtor of the Related Documents or for the creation and perfection of the first priority security interest on the Collateral intended to be created in favor of Secured Party hereunder under the laws of the State of Utah except for Uniform Commercial Code financing statement filings in the State of Utah.

(v) No Conflicts. Neither the execution, delivery or performance by Debtor of the Related Documents, nor compliance with the terms and provisions hereof or thereof, conflicts or will conflict with or will result in a breach or violation of any of the conditions or provisions of any Utah or federal banking law, governmental rule or regulation, the Trust Agreement or the charter documents, as amended, or by-laws, as amended, of Debtor, or any order, writ, injunction or decree of any court or governmental authority against Debtor or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which Debtor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties except for the security interest granted herein.

(vi) Securities Act of 1933. Neither Debtor nor, to its knowledge, anyone acting on its behalf has directly or indirectly offered the Note, or similar securities or beneficial interests relating to the Equipment, for sale to, or solicited any offer to acquire any of the same from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any interest in the Collateral, other securities or beneficial interests in the Equipment with, any Person so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act of 1933. Debtor will not offer any interest in the Collateral, the Note, or other securities or beneficial interests in the Equipment to, or solicit any offer to buy any thereof from, any other Person or approach or negotiate with any other Person in respect thereof, so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of said Securities Act.

(vii) Acquisition of Interest in Equipment. Debtor has acquired its interest in the Equipment for its own account with the proceeds of the Loan and no funds used to acquire any Item of Equipment have been furnished directly or indirectly out of the assets of or in connection with any employee

benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (vii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(viii) No Amendments to the Lease. Debtor hereby ratifies and confirms the Lease and warrants and represents that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than Secured Party, and that it will not, so long as the assignment hereunder shall remain in effect, except as provided in this Agreement, accept any payment from the Lessee (except payments immediately delivered to Secured Party in accordance with the terms of the Participation Agreement), enter into any agreement amending or supplementing the Lease or the Trust Agreement, execute any waiver or modification of, or consent under, the terms of the Lease or the Trust Agreement, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder without the prior written consent of Secured Party and that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease or the Trust Agreement, or of any of the rights created by the Lease or the Trust Agreement, or the assignment of the Lease hereunder.

(ix) Litigation. There are no actual, pending or, to the knowledge of any officer of Debtor, threatened legal actions, arbitrations, or other proceedings involving Debtor which might have an adverse effect on the validity or enforceability of this Agreement, the Note, the Assignment, the Lease or the other Related Documents.

(x) Reports. Debtor has caused to be furnished to Secured Party the audited consolidated financial statements of the Lessee's parent and its subsidiaries as of December 31, 1994.

(xi) Tax Liens. No tax liens have been filed and no claims are being asserted against NREC or the Debtor with respect to any taxes, fees or other charges, other than those the amount and validity of which is currently being contested in good faith by appropriate proceedings and with respect to which appropriate reserve in accordance with GAAP consistently applied have been provided on their books.

(xii) Investment Company. Debtor is not an "investment company" as such term is defined under the Investment Company Act of 1940,

as amended, and the rules and regulations promulgated thereunder, nor will the making of the Loan hereunder by Secured Party on the terms and conditions hereunder provided and the use of the proceeds therefrom by Debtor result in any violation by Debtor or any of its affiliates of any of the provisions of the Investments Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

(xiii) Margin Regulations G, T, U, X. The making of the Loan hereunder by Secured Party on the terms and conditions hereunder provided and the use of the proceeds therefrom by Debtor are not prohibited by Regulations G, T, U or X of the Board of Governors of the Federal Reserve System.

(xiv) Due Performance of the Lease. Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements herein set forth, in the Lease, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Lease were fully set out in an amendment or supplement to this Agreement.

(xv) Ownership of Collateral; No Liens. Debtor has good and marketable title to the Collateral, free and clear of all liens (other than those arising by, through or under the Lessee and other than the security interest granted herein); and Debtor will warrant and defend the title to the Collateral against all claims and demands of all Persons whatsoever except Persons claiming by, through or under the Lessee or Secured Party. Debtor agrees to pay or discharge, at its own cost and expense, any and all claims, liens or charges (other than those arising by, through or under the Lessee or Secured Party) on or with respect to the Collateral. Debtor further agrees to indemnify and hold harmless Secured Party from and against any direct loss, costs or expenses (including legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such claim, lien, or charge. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which Debtor is named and which Debtor has signed, as debtor or mortgagor, now on file at the Interstate Commerce Commission, at the Registrar General of Canada or in any other public office in the United States or in Canada covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

(xvi) Further Assurances. Debtor will, at no expense to Secured Party, do, execute, acknowledge and deliver every and all further acts, deeds, conveyances, transfers and assurances (a) for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired, and (b) as Secured Party may consider necessary or appropriate for giving full effect to this Agreement or for securing the rights of Secured Party hereunder. Without limiting the foregoing but in furtherance of the security interest herein granted in the revenues and other sums due and to become due under the Lease, Debtor covenants and agrees that it will cause the Lessee and each other lessee of any Item of Equipment to be notified of such assignment and direct the Lessee and any such lessee, to make all payments of such revenues and other sums due and to become due under the Lease, other than the Excepted Rights in Collateral, as Secured Party may direct, and cause the Lessee and each such lessee to execute and deliver an acknowledgement of assignment, substantially in the form of the Notice and Acknowledgement of Assignment attached as Exhibit C and otherwise in form and substance satisfactory to Secured Party.

(xvii) The Lease. (a) Debtor will not, without the prior written consent of Secured Party:

(1) declare a default or exercise the remedies of Debtor under, or terminate or modify or accept a surrender of, or offer or agree to, any termination or modification or surrender of, or take or omit to take any action which might result in an alteration or impairment of, the Lease or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the rights created by the Lease or any part thereof; or

(2) receive or collect or permit the receipt or collection of any payment of rent under the Lease prior to the date for payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to Secured Party hereunder) any rent then due or to accrue in the future under the Lease in respect of the Equipment; or

(3) sell, mortgage, transfer, assign or hypothecate (other than to Secured Party hereunder) its interest in the Equipment or other Collateral or any part thereof or in any amount to be received by it from the use or disposition of the Equipment or other Collateral; or

(4) enter into any new lease with respect to the Equipment.

(b) Debtor will furnish Secured Party promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates,

financial statements and other instruments furnished to Debtor under the Lease, or furnished by Debtor to the Lessee under the Lease to the extent that same shall not have been furnished to Secured Party pursuant to the Lease.

(xviii) Power of Attorney. Debtor hereby constitutes Secured Party and its successors and assigns, the true and lawful attorney of Debtor, irrevocably and with full power of substitution for and in the name, place and stead of Debtor or otherwise, to demand, collect, receive, receipt for, sue for, compound and compromise and give acquittance for, any and all rents, income, profits, moneys and claims for sums which are assigned under Sections 3.1 and 3.2 hereof and any other Collateral, to endorse any checks or other instruments or orders in connection therewith, to make all waivers and agreements and to file any claims (including without limitation any proof of claim in any bankruptcy proceeding commenced by or against the Lessee) or take any actions or institute any proceedings with respect thereto which Secured Party may deem necessary or advisable in its sole and complete discretion. Anything herein contained to the contrary notwithstanding, neither Secured Party nor its successors or assigns shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time by virtue of this Agreement. Upon written request from Debtor, such request to be made no more frequently than once in any six month period, Secured Party shall account to Debtor for any and all rents, income, moneys and claims for sums received by Secured Party pursuant to the grant of security herein.

(xix) Payment of Commissions. Debtor warrants that it will pay or cause to be paid all appropriate brokers' commissions or finders' fees in connection with the acquisition of the Equipment and the other transactions contemplated hereby. Debtor agrees that Secured Party has no obligation to pay such fees and it agrees to indemnify Secured Party for any and all sums whatsoever required to be expended by Secured Party in payment of such claims by brokers provided that Debtor shall be under no obligation to indemnify Secured Party for fees incurred solely as a result of acts by Secured Party.

(xx) Notice of Event of Default. Debtor further covenants and agrees that it will give Secured Party prompt written notice of any event or condition constituting a Default or an Event of Default hereunder or under the Lease if Debtor has actual knowledge of such event or condition.

(xxi) Remanufacturing of Equipment. The Equipment has been remanufactured in compliance with, and meets all safety and other standards established by the Federal Railroad Administration.

(xxii) Use of Equipment. The Equipment will be used by the Lessee only upon lines or railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over lines upon which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting with other carriers in the usual interchange of traffic in the continental United States. The Equipment will be located at all times only in the United States, notwithstanding any provision of the Lease or any other agreement; provided, however, with the prior express written consent of Secured Party, and subject to such conditions as Secured Party may require, the Equipment may be used in Canada or Mexico for a period of time not exceeding a total of ninety (90) days in any calendar year.

(xxiii) Right to Inspect the Collateral. Debtor shall at any reasonable time, on demand by Secured Party, cause the Collateral to be exhibited to Secured Party (or persons designated by Secured Party) for purposes of inspection.

(xxiv) Reporting Requirements. Debtor shall promptly furnish to Secured Party such other information respecting the financial condition or operations of Debtor and of the Lessee and its parent or any of their respective subsidiaries as Secured Party may from time to time reasonably request.

(b) Secured Party. Secured Party represents and warrants that:

(i) Secured Party understands that the Note has not been registered under the Securities Act of 1933, as amended, and that the Note must be held indefinitely unless subsequent disposition thereof is registered under said Act or is a transaction exempt from registration.

(ii) The Note to be issued to Secured Party pursuant hereto is being acquired by it with its general corporate assets, and no funds used to acquire the Note will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (ii), the terms "employee benefit plan, and "separate account" shall have the respective meanings assigned to them in ERISA.

2.3 Taxes. (a) Withholdings. If any withholding of a Tax (defined below) for which Debtor is required by Section 2.3(b) to indemnify Secured Party is required in connection with any payment pursuant to this Agreement or the Note, Debtor shall pay such additional amount as may be necessary to make the net amount actually received by the recipient equal to the total amount the recipient would have received if no withholding had been required.

(b) Tax Indemnity. Debtor shall indemnify Secured Party for all taxes, fees and other governmental charges (collectively, "Taxes", and individually a "Tax") payable in connection with the execution, delivery, recording, performance or enforcement of this Agreement and the Note or otherwise in connection with the transactions described in this Agreement and the Note, excluding Taxes imposed by the United States Federal Government on the net income of Secured Party.

(c) After-tax Basis. Each indemnity pursuant to this Section 2.3 shall be in an amount which, after taking into account (i) all Taxes required to be paid by Secured Party entitled to the indemnity as a result of the receipt or accrual of the indemnity and (ii) any Tax savings realized by Secured Party as a result of deductions, credits or other allowances resulting from the payment or accrual of the Tax for which the indemnity has been demanded, shall be equal to the total amount of the indemnity that Debtor would be required to pay if Secured Party were not subject to Taxes as a result of the receipt or accrual of the indemnity.

(d) When Due. Each payment required to be made by Debtor to Secured Party pursuant to this Section 2.3 shall, except as otherwise provided herein, be due thirty (30) days following Debtor's receipt of Secured Party's written demand for the payment accompanied by a written statement of Secured Party describing in reasonable detail the computation of the indemnity being demanded.

(e) Information. Debtor shall provide, at its own expense, such information as may be reasonably requested by Secured Party or required to enable Secured Party to fulfill its tax filing, audit and litigation requirements with respect to the transactions described in this Agreement and the Note.

Section 3. GRANT OF SECURITY.

Debtor, in order to secure the prompt payment of the principal of, Premium (if any) and interest on the Note issued hereunder, and to secure the payment of all other indebtedness of Debtor to Secured Party pursuant to this Agreement and the performance and observance of all covenants and conditions in each of the Related Documents (collectively, the "Liabilities"), and for the benefit of Secured Party and any other holders of the Note, does hereby convey, warrant, mortgage, pledge, assign and grant to Secured Party, its successors and assigns, for the security and benefit of each holder of the Note a first priority security interest in all of Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 3.1 and 3.2 hereof whether now owned or hereafter acquired, and all proceeds thereof, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof (all of which properties, rights, interests and privileges hereby mortgaged, assigned and pledged, or intended so to be, are collectively referred to as the "Collateral").

3.1 Equipment Collateral. Collateral includes the Equipment identified in Exhibit A attached hereto and made a part hereof and in any amendments or additions to such exhibit hereafter attached hereto and filed herewith together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, or proceeds of any and all of said Equipment, together with all of the rents, issues, income, profits, avails and other proceeds (including insurance proceeds) therefrom.

3.2 Lease Collateral. Collateral also includes all right, title, interest, claims and demands of Debtor in, to and under the Lease, including any extensions of the term of the Lease with respect to the Equipment, any other lease entered into with respect to the Equipment, whether pursuant to Sections 4.4 and 6.2(g) hereof or otherwise together with all rights, powers, privileges, options and other benefits of Debtor under the Lease and any other lease, including, without limitation, but subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof:

(1) the immediate and continuing right to receive and collect all rent and loss of value payments, insurance proceeds, Casualty Value (as defined in the Lease), condemnation awards, requisition payments and other payments, proceeds, tenders and security now or hereafter payable to or receivable by Debtor under the Lease or pursuant thereto and under any other lease or pursuant thereto, together with the immediate and continuing right to receive and collect same;

(2) the right to make all consents, waivers and agreements and to enter into any amendments relating to the Lease and any other lease or any provision thereof; provided, however, that Secured Party shall be under no obligation to take such actions; provided, further, that, so long as no Default or Event of Default has occurred and is continuing hereunder or under the Lease, Secured Party shall take such actions upon consultation with Debtor; and

(3) the right to take such action upon the occurrence of an Event of Default under the Lease and each other lease or an event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under the Lease and each other lease of the Equipment, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease and each other lease of the Equipment or by law, and to do any and all other things whatsoever which Debtor or its successors and assigns is or may be entitled to do under the Lease and each other lease of the Equipment;

it being the intent and purpose hereof that, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof, the assignment and transfer to Secured Party of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and Secured Party shall have the right to collect and receive all rent and Casualty Value (as defined in the Lease), loss of value payments, insurance proceeds, condemnation awards and other payments for application in accordance with the provisions of Sections 5 and 6 hereof at all times during the period from and after the date of this Agreement until the indebtedness hereby secured has been fully paid and discharged; and Secured Party may at any time give notice to the Lessee and any other lessee to pay the same directly to Secured Party.

It is expressly agreed that anything herein contained to the contrary notwithstanding, Debtor shall remain liable under the Lease and each other lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Secured Party and the holders of the Note shall have no obligation or liability under the Lease or any other lease by reason of or arising out of the assignment hereunder, nor shall Secured Party or the holder of the Note be required or obligated in any manner to perform or fulfill any obligations of Debtor under or pursuant to the Lease or any other lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

3.3 Excepted Rights in Collateral. There are expressly excepted and reserved from the security interest and operation of this Agreement the following described properties, rights, interests and privileges (hereinafter the "Excepted Rights in Collateral") and nothing herein or in any other agreement contained shall constitute an assignment of the Excepted Rights in Collateral to Secured Party:

- (a) all payments of any indemnity under Section 6 of the Lease which by the terms of the Lease are payable to Debtor for its own account;
- (b) all rights of Debtor under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due Debtor for its own account on account of any such indemnities or payments due to Debtor for its own account pursuant to said Section 6 of the Lease; and
- (c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Section 7 of the Lease which by the terms of the Lease are payable directly to Debtor for its own account.

Section 4. POSSESSION, CASUALTY OCCURRENCE, REPLACEMENT OF EQUIPMENT, OBSOLESCENCE, USE AND RELEASE OF PROPERTY.

4.1 Possession of Collateral. So long as no Default or Event of Default, has occurred and is continuing, Debtor shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement and the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

4.2 Casualty Occurrence. Debtor shall promptly and fully notify Secured Party of each "Casualty Occurrence" (as such term is defined in the Lease).

4.3 Casualty Occurrence Payment. On the first Installment Payment Date falling after a Casualty Occurrence with respect to an Item of Equipment (or on the next following Installment Payment Date, if such first Installment Payment Date falls fewer than fifteen (15) days after such Casualty Occurrence) (the "Casualty Occurrence Payment Date") Debtor, subject to Section 4.4 hereof shall pay to Secured Party an amount (the "Casualty Occurrence Payment") equal to the Applicable Fraction of the then unpaid principal amount of the Note. Except as otherwise permitted by Section 4.4 hereof, upon Secured Party's full and final receipt of the Casualty Occurrence Payment, and if no Default or Event of Default shall have occurred and be continuing, the Item of Equipment which has become a Casualty Occurrence shall be released from the security interests created hereby or pursuant hereto, and thereafter the amount of principal and interest due and payable under the Note on the remaining Installment Payment Dates shall be reduced by the Applicable Fraction. Provided that Secured Party shall have received all amounts due and payable under this Section 4.3 and no Default or Event of Default has occurred and is continuing hereunder or under the Lease, all amounts of Casualty Value (as defined in the Lease) received by Secured Party in excess of amounts due and payable under this Section 4.3 shall be released to Debtor.

4.4 Replacement of Items of Equipment. Notwithstanding Section 4.3 hereof, as long as no Default or Event of Default shall have occurred and be continuing, the Debtor may elect, by written notice to the Secured Party given no fewer than fifteen (15) days prior to the Casualty Occurrence Payment Date, to replace the Item of Equipment which has suffered the Casualty Occurrence with another locomotive (the "Replacement Unit") having at least equal value and utility (as determined by Secured Party in its sole discretion) as of the date of the Casualty Occurrence as the Item of Equipment which has suffered the Casualty Occurrence. The Debtor shall provide, at its cost, to the Secured Party an appraisal from Norman

W. Seip & Associates, Erie, Pennsylvania, in form and substance acceptable to the Secured Party.

In the event such replacement is completed prior to the Casualty Occurrence Payment Date, the Debtor shall be released from its obligation to pay the Casualty Occurrence Payment. In the event, however, such replacement is not completed prior to the Casualty Occurrence Payment Date, the Debtor shall deposit with the Secured Party on or prior to the Casualty Occurrence Payment Date an amount equal to the Casualty Occurrence Payment, as cash collateral. So long as no Event of Default shall have occurred and be continuing, the Secured Party shall invest such amount in any Permitted Investment (as defined in the Lease), at the expense and risk of the Debtor. The Secured Party shall disburse such amount and any earnings derived from such investments to the Debtor upon receiving written notice from the Debtor that the replacement has been completed. If an Event of Default or Default shall occur, the Secured Party shall apply all such amounts in its possession in the manner set forth Section 6.6 hereof.

In the event the Debtor elects to replace an Item of Equipment in accordance with this Section 4.4, the Debtor covenants and agrees to enter into a lease of such Replacement Unit in form and substance similar to the Lease, and such lease and Replacement Unit shall immediately become subject to the perfected lien of this Agreement and the interest of the Secured Party, all in form and substance satisfactory to Secured Party.

4.5 Obsolescence. In the event that an Item of Equipment shall, in the reasonable opinion of the Lessee become economically obsolete in the Lessee's business pursuant to Section 7 of the Lease, Debtor shall promptly inform Secured Party in respect thereto. In the event the Lessee elects to exercise its rights under Section 7 of the Lease with respect to such obsolescence of such Item of Equipment and if no Event of Default or Default shall have occurred and be continuing, such Item of Equipment shall be released from the security interests created hereby or pursuant hereto as of the succeeding Installment Payment Date (the "Termination Date"), provided Debtor shall pay to Secured Party an amount equal to the Applicable Fraction of the then unpaid principal amount of the Note, and upon full final receipt by Secured Party of all such amounts, the amount of principal and interest due and payable under the Note on the remaining Installment Payment Dates shall be reduced by the Applicable Fraction. Provided that Secured Party shall have received all amounts due and payable under this Section 4.5 and no Default or Event of Default has occurred and is continuing hereunder or under the Lease, all amounts of Casualty Value (as defined in the Lease) received by Secured Party in excess of amounts due and payable under this Section 4.5 shall be released to Debtor.

4.6 Release of Property. So long as no Event of Default, or Default, has occurred and is continuing, Secured Party shall execute a release in respect of any

Item of Equipment suffering a Casualty Occurrence, withdrawn, lost or destroyed as referred to in Sections 4.3 and 4.5 hereof upon receipt from the Lessee of written notice designating the Item of Equipment in respect of which the Lease will terminate and the payments required thereunder. After payment in full of all the indebtedness hereby secured, including but not limited to all amounts due and payable under the Note, Secured Party shall, upon the written request of Debtor, execute and deliver to, or as directed in writing by, Debtor, such instruments (in due form for filing and recording) as may be reasonably requested and furnished by Debtor, releasing the Equipment from, and terminating and discharging, this Agreement and the security interests created hereby or pursuant hereto.

4.7 Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of Secured Party to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

Section 5. APPLICATION OF ASSIGNED RENT AND CERTAIN OTHER MONEYS RECEIVED BY SECURED PARTY.

5.1 Application of Assigned Rent. So long as no Event of Default or event which, but for the lapse of time or the giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the amounts from time to time received by Secured Party which constitute payment by the Lessee under the Lease of the installments of rent shall be applied: first, to the payment of the installment of the aggregate unpaid interest, or of principal and interest (in each case first to interest and then to principal), then due or which have become due on the Note (including, without limitation, the final payment of interest on the Note) ratably, if there is more than one Note, without priority of one over the other in the proportion that the sum of the aggregate unpaid principal amount of the Note held by each holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the sum of the aggregate unpaid principal amount of all outstanding Notes held by all holders, plus the accrued but unpaid, interest thereon to the date of distribution second, the balance, if any, of such amounts shall be paid to or upon the order of Debtor.

5.2 Default. If an Event of Default, or event which, but for the lapse of time or the giving of notice or both, would constitute such an Event of Default, shall have occurred and be continuing, all amounts received by Secured Party shall be held until (i) such event or condition has been cured or (ii) such amounts are applied in the manner provided for in Section 6.6 hereof.

5.3 Excepted Payments. Notwithstanding any other provision of this Agreement, all payments constituting part of Excepted Rights in Collateral, if received by any holder of a Note, shall be paid to Debtor.

Section 6. DEFAULTS AND OTHER PROVISIONS.

6.1 Events of Default. The term "Event of Default" shall mean one or more of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Default in payment of any installment of the principal of, Premium, if any, or interest on, the Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise; or

(b) A Lease Event of Default shall have occurred and be continuing; provided, however, that, unless Secured Party has declared an Event of Default under the Lease, Debtor shall be entitled to cure such Lease Event of Default and the corresponding Event of Default hereunder within the expiration of the applicable grace period in the Lease; provided, however, that notwithstanding any provision to the contrary herein, Secured Party shall have given a copy to Debtor of any notice given by Secured Party to the Lessee in connection with any Lease Event of Default concurrently with the giving of such notice to the Lessee; and provided further, that if more than six Lease Events of Default in total or if more than three consecutive Lease Events of Default shall have occurred resulting from failure to make any payment of Basic Rent or any other amount payable under the Lease, any such Lease Event of Default shall be an Event of Default hereunder whether or not the corresponding Lease Event of Default is cured; or

(c) Default on the part of Debtor or NREC in the due observance or performance of any covenant or agreement to be observed or performed by Debtor under this Agreement or the Note or any other Related Documents; or

(d) Any representation or warranty on the part of Debtor or NREC made herein, in the Guaranty or in the Lease or any other Related Documents or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease or the transactions contemplated herein or therein, shall prove to be false or misleading in any material respect when made; or

(e) Any claim, lien or charge (except for any claim, lien or charge arising by, through or under the Lessee) shall be asserted against or levied or imposed

upon the Equipment or any Item of Equipment or the security interest granted hereunder shall cease to be a perfected and enforceable first priority security interest in the Collateral other than as a result of acts by Secured Party, and such claim, lien or charge shall not be discharged or removed or such security interest restored as a perfected and enforceable first priority security interest within thirty (30) calendar days after written notice from Secured Party or the holder of a Note to Debtor demanding the discharge or removal or restoration thereof; or

(f) Failure on the part of Debtor to give notice to Secured Party, within ten (10) days of the occurrence thereof, of any Event of Default or of the occurrence of any event known to Debtor which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default; or

(g) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of Debtor or Lessee under any bankruptcy, insolvency or similar act, law or statute now or hereafter in effect, or adjudging the Debtor or the Lessee a bankrupt or insolvent, or approving a petition seeking reorganization, adjustment or composition of or in respect of the Debtor or the Lessee under Title XI of the United States Code, as now constituted or hereafter in effect or under any other applicable Federal or state bankruptcy law or other similar law, or the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of Debtor or Lessee or of any substantial part of Debtor's or Lessee's property, or the entry of an order for the winding-up or liquidation of either Debtor's or the Lessee's affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) The filing by or against Debtor of any petition, application, answer or consent to or for liquidation, reorganization, arrangement or any other relief under any Chapter of Title XI of the United States Code or any similar state or Federal law or statute, as now or hereafter in effect or the consent by it to the filing of any such petition or application for the relief requested therein, or the consent by it to the appointment or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Debtor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the failure of Debtor generally to pay its debts as such debts become due, or the taking of lawful action by Debtor in furtherance of any such action; or

(i) The occurrence of any "Event of Default" (as such term is defined in the Guaranty).

6.2 Secured Party's Rights. If any Event of Default shall have occurred and be continuing, Secured Party shall have the rights, options, duties and remedies of a secured party, and Debtor shall have the rights and duties of a debtor, under the

Uniform Commercial Code in effect in the State of Illinois (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), and:

(a) The entire unpaid principal balance of the Note, accrued interest thereon plus the Premium shall be immediately due and payable without notice, presentment or demand of any kind in the case of an Event of Default under Section 6.1(g) and (h) above, and with notice to Debtor of any acceleration hereunder following any other Event of Default;

(b) At the request of Secured Party, Debtor shall promptly execute and deliver to Secured Party such instruments of title and other documents as Secured Party may deem necessary or advisable to enable Secured Party or an agent or representative designated by Secured Party, at such time or times and place or places as Secured Party reasonably may specify, to obtain possession of all or any part of the Collateral to which Secured Party shall at the time be entitled hereunder; if Debtor shall for any reason fail to execute and deliver such instruments and documents after such request by Secured Party, (i) Secured Party may obtain a judgment conferring on Secured Party the right to immediate possession and requiring Debtor to execute and deliver such instruments and documents to Secured Party, to the entry of which judgment Debtor hereby specifically consents, and/or (ii) Secured Party personally or by agents or attorneys, shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any premises, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the Collateral, or, to the extent permitted by law, use and operate or lease the Collateral until sold;

(c) Upon every such taking of possession, Secured Party may, from time to time, at the expense of the Debtor, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Collateral, as it may deem proper, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control, management or disposition of the Collateral or any part thereof as Secured Party may determine; and Secured Party shall be entitled to collect and receive directly all tolls, rents (including rental under the Lease), revenues, issues, income, products and profits of the Collateral and every part thereof, except Excepted Rights in Collateral, without prejudice, however, to the right of Secured Party under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with Secured Party hereunder;

(d) Secured Party may, if at the time such action may be lawful (subject to compliance with any mandatory legal requirements), either with or without taking possession and either before or after taking possession, and without instituting

any legal proceedings whatsoever, and having first given notice of such sale by certified mail to Debtor once at least ten days prior to the date of such sale, sell and dispose of said Collateral, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as Secured Party may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to; provided, however, that any such sale should be held in a commercially reasonable manner provided, however, that if, prior to such sale and prior to the making of a contract for such sale, Debtor should tender full payment of the total unpaid balance of the Note, together with interest thereon accrued and unpaid and all other payments due under the Note and this Agreement as well as expenses of Secured Party in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and Secured Party's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by Secured Party, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Debtor. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and Secured Party or any holder of the Note, or of any interest therein, or Debtor may bid and become the purchaser at any such sale;

(e) Secured Party may proceed to protect and enforce this Agreement and the Note by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law;

(f) Secured Party may proceed to exercise all rights, privileges and remedies available to Debtor under the terms of the Lease including, without limitation, the right to terminate the Lease and may exercise all such rights and remedies either in the name of Secured Party or in the name of Debtor for the use and benefit of Secured Party. In the event Secured Party shall at any time declare that a Lease Event of Default shall have occurred, subject to the terms of Section 6.1(b) hereof, the unpaid balance of the Note then outstanding, together with all accrued interest thereon, shall immediately be and become immediately due and payable without presentment, demand, protest or notice, all of which are hereby waived; and

(g) Debtor will pay all reasonable actual fees, costs and expenses, including attorneys' fees incurred by Secured Party in enforcing its rights and remedies under the terms of this Agreement.

6.3 Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Agreement, the aggregate principal amount of the Note, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal thereof and interest thereon, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

6.4 Waiver by Debtor. To the extent permitted by law, Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, Debtor hereby expressly waives for itself and on behalf of each and every Person all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Secured Party, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted; provided, however, that any such sale or sales shall be made in a commercially reasonable manner.

6.5 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through Debtor, its successors or assigns.

6.6 Application of Sale Proceeds. The proceeds of any sale of the Collateral, or any part thereof, and the proceeds of any remedy hereunder and any other amounts received by Secured Party pursuant to this Agreement after an Event of Default shall have occurred and be continuing shall be paid to and applied as follows:

First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including reasonable actual legal expenses and attorneys' fees, incurred or made hereunder by Secured Party, or the holders of the Note, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

Second, to the payment to Secured Party of the amount then due, owing or unpaid on the Note for principal, Premium and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Note, then first to unpaid interest thereon, second, to unpaid principal thereof to Secured Party and third to the payment of Premium; and

Third, to the payment of any other indebtedness hereby secured to Secured Party; and

Fourth, to the payment of the surplus, if any, to Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

6.7 Discontinuance of Remedies. In case Secured Party shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, Debtor, Secured Party and the holders of the Note shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

6.8 Cumulative Remedies. No delay or omission of Secured Party or of any holder of the Note to exercise any right or power arising from any default on the part of Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by Secured Party, or any holder of the Note, of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. Secured Party may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Agreement operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor shall Secured Party or the holders of the Note be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

6.9 Indemnity. Debtor agrees to indemnify, protect and hold harmless Secured Party and its assigns, directors, officers, employees, agents and representatives (each an "Indemnified Party") from and against all losses, damages injuries, liabilities, claims and demands (all the foregoing losses, damages, etc. are the "indemnified liabilities"), and expenses in connection therewith (including, but not limited to, reasonable counsel fees and expenses) arising out of or as the result of entering into or the performance of this Agreement and the Note and the other Related Documents, the enforcement of any rights thereunder, the retention by Secured Party of a security interest in the Collateral, or arising during the period of any delivery, rejection, storage or repossession of any of the Equipment while a security interest therein remains in Secured Party or during the period of the transfer of such security interest in the Collateral by Secured Party pursuant to any of the provisions hereof; provided, however, that Debtor shall have no obligation to so indemnify any Indemnified Party for any indemnified liabilities arising from its willful misconduct or gross negligence. The foregoing indemnity shall survive the termination of this Agreement.

Section 7. TRANSFER OF DEBTOR'S INTEREST.

Debtor agrees that it will not sell, lease or otherwise transfer its interest in the Equipment or the Lease, or any part thereof, without the prior written consent of Secured Party.

Section 8. THE NOTE.

8.1 Execution of the Note. The Note shall be signed on behalf of Debtor by an authorized signatory who, at the date of the actual execution thereof, shall be duly authorized to execute the same.

8.2 Payment of the Note.

(a) The principal of and interest on the Note shall be payable on each Installment Payment Date under the Note by wire transfer of immediately available funds as follows: Mellon Bank, Pittsburgh, Pennsylvania, ABA #043000261 for the account of Colonial Life & Accident Insurance Company - Private Placements, Account No. 0940967, or to such other account and in such other manner as the holder of the Note shall designate to Debtor from time to time in writing, and if no such designation is in effect, by check, duly mailed, first class, certified, postage prepaid, or delivered to Secured Party at the address last furnished to Debtor. All payments so made shall be valid and effective to satisfy and discharge the liability upon the Note to the extent of the sums so paid. All such payments shall be free and clear of and without deduction for or an account of wire or other charges.

(b) There shall be a mandatory prepayment of principal on the Note, plus interest accrued thereon, in the amounts and to the extent required under Sections 4.3 and 4.5 hereof.

(c) At any time, upon not less than fifteen (15) Business Days' prior written notice to Secured Party, Debtor may prepay all but not less than all of the Loan. All voluntary prepayments of principal of the Loan shall be accompanied by accrued interest on the amount prepaid, together with a Premium on the amount prepaid. Amounts paid or prepaid hereunder may not be reborrowed.

(d) If any payment hereunder or under the Note is due on a day other than a Business Day, payments required to be made on such day shall be made on the next succeeding Business Day and interest shall continue until such payment is made. Interest shall accrue on the principal of the Note from and including October 1, 1995, notwithstanding that the Closing Date may later occur.

(e) Debtor shall pay to Secured Party or any holder of the Note interest on overdue principal and overdue interest and any other amounts payable hereunder or under any Note which are overdue at the rate of 8.76% per annum (calculated on the basis of twelve (12) months of thirty (30) days each) whether as scheduled or upon acceleration or otherwise.

(f) In no event shall the interest rate for the Note or any other amount payable under the Related Documents exceed the maximum permitted by law and, in the event Secured Party ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of such other amounts due hereunder or under the Note or hereunder then outstanding, and, if such other amounts then outstanding are paid in full, any remaining excess shall forthwith be paid to Debtor. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the highest lawful rate, Debtor and Secured Party shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (b) exclude any voluntary prepayments and the effect thereof, and (c) spread the total amount of interest throughout the period during which any principal of the Loan remains outstanding so that the interest rate is uniform throughout the period during which any principal of the Loan remains outstanding. In no event shall any interest rate provided for in this Agreement or the Note exceed the maximum rate permitted by the then applicable law, provided, further that the interest rate payable pursuant to this Agreement and the Note shall be at all times the lower of (A) the relevant interest rate stated in this Agreement, or (B) the maximum interest rate permitted under applicable law.

8.3 Transfers of the Note; Lost or Mutilated Note.

(a) The holder of the Note may transfer the Note upon the surrender thereof at the principal office of Debtor and Debtor shall execute in the name of the transferee a new Note in aggregate principal amount equal to the unpaid principal amount of the Note so surrendered, and deliver such new Note to said holder for delivery to such transferee.

(b) All Notes presented or surrendered for transfer shall be accompanied (if so required by Debtor) by a written instrument or instruments of assignment or transfer, duly executed by the registered holder or by its attorney duly authorized in writing. Debtor shall not be required to make a transfer or an exchange of the Note for a period of ten days preceding any installment payment date with respect thereto.

(c) No notarial act shall be necessary for the transfer or exchange of any Note pursuant to this Section 8.3, and the holder of any Note issued as provided in this Section 8.3 shall be entitled to any and all rights and privileges granted under this Agreement to the holder of the Note.

(d) In case the Note shall become mutilated or be destroyed, lost or stolen, Debtor, upon the written request of the holder thereof, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The applicant for a substituted Note shall furnish to Debtor such security or indemnity as may be required by Debtor to save it harmless from all risks in connection therewith, and the applicant shall also furnish to Debtor evidence to its satisfaction of the mutilation, destruction, loss or theft of the applicant's Note and of the ownership thereof. In case the Note which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, Debtor may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note), if the applicant for such payment shall furnish to Debtor such security or indemnity as Debtor may require to save it harmless, and shall furnish evidence to the satisfaction of Debtor of the mutilation, destruction, loss or theft of such Note and the ownership thereof. If Secured Party, or its nominee, is the owner of any such lost, stolen or destroyed Note, then the affidavit of the president, vice president, treasurer or assistant treasurer of Secured Party setting forth the fact of loss, theft or destruction and of its ownership of the Note at the time of such loss, theft or destruction shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of Secured Party to indemnify Debtor for any claims or action against it (and for its attorneys' fees) resulting from the issuance of such new Note or the reappearance of the old Note.

8.4 New Notes.

(a) Each new Note issued pursuant to Section 8.3(a) or (d) in exchange for or in substitution or in lieu of an outstanding Note shall be dated the date of such outstanding Note. Debtor shall mark on each new Note (i) the dates to which principal and interest have been paid on such outstanding Note, (ii) all payments and prepayments of principal previously made on such outstanding Note which are allocable to such new Note, and (iii) the amount of each installment payment payable on such new Note. Interest shall be deemed to have been paid on such new Note to the date on which interest shall have been paid on such outstanding Note, and all payments and prepayments of principal marked on such new Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) All new Notes issued pursuant to Section 8.3(a) or (d) in exchange for or in substitution or in lieu of the outstanding Note shall be valid obligations of Debtor evidencing the same debt as the outstanding Note and shall be entitled to the benefits and security of this Agreement to the same extent as the outstanding Note.

(c) Upon the issuance of any Note pursuant to this Agreement, Debtor shall prepare and deliver to Secured Party a copy of an amortization schedule with respect to such Note setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment. Secured Party shall deliver, or send by first class mail, postage prepaid, one copy of the applicable schedule to the holder of such Note at its address furnished to Debtor for such purpose.

8.5 Cancellation of Note. If the Note is surrendered for the purpose of payment, redemption, transfer or exchange, such Note shall be delivered to Debtor for cancellation or, if surrendered to Debtor, shall be cancelled by it, and no Note shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Agreement.

Section 9. MISCELLANEOUS.

9.1 Business Days. As used herein, the term "Business Day" means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the States of Pennsylvania or Utah are authorized or obligated to remain closed.

9.2 Successors and Assigns. Whenever any of the parties hereto is referred to such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Agreement contained by or on behalf of Debtor or by or on behalf of Secured Party shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9.3 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

9.4 Communications. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mails, certified first class, postage prepaid, addressed as follows:

If to Debtor:

First Security Bank of Utah, National Association
79 South Main Street
Salt Lake City, Utah 84111
Attn: Corporate Trust Department
Telecopier No. (801)246-5053

with a copy to:

National Railway Equipment Co.
14400 South Robey Street
Dixmoor, Illinois 60426
Attn: Mr. Lawrence Beal, President
Telecopier No.: (708) 388-2487

and

Richard F. Loritz, Esq.
1100 Ravinia Place
Orland Park, Illinois 60462
Telecopier: (708) 403/9749
Telephone: (708) 403-2555

If to Secured Party:

Address for all notices in respect of payments:

Colonial Life & Accident Insurance Company
2211 Congress Street
Portland, Maine 04122-0590
Attention: Bond Investment Accounting
Telecopier No.: (207) 770-4000
Federal Employer Identification Number: 57-0144607

Address for all other communications:

Colonial Life & Accident Insurance Company
2211 Congress Street
Portland, Maine 04122-0590
Attention: Bond Investment Division
Telecopier No.: (207) 770-4000

with a copy to:

Scott E. Pickens
Schiff Hardin & Waite
233 S. Wacker Drive
7300 Sears Tower
Chicago, Illinois 60606
Telecopier No.: (312) 258-5600

or to Debtor or Secured Party at such other address as Debtor or Secured Party may designate by notice duly given in accordance with this Section to the other party.

9.5 Governing Law. This Agreement and the Note shall be construed in accordance with and governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

9.6 Submission to Jurisdiction. Debtor and Secured Party hereby irrevocably submit to the jurisdiction of the United States District Court for the Northern District of Illinois, for the purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof brought by any party or its successors or assigns, and each of the undersigned hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Federal court, and each of the undersigned hereby agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts. Debtor hereby generally appoints as its attorney-in-fact, to receive service of process in such action, suit or proceeding CT Corporation System of Chicago, Illinois (the "Agent for Service of Process"). Debtor agrees that (without prejudice to any other lawful method of service) service of process upon such attorney-in-fact shall constitute valid service upon Debtor or its successors or assigns. Debtor also agrees to give each Secured Party thirty (30) days advance written notice regarding any change related to the Agent for Service of Process, and so long as any amount remains outstanding and unpaid hereunder or under the Note to maintain an agent for the receipt of process as aforesaid.

9.7 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

9.8 Table of Contents and Headings. The Table of Contents hereto and any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

9.9 Marking of Equipment. Debtor will cause each Item of Equipment to be kept numbered and conspicuously marked indicating that ownership in the Item of Equipment is subject to a Loan and Security Agreement filed with the Interstate Commerce Commission. Debtor will not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed by or on behalf of Debtor in all public offices where this Agreement shall have been filed. Except as aforesaid, Debtor will not allow the name of any Person to be placed on any Item of Equipment as a designation that might be interpreted as claim of ownership or lien; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee.

9.10 Participation. Notwithstanding any other provision of this Agreement, Secured Party may enter into participation agreements before, in conjunction with or after the closing hereof, with participating lenders whereby Secured Party will allocate certain percentages of this Agreement and the Note to such participating lenders. Debtor agrees that its obligations under this Agreement are undertaken for the benefit of, and as an inducement to, each of any such participants as well as Secured Party.

9.11 Transaction Expenses. Whether or not the transactions contemplated by this Agreement and the Lease are consummated, Debtor shall pay on demand all expenses in connection with such transactions, including without limitation the reasonable fees and expenses of Schiff Hardin & Waite, special Illinois counsel to Secured Party and the reasonable fees and expenses of special I.C.C. and Canadian counsel.

9.12 Release of Equipment and Termination of this Agreement. The parties hereto fully understand that after payment in full of all indebtedness hereby secured, including but not limited to all amounts due and payable under the Note, the Equipment shall be released from this Agreement and the security interests created hereby or pursuant hereto and this Agreement shall be terminated so long as no Default or Event of Default has occurred and is continuing.

9.13 WAIVER OF JURY TRIAL. BY ITS SIGNATURE BELOW WRITTEN EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER RELATED DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

9.14 Except as otherwise provided in Sections 3.2 and 5 of the Participation Agreement, it is expressly understood and agreed that this Agreement and each other Related Document is (except as otherwise expressly provided herein and therein) executed by Debtor, not in its individual capacity or personally but solely as Owner Trustee (as defined in the Trust Agreement) under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Owner Trustee, that (except as otherwise expressly provided herein and therein) each and all of the representations, undertakings and agreements herein made on the part of the Owner Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by Trust Company, or for the purpose or with the intention of binding Trust Company in its individual capacity or personally, but are made and intended for the purpose of binding only the Trust Estate (as defined in the Trust Agreement), that this Agreement is executed and delivered by Trust Company solely in the exercise of the powers expressly conferred upon Trust Company, as Owner Trustee under the Trust Agreement, that actions to be taken by the Debtor pursuant to its obligations hereunder and thereunder may, in certain instances, be taken by the Debtor only at the specific direction of NREC; that nothing herein or therein contained shall be construed as creating any liability on Trust Company, in its individual capacity or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, employee, officer or director of, Trust Company, to perform any covenant either express or implied contained herein or therein, all such liability, if any, being expressly waived; provided that nothing in this paragraph shall be construed to limit the liability of the Trust Company for its gross negligence or willful misconduct or for the representations, warranties and covenants made in its individual capacity or with respect to the handling of funds, or for liability with respect to the failure to exercise ordinary care. Nothing contained in this Agreement shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Owner Trustee thereunder.

[Rest of page intentionally left blank.]

ATTEST:

**COLONIAL LIFE & ACCIDENT
INSURANCE COMPANY**

By: *Laurence B. Carroll III*
Name: Laurence B. Carroll III
Title: Assistant Secretary

By: *Daniel S. Redmond*
Name: Daniel S. Redmond
Title: Vice President

STATE OF MAINE)
) SS.
COUNTY OF CUMBERLAND)

I, Phyllis L. Haskell, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel S. Redmond personally known to me to be the Vice President of COLONIAL LIFE & ACCIDENT INSURANCE COMPANY, a South Carolina insurance Company (the "Company") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as Vice President of the Company pursuant to authority given by the Board of Directors of the Company as its and such corporation's free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of November, 1995.

Phyllis L. Haskell
Notary Public

My Commission Expires:
PHYLLIS L. HASKELL
NOTARY PUBLIC, MAINE
COMMISSION EXPIRES SEPTEMBER 4, 1999

10-12-95 04:52PM

FROM NATIONAL RAILWAY

TO 13122585600

P002/002

EXHIBIT A

Type and General Description of Locomotive Unit, Marks and Numbers:

<u>UNIT NO.</u>	<u>TYPE</u>	<u>GENERAL DESCRIPTION</u>
CNW 4701	GP-38-2	General Purpose Locomotive
CNW 4702	GP-38-2	General Purpose Locomotive
CNW 4703	GP-38-2	General Purpose Locomotive
CNW 4704	GP-38-2	General Purpose Locomotive
CNW 4705	GP-38-2	General Purpose Locomotive
CNW 4706	GP-38-2	General Purpose Locomotive
CNW 4707	GP-38-2	General Purpose Locomotive
CNW 4708	GP-38-2	General Purpose Locomotive
CNW 4709	GP-38-2	General Purpose Locomotive
CNW 4710	GP-38-2	General Purpose Locomotive
CNW 4711	GP-38-2	General Purpose Locomotive



SECURED PROMISSORY NOTE

THIS NOTE IS A REGISTERED INSTRUMENT. NO TRANSFER OF ANY INTEREST HEREIN SHALL BE EFFECTIVE OR PERMITTED UNLESS SUCH TRANSFER COMPLIES WITH THE REGISTRATION AND OTHER PROVISIONS OF THE LOAN AND SECURITY AGREEMENT REFERRED TO BELOW.

October 1, 1995

\$4,920,280.80

Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, First Security Bank of Utah, National Association, not in its individual capacity but solely as Owner Trustee (the "Debtor") under that certain Trust Agreement dated as of November 1, 1995 between it and National Railway Equipment Co., an Illinois corporation ("NREC"), HEREBY PROMISES TO PAY to Colonial Life & Accident Insurance Company, a South Carolina insurance company or its registered assign (the "Secured Party"), the principal amount of Four Million Nine Hundred Twenty Thousand Two Hundred Eighty and 80/100 Dollars (U.S. \$4,920,280.80), together with interest hereon from and including October 1, 1995 at the rate of 6.76% per annum (computed on the basis of a 360-day year of twelve 30-day months).

The principal hereof and interest thereon shall be payable in thirty-three (33) equal consecutive quarterly installments each in the amount of One Hundred Ninety-Five Thousand Seven Hundred Forty-Five Dollars (\$195,745.00) on the first day of each January, April, July and October, commencing January 1, 1996 and ending January 1, 2004; provided, however, that the last such installment shall be in the amount necessary to repay in full the principal and interest outstanding under this Note.

The Debtor shall pay to the holder hereof interest on overdue principal and (to the extent permitted by applicable law) overdue interest and any other amounts payable hereunder which are overdue at the rate of 8.76% per annum (computed on the basis of a 360-day year of twelve 30-day months) whether as scheduled, or upon acceleration or otherwise, but not in excess of the highest rate permitted by law.

If any payment hereunder is due on a day other than a Business Day (as defined in the Loan Agreement), payments required to be made on such day shall be

made on the next succeeding Business Day, together with interest thereon to the date of payment at a rate of 6.76% per annum.

All amounts payable hereunder are payable by wire transfer in lawful money of the United States of America to Secured Party as follows: Mellon Bank, Pittsburgh, Pennsylvania, ABA #043000261 for the account of Colonial Life & Accident Insurance Company - Private Placements, Account No. 0940967, or such other account as Secured Party may from time to time designate in writing in same day funds. All payments shall be free and clear of, and without deduction for, wire or other charges.

This Secured Promissory Note is the Note referred to in, and is entitled to the benefits and subject to the terms and requirements of, the Loan Agreement dated as of November __, 1995 between the Debtor and Secured Party (as the same may be supplemented, amended or otherwise modified from time to time, the "Loan Agreement"), which Loan Agreement among other things, (i) provides for the making of the loan evidenced hereby by Secured Party to the Debtor, (ii) provides for the mandatory amortization of such loan, (iii) provides for optional prepayment by the Debtor at any time with payment of Premium (as defined in the Loan Agreement), and (iv) contains provisions for acceleration of the maturity thereof and payment of Premium upon the happening of certain stated events. Capitalized terms used herein and not defined herein shall have meanings given such terms in the Loan Agreement to the extent the same are defined therein.

The Debtor hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

This Note and the Loan Agreement are governed by and shall be construed in accordance with the laws of the State of Illinois (other than the laws of the State of Illinois governing the choice of law).

BY ITS SIGNATURE BELOW WRITTEN THE DEBTOR HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Except as otherwise provided in Sections 3.2 and 5 of the Participation Agreement, it is expressly understood and agreed that this Note and each other Related Document is (except as otherwise expressly provided herein and therein) executed by Debtor, not in its individual capacity or personally but solely as Owner Trustee (as defined in the Trust Agreement) under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Owner Trustee, that (except as otherwise expressly provided herein and therein) each and all of the representations, undertakings and agreements herein made on the part of the Owner

Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by Trust Company, or for the purpose or with the intention of binding Trust Company in its individual capacity or personally, but are made and intended for the purpose of binding only the Trust Estate (as defined in the Trust Agreement), that this Note is executed and delivered by Trust Company solely in the exercise of the powers expressly conferred upon Trust Company, as Owner Trustee under the Trust Agreement, that actions to be taken by the Debtor pursuant to its obligations hereunder and thereunder may, in certain instances, be taken by the Debtor only at the specific direction of NREC; that nothing herein or therein contained shall be construed as creating any liability on Trust Company, in its individual capacity or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, employee, officer or director of, Trust Company, to perform any covenant either express or implied contained herein or therein, all such liability, if any, being expressly waived; provided that nothing in this paragraph shall be construed to limit the liability of the Trust Company for its gross negligence or willful misconduct or for the representations, warranties and covenants made in its individual capacity or with respect to the handling of funds, or for liability with respect to the failure to exercise ordinary care. Nothing contained in this Note shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Owner Trustee thereunder.

IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed.

WITNESS:

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, not in its
individual capacity but solely as Owner
Trustee as aforesaid

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY NOT BE OFFERED, TRANSFERRED OR RESOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

CHI3:9982.3 11.02.95 13.43

November 1, 1995

Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179
Attn: Larry Anderson

Re: Lease of Railroad Equipment, dated as of November 1, 1991, between National Railway Equipment Company ("NREC"), as lessor, and Union Pacific Railroad Company, successor by merger to Chicago and North Western Transportation Company, as lessee (the "Lessee"), covering 11 GP38-2 diesel-electric locomotives (the "Lease"); Trust Agreement (the "Trust Agreement") dated as of November 1, 1995 between NREC and First Security Bank of Utah, National Association, as trustee (the "Trustee"); and Loan and Security Agreement (the "LSA") dated as of November 1, 1995 between the Trustee and Colonial Life & Accident Insurance Company (the "Note Purchaser")

Gentlemen:

Please be advised that NREC intends to assign, sell and transfer its interest in the Lease and the Units (as defined in the Lease) to the Trustee, whose address is:

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

Concurrently therewith the Trustee contemplates assigning its rights in the Lease to the Note Purchaser and granting the Note Purchaser a security interest in the Lease and the Units to secure the Note Purchaser's loan to the Trustee. It is a condition to the Note Purchaser's obligation to consummate the loan contemplated by the LSA that you enter into this letter agreement.

With respect to the foregoing, NREC, the Trustee and the Lessee hereby acknowledge and agree, in favor of the Note Purchaser, to the following:

- (a) The Lease is in full force and effect, all payments due under the Lease have been made in accordance with the Lease and no Event of Default (as defined in the Lease) exists as of the date hereof and there is no fact or circumstance which, after the giving of notice or the lapse of time, or both, would constitute an Event of Default under the Lease. There have been no prepayments of rent due under the Lease after October 1, 1995. The remaining schedule of rent payments due under the Lease is set forth on annexed Exhibit A. The Lease has not been modified, altered or amended, and a true, correct and complete copy of the Lease as in effect on the date hereof is attached as Exhibit B hereto.
- (b) Consummation of the transactions referenced above shall not constitute a waiver of (i) any Event of Default which may now or hereafter exist under the Lease

of (ii) any obligation or undertaking of Lessee or NREC or any right of the Lessee or NREC under the Lease.

(c) All of the terms and conditions of the Lease are hereby ratified and confirmed by Lessee, NREC and the Trustee and shall remain in full force and effect.

(d) The Units currently subject to the Lease are accurately described on Exhibit A attached hereto. The identification marks set forth on Exhibit A hereto are a true and correct list of the road numbers which are assigned to all of the Units.

(e) Lessee consents to NREC's transfer of lessor's rights in the Lease and the Units to the Trustee, and the transfer of the same to the Note Purchaser. Lessee, Trustee and NREC agree that the Lease shall be binding upon Lessee and the Trustee and their respective successors and assigns and inure to the benefit of each of Lessee, NREC, Trustee and the Note Purchaser and their respective successors and assigns. All rental shall be paid under the Lease to the Note Purchaser without setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims against NREC, the Trustee or the Note Purchaser. The Lessee's obligations under the Lease shall be absolute and unconditional under any and all circumstances as provided in Section 1 of the Lease. Rental payable under the Lease to the Trustee shall be payable in accordance with the Lease as follows: First Security Bank of Utah, National Association, Salt Lake City, Utah, ABA #124000012 for the account of Corporate Trust Department Account No. 0510922115, or as the Note Purchaser may otherwise direct the Lessee from time to time.

(f) All of the Units subject to the Lease, currently exist and are in good operating order, repair and condition, subject to reasonable wear and tear as set forth in the Lease, and are being maintained in accordance with the terms of the Lease. No Casualty Occurrence has occurred with respect to any of the Units subject to the Lease and there is no fact or circumstance which, after the giving of notice or the lapse of time, or both, would constitute a Casualty Occurrence under the Lease.

(g) Chicago and North Western Transportation Company changed its name to Chicago and North Western Railway Company effective May 6, 1994 and has merged with and into Union Pacific Railroad Company effective October 1, 1995, the survivor of such merger. The Lessee is the lessee under the Lease and the current owner of the entire Lessee's interest in, to and under the Lease, and shall make no transfer thereof without the prior written consent of the Note Purchaser, except as otherwise permitted under said Lease. Notwithstanding the foregoing, Lessee shall be permitted to assign its rights under the Lease to any of Lessee's railroad transportation affiliates which are "Class 1" railroads provided that Lessee shall remain primarily obligated to perform all of the lessee's obligations under the Lease.

(h) Lessee and NREC have no notice of any sale, assignment, hypothecation or pledge of the Trustee's interest in the Units or under the Lease or the rents due thereunder.

(i) Upon closing of the proposed Assignment, sell and transfer to Trustee, the Note Purchaser shall be an "Indemnified Person" (as such term is defined in the Lease) and will become an intended beneficiary of each of the indemnities set forth in the Lease.

(j) Lessee will give the Note Purchaser a copy of any notice which Lessee gives under the Lease. Lessee will not amend, modify, supplement or change the Lease or consent to the additions, deletions or substitutions of Units to or from the Lease, without the prior written consent of the Note Purchaser, except that Lessee shall be permitted to substitute Units in accordance with Section 7 of the Lease. Lessee acknowledges that neither NREC nor the Trustee can consent to any matter under the Lease, or waive any breach of Lessee's obligations thereunder, without the prior written consent of the Note Purchaser. The Lessee will send the Note Purchaser the Lessee's parent's financial statements, annual report and proxy statements that Lessee's parent furnishes its shareholders, and all SEC filings made by Lessee's parent, (e.g., filings on form 10-K, 10-Q and 8-K) made under the Securities Exchange Act of 1934 to the following address: Colonial Life & Accident Insurance Company, 2211 Congress Street, Portland, Maine 04122-0590, Attention: Bond Investment Accounting.

(k) Insurance coverage shall be in accordance with the memorandum signed by Robin Redick, Risk Manager of Union Pacific Railroad Company, a copy of which is attached hereto as Exhibit C and by this reference hereby made a part hereof.

(l) The Lease is amended in each of the following respects:

1. Any Unit of Equipment substituted pursuant to Section 7 of the Lease shall be free and clear of all liens, charges, security interests and encumbrances other than subleases and Permitted Liens permitted by Section 12 of the Lease.
2. The "Overdue Rate" as such term is used in the Lease shall mean 8.76% per annum (calculated on the basis of twelve (12) months of thirty (30) days each) to the extent permitted by law.
3. For the purposes of the Lease, the term "Original Fair Market Value" shall mean \$600,000 for each locomotive. [The Casualty Value Schedule in effect on the date hereof will remain unchanged.]
4. The references in Section 13 of the Lease to "Original Fair Market Value" and corrected to read "Fair Market Purchase Price."

Union Pacific Railroad Company
November 1, 1995
Page 4

5. The lessor under the Lease shall endeavor to send the Lessee an invoice as to quarterly rent due under the Lease at least ten (10) days and not more than forty (40) days before the date the same becomes due in accordance with the terms of the Lease; such invoice shall be sent to the following address: Union Pacific Railroad Company, Room 200, 1416 Dodge Street, Omaha, Nebraska 68179, Attention: Manager of Leasing.

(m) This letter may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were on the same instrument. The delivery of an executed counterpart of a signature page to this letter by telecopier shall be effective as delivery of a manually executed counterpart of this letter.

Union Pacific Railroad Company
November 1, 1995
Page 5

If you are in agreement with the foregoing, please execute this letter in the space provided for that purpose below whereupon this letter shall become your agreement as set forth herein.

Very truly yours,
NATIONAL RAILWAY EQUIPMENT COMPANY

By: _____
Title:

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, AS TRUSTEE

By: _____
Title:

COLONIAL LIFE & ACCIDENT INSURANCE
COMPANY

By: _____
Title:

ACKNOWLEDGED AND AGREED TO:

UNION PACIFIC RAILROAD
COMPANY

By: _____

Title: _____

Date: November __, 1995