

Stroock & Stroock & Lavan

RECORDATION #3 17932 FILED 1425

*Seven Hanover Square
New York, New York 10004-2504*

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INTERSTATE COMMERCE COMMISSION

RECORDATION #3 17932 212 806 4400
FILED 1425 Fax: 212 806 6006
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Direct Dial:

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INTERSTATE COMMERCE COMMISSION

September 1, 1992

RECORDATION #3 17932 FILED 1425

SEP 1 1992 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

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MOTOR VEHICLE UNIT

Mr. Sidney L. Strickland
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three fully executed and acknowledged copies (one original and two notarized photocopies) of (1) a Lease Agreement, dated August 21, 1992 (the "Head Lease"), between I/S Scansejl, a Danish general partnership (the "Lessor"), and Higgins Leasing Limited, an English company (the "Lessee"); (2) a Sublease Agreement, dated August 21, 1992 (the "Sublease"), between the Lessee, as sublessor, and Triborough Bridge and Tunnel Authority, a public benefit corporation organized under the law of the State of New York (the "Sublessee"); and (3) a Security Agreement, dated as of August 21, 1992 (the "Secondary Security Agreement"), between the Lessee, as grantor, and the Sublessee, as secured party.

The Head Lease, Sublease, and Secondary Security Agreement are primary documents as defined in the Interstate Commerce Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

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

Lessor (under the Lease):

I/S Scansejl, a Danish general partnership
c/o Rowe & Maw
20 Black Friars Lane
London EC4V 6HD
England
Attention: The Chairman

Washington, D.C. 20036-4652
1150 Seventeenth Street N.W.
202 452 9250

Los Angeles, CA 90067-3086
2029 Century Park East
310 556 5800

Miami, FL 33131-2385
200 South Biscayne Boulevard
305 358 9900

H-1088 Budapest, Hungary
Rákóczi út 1-3
361 251 9520

(Handwritten signature)
Katherine G. Fraust

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Lessee (under the Head Lease), Lessor (under the Sublease)
and Grantor (under the Secondary Security Agreement):

Higgins Leasing Limited

67 Hope Park
Bromley, Kent
BR 1 3RG
England
Attention: Company Secretary

Sublessee (under the Sublease) and Secured Party (under the
Secondary Security Agreement):

Triborough Bridge and Tunnel Authority, a public benefit
corporation organized under the laws of the State
of New York

Randall's Island
New York, NY 10035
Attention: Executive Director/Chief Financial Officer

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

Two (2) R-68 subway railcars, manufactured by
Westinghouse-Amrail Company (bearing identification
numbers 2885 and 2890).

Also enclosed is a check in the amount of \$48.00 payable to the
order of the Interstate Commerce Commission covering the required
recordation fee of \$16.00 for each of the three enclosed documents.
Please return the original and any extra copies not needed by the
Commission for recordation to: Richard H. Kronthal, Esq., Stroock
& Stroock & Lavan, 7 Hanover Square, New York, NY 10004.

A short summary of the documents to appear in the index follows:

(1) Head Lease Agreement, dated August 21, 1992, between I/S
Scansejl, a Danish general partnership (the "Lessor"), and Higgins
Leasing Limited, an English company (the "Lessee"), with respect to
two (2) R-68 subway railcars, manufactured by Westinghouse-Amrail
Company (bearing identification numbers 2885 and 2890).

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(2) Sublease Agreement, dated August 21, 1992, between Higgins Leasing Limited, an English company ("Lessor"), and Triborough Bridge and Tunnel Authority, a public benefit corporation organized under the law of the State of New York ("Lessee"), with respect to two (2) R-68 subway railcars, manufactured by Westinghouse-Amrail Company (bearing identification numbers 2885 and 2890).

(3) Secondary Security Agreement, dated as of August 21, 1992, between Higgins Leasing Limited, an English company ("Grantor"), and Triborough Bridge and Tunnel Authority, a public benefit corporation organized under the law of the State of New York, as secured party, covering the Grantor's interest (i) as lessee in a lease agreement, dated as of August 21, 1992, between Grantor and I/S Scansejl, a Danish general partnership ("Scansejl"); (ii) as secured party in a security agreement, dated as of August 21, 1992, between Grantor and Scansejl; (iii) upon acquiring title following the exercise of a purchase option or otherwise, in two (2) R-68 subway railcars, manufactured by Westinghouse-Amrail Company (bearing identification numbers 2885 and 2890), including parts of such equipment and (iv) in the proceeds of clauses (i) to (iii).

Very truly yours,


Andrew E. Blustein

AEB/mv
Enclosures

17932 A
REGISTRATION NO. FILED 1425

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INTERSTATE COMMERCE COMMISSION

SUBLEASE AGREEMENT

Dated August 21, 1992

HIGGINS LEASING LIMITED, Lessor

-and-

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, Lessee

THIS SUBLEASE AGREEMENT is made on the 21 day of August, 1992

BETWEEN

- (1) HIGGINS LEASING LIMITED (registered number 2741022), a company, established under the laws of England ("Lessor"); and
- (2) TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, a public benefit corporation organised under the laws of the State of New York ("Lessee").

WHEREAS

This Agreement sets out the terms and conditions on which the Lessor will sublease to the Lessee the Equipment hereinafter referred to.

NOW IT IS HEREBY AGREED

1. DEFINITIONS

- 1.01 In this Agreement, except where the context otherwise requires the following expressions shall have the following meanings:

"Affiliate" shall have the meaning given to it in the Loan Agreement;

"Bank" means Barclays Bank PLC acting through any of its branches or offices;

"Bank Insolvency Event" means an order, judgment or decree of any competent court, tribunal or governmental authority of England is made in respect of the Bank or any Affiliate of the Bank which is a party to Operative

Documents (a "Relevant Affiliate") pursuant to which the Bank or a Relevant Affiliate is wound-up, dissolved or declared bankrupt or an administration order in respect of the Bank or a Relevant Affiliate is made;

"Business Day" means any day (not being a Saturday, Sunday or holiday scheduled by law) on which banks and financial markets are open for business in London and New York City;

"Commencement" means the date of this Agreement;

"Danish Taxes" means any Taxes imposed, withheld, levied or assessed by any national or local government or taxing authority of or in Denmark or any national or local or taxing authority thereof or any political subdivision thereof;

"Default Rate" means the rate of nine per cent (9%) per annum;

"Dollars" and "\$" means lawful money of the United States of America;

"Equipment" means and includes each and every railcar or other equipment purchased, or to be purchased, by the Lessor pursuant to, and as specified in, the Sale Agreement (including each or any part thereof) and all replacements and renewals of such equipment (including but not limited to renewals pursuant to Clause 12.05(b)) and component parts thereof and all additions and accessories to such equipment which form part thereof pursuant to Clause 10.03;

"Event of Termination" shall have the same meaning as in the Loan Agreement;

"Head Lease Agreement" means the lease agreement entered into between the Head Lessor (as Lessor) and the Lessor (as Lessee) in respect of the Equipment;

"Head Lessor" means I/S ScanSejl a general partnership organised and existing under the laws of Denmark;

"Lease Period" means the period beginning on Commencement and ending on the Termination Date;

"Lessor Lien" means any Lien on any item of Equipment to secure liabilities of the Lessor which do not relate to any liabilities in connection with the transactions contemplated by any of the Operative Documents;

"Lien" means any mortgage, pledge, lien, charge, encumbrance, lease or security interest of any nature whatsoever;

"Loan" shall have the same meaning as in the Loan Agreement;

"Loan Agreement" means an agreement of the same date as this Agreement and made between (1) the Head Lessor, (2) the Chairman (as defined in the Loan Agreement) and (3) the Bank;

"Losses" means any and all losses, costs, charges, expenses, fees, payments, liabilities, penalties, fines, judgments, damages or other sanctions of a monetary nature other than Taxes;

"Manufacturer" shall mean Westinghouse Amrail Company or any other manufacturer of the Equipment as the case may be;

"net proceeds of sale" has the meaning given to it in Clause 14.01;

"NYCTA" means the New York City Transit Authority a public benefit corporation organised under the laws of the State of New York;

"NYCTA Indemnity Letter" means the letter of indemnity of the same date as this Agreement from NYCTA to the Lessee;

"Operative Documents" shall have the same meaning as in the Loan Agreement;

"Overdue Rate" means such annual rate as is conclusively certified by the Bank to be two per cent (2%) per annum above the rate quoted to the Bank by prime banks in the London Interbank Market at or about 11.00 am. (London time) on the relevant date for deposits of Dollars for 3 months and in amounts (in the judgment of the Lessor) comparable with amounts upon which interest shall for the time being be payable (or if the Bank shall determine that, by reason of circumstances affecting the London Interbank Market generally, adequate and reasonable means do not or will not exist for ascertaining such rate, the rate which represents the aggregate of two per cent (2%) and the cost to the Lessor of funding any amount due on which interest is payable as aforesaid);

"Payment Date" means, subject to Clause 5.02, each of the dates specified for payment of rent as set forth in Appendix A hereto;

"Permitted Lessor Liens" means (i) any Lessor Lien imposed on the general assets of the Lessor under the law of its incorporation so long as the existence or enforcement thereof does not and would not adversely affect the Lessee's interest in the Equipment or impair the Lessor's ability to transfer the Equipment in accordance with the Transfer Protocol if required to do

so and (ii) Lessor Liens relating to obligations that the Lessee is obligated to discharge under any Operative Document;

"Sale Agreement" means the sale and purchase agreement of the same date as this Agreement and made between
(1) Neutron Equipment Leasing Limited as vendor and
(2) the Head Lessor as purchaser;;

"Security Assignment" means the assignment to be entered into on or about the date of this Agreement by which, amongst other things, the Lessor assigns in favour of the Bank certain monies which are payable to the Lessor pursuant to this Agreement;

"Termination Date" means the dates on which the leasing of all or part of the Equipment terminates pursuant to the provisions of this Agreement;

"Termination Value A" means as at any date the amount in Dollars calculated in accordance with the provisions of column (ii) in Appendix C;

"Termination Value B" means as at any date the amount in Dollars calculated in accordance with the provisions of column (iii) in Appendix C;

"Termination Value C" means as at any date the amount in Dollars calculated in accordance with the provisions of column (iv) in Appendix C;

"Tax" shall include any and all present or future tax, levy, impost, duty or other charge of a similar nature and whenever created or imposed and of whatever jurisdiction including but not limited to, income tax, corporation tax, value added tax, customs and other import or export duty or excise duty payable to any revenue, customs or other authority having power to levy

Tax and including all fines and penalties payable in connection with any failure to pay or any delay in paying any of the same;

"Total Cost" means the cost of the Equipment to the Lessor as specified in Appendix F;

"Total Loss" means in relation to all of the Equipment or any railcar forming part of the Equipment:

- (i) actual or constructive or compromised or agreed or arranged total loss of all or, as the case may be, the relevant part of the Equipment, including any such total loss as may arise during a requisition for hire; or
- (ii) destruction of or damage beyond repair to all or, as the case may be, the relevant part of the Equipment or the permanent rendering of all or, as the case may be, the relevant part of the Equipment unfit for normal use for any reason whatsoever; or
- (iii) requisition for title or any compulsory acquisition whatsoever of all or, as the case may be, the relevant part of the Equipment (otherwise than by requisition for hire) by any governmental or other competent authority or by any person acting or purporting to act by authority of the same unless all or, as the case may be, the relevant part of the Equipment is released therefrom and returned to the possession of the Lessee, and ownership of the Lessor, within ninety days of the occurrence thereof; or
- (iv) any hijacking, theft, confiscation, forfeiture, seizure, condemnation, capture, restraint or disappearance of all or, as the case may be, the

relevant part of the Equipment unless that item of Equipment is released therefrom, and returned to the possession of the Lessee, and ownership of the Lessor, within ninety days of the occurrence thereof;

"Total Loss Payment Date" means the date falling nine months after the date of the occurrence of a Total Loss;

"Transfer Protocol" means a transfer of the interest of any person in any item of Equipment on the following terms:

- (i) the transferor shall make no (and may expressly disclaim any) representation of any kind in respect of such item of Equipment as to any matter whatsoever, including:
 - (A) title (except that the transferor shall warrant that it shall convey whatever title was conveyed pursuant to the relevant Sale Agreement free and clear of any Lessor Liens other than Permitted Lessor Liens);
 - (B) the condition, design, quality or capacity of such item of Equipment;
 - (C) the absence of obligations based on strict liability in tort; or
 - (D) the merchantability of such item of Equipment; and
- (ii) the transferor shall assign, transfer and convey to its transferee all rights and remedies that the transferor may have, and is permitted to assign, transfer and convey, in relation to such

item of Equipment in respect of any warranty, express or implied, as to title, materials, workmanship, design, performance or patent infringement and all other rights against the Manufacturer that have been assigned to the Lessor under the relevant Sale Agreement for such item of Equipment and that the transferor may have;

"UK Taxes" means any Taxes imposed, withheld, levied or assessed by any national or local government or taxing authority of the UK or any political subdivision thereof;

"US Taxes" means any Taxes imposed, withheld, levied or assessed by any national, state or local government or taxing authority of or in the US or any political subdivision thereof.

1.02 References in this Agreement to a Clause or an Appendix are unless otherwise stated references to a Clause or Appendix to this Agreement. Clause headings are inserted in this Agreement for convenience of reference only and shall be ignored in its construction. The Appendices form part of this Agreement. References to this Agreement or any other document herein shall be construed as references to this Agreement or such other document as amended or varied from time to time. References in this Agreement to "the Lessee", "the Lessor" and any other person includes their respective successors in title and permitted assigns and includes its permitted transferees. References in this Agreement to "UK" or "the United Kingdom" are to the United Kingdom of Great Britain and Northern Ireland; to "Denmark" are to the Kingdom of Denmark, and to "US" or "the United States" are to the United States of America and any political subdivision of the same.

2. REPRESENTATIONS AND WARRANTIES

2.01 In order to induce the Lessor to enter into this Agreement and to lease the Equipment to the Lessee under this Agreement, the Lessee represents and warrants to the Lessor as at the date of this Agreement that:

- (a) the Lessee has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under this Agreement and has complied with all statutory and other requirements relative to such business;
- (b) the Lessee has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken by the Lessee to authorize the execution, delivery and performance of this Agreement;
- (c) all necessary governmental or other official consents, authorities and licences for the Lessee to execute, deliver and perform its obligations under this Agreement have been taken or obtained and no further governmental or other official consents, authorizations or licences will be necessary for the performance by the Lessee of its obligations under this Agreement;
- (d) assuming that all the obligations of the Lessor under this Agreement are legal, valid and binding, this Agreement constitutes the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with its terms as the same may be limited by any laws from time to time relating to bankruptcy, insolvency, administration, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of debt;

- (e) the execution and delivery by the Lessee of, and the performance of the provisions of, this Agreement does not, and will not at any time during the Lease Period, contravene (i) any applicable law or regulation then existing or (ii) any contractual restriction binding on the Lessee the effect of a breach of which will have a material effect on the Lessee's ability to comply with the terms of this Agreement or (iii) any provision of the constitution of the Lessee;
- (f) no action, suit or proceeding is pending or threatened against the Lessee or any of its property or assets before any court, board of arbitration or administrative agency which, if adversely determined, could or might result in a material adverse change in the ability of the Lessee to perform its obligations under this Agreement;
- (g) no such event as is described in Clause 11.02, nor any event which with the giving of notice or lapse of time, or both, would constitute such an event, has occurred and is continuing; and
- (h) the choice by the Lessee of English law to govern this Agreement and the submission by the Lessee to the jurisdiction of the Courts of England are valid and binding.

2.02 In order to induce the Lessee to enter into this Agreement and to lease the Equipment from the Lessor under this Agreement the Lessor represents and warrants to the Lessee as at the date of this Agreement that:

- (a) the Lessor is and will remain a resident of England and Wales, or an entity organized in

England and Wales or under the law of England and Wales;

- (b) the Lessor is not a bank which takes deposits or makes loans;
- (c) the Lessor is a company established under the laws of England and Wales, has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Operative Documents and has complied with all statutory and other requirements relative to such business;
- (d) the Lessor has full power to execute, deliver and perform its obligations under the Operative Documents and that all necessary action has been taken by the Lessor to authorize the execution, delivery and performance of the Operative Documents;
- (e) all necessary governmental or other official consents, authorities and licences for the Lessor to execute, deliver and perform its obligations under the Operative Documents have been taken or obtained and, as of the date of the Operative Documents, no further governmental or other official consents, authorizations or licences are necessary for the performance by the Lessor of its obligations under the Operative Documents;
- (f) assuming that all the obligations of the other parties to the Operative Documents are legal, valid and binding, the Operative Documents constitute the legal, valid and binding obligations of the Lessor enforceable against the Lessor in accordance with their respective terms as the same may be limited by any laws from time

to time relating to bankruptcy, insolvency, administration, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of debt;

- (g) the execution and delivery by the Lessor of, and the performance of the provisions of, the Operative Documents does not, and will not at any time during the Lease Period, contravene (i) any applicable law or regulation existing at the date of this Agreement or (ii) any contractual restriction binding on the Lessor the effect of a breach of which will have a material effect on the Lessor's ability to comply with the terms of the Operative Documents or (iii) any provision of the constitution of the Lessor;
- (h) no action, suit or proceeding is pending or threatened against the Lessor or any of its property or assets before any court, board of arbitration or administrative agency which, if adversely determined, could or might result in a material adverse change in the ability of the Lessor to perform its obligations under the Operative Documents;
- (i) the Lessor will not conduct any business or activity other than that of owner of the Equipment, except for granting leases of personal property; and
- (j) there are no Lessor Liens, and the execution and delivery of this Agreement by the Lessor will not create any Lessor Lien, in respect of any item of Equipment other than Permitted Lessor Liens.

3. AGREEMENT TO LEASE

- 3.01 At Commencement the Lessor shall lease the Equipment to the Lessee, and the Lessee shall take on lease from the Lessor (and shall have no right to reject) the Equipment, on an "as is where is" basis (without prejudice to claims by either the Lessor or the Lessee against the Manufacturer or any third party) upon and subject to the terms and conditions contained in this Agreement. At Commencement, the Lessee shall sign a certificate of delivery and acceptance in the form set out in Appendix D.
- 3.02 The leasing of the Equipment under this Agreement shall commence on Commencement and shall terminate on the Termination Date in accordance with the provisions of this Agreement.
- 3.03 The obligation of the Lessor to lease the Equipment to the Lessee is subject to and conditional upon (a) no such event as is described in Clause 11.02 having occurred, and no other event having occurred and being continuing unremedied which, with the giving of notice and/or lapse of time would, if not remedied, constitute such an event and (b) the representations and warranties contained in Clause 2.01 being true and correct and (c) the Lessee delivering to the Lessor each of the documents or other items specified in Appendix B in form and substance satisfactory to the Lessor, provided always that the requirements of this Clause 3.03, which are for the benefit of the Lessor, may be waived by the Lessor in its discretion in whole or in part and with or without conditions.
- 3.04 The obligations of the Lessee to take on lease the Equipment is subject to and conditional upon (a) no such event as is described in Clause 11.04 having occurred, and no other event having occurred and being continuing unremedied which, with the giving of notice and/or lapse

of time, would if not remedied constitute such an event and (b) the representations and warranties contained in Clause 2.02 being true and correct and (c) the Lessor delivering to the Lessee each of the documents specified in Appendix E in form and substance satisfactory to the Lessee, provided always that the requirements of this Clause 3.04, which are for the benefit of the Lessee, may be waived by the Lessee in its discretion in whole or in part and with or without conditions.

4. RENT

- 4.01 The Lessee shall pay rent to the Lessor for the Equipment in arrears by instalments on the Payment Dates as set forth in Appendix A.

5. PAYMENTS

- 5.01 All payments to be made by or on behalf of the Lessee under this Agreement in respect of rent or Termination Value A, under Clause 5.03(a) or Clause 5.04 or with reference to any such payment as aforesaid shall be irrevocably made in Dollars for value not later than the close of business (local time in the place of payment) on the due date for payment thereof to the Loan Account (as such term is defined in the Loan Agreement). All other payments to be made by or on behalf of the Lessee under this Agreement (including, but without limitation, Termination Value B and Termination Value C) shall be irrevocably made in Dollars for value not later than the close of business (local time in the place of payment) on the due date for payment thereof to such account of the Lessor in London as the Lessor shall from time to time notify the Lessee. Time of payment of rent and other payments under this Agreement shall be of the essence of this Agreement.

5.02 If any payment falls due under this Agreement on a day which is not a Business Day, such payment shall be made on the immediately preceding Business Day but the amount of the relevant payment shall not be adjusted.

5.03 (a) If the Lessee fails to pay on the due date for payment thereof any rent falling due under this Agreement or Termination Value A or any other amount payable or calculated with reference to any such payments the Lessee shall, without prejudice to any other rights which the Lessor may have as a result of such failure, pay interest at the Default Rate on such rent or Termination Value A or other amount from the due date for payment thereof until actual payment thereof (both before and after any relevant judgment) and such interest shall be payable on demand.

(b) If the Lessee fails to pay on the due date for payment thereof Termination Value B, Termination Value C or any other payment falling due under this Agreement other than rent or Termination Value A, the Lessee shall, without prejudice to any other rights which the Lessor may have as a result of such failure, pay interest at the Overdue Rate on such Termination Value B, Termination Value C or other payment from the due date for payment thereof until actual payment thereof (both before and after any relevant judgment) and such interest shall be payable on demand.

5.04 All payments to be made under this Agreement (whether of rent, interest or otherwise) shall be made by the Lessee free from any set-off, claim, counterclaim or demand against the Lessor and free and clear of any deduction or withholding unless the Lessee is required by the laws of

the US to make any such deduction or withholding in which event the Lessee shall pay to the Lessor all such additional amounts as shall be necessary in order that the net amount received by the Lessor after all such deductions or withholdings shall be not less than such amount as would have been received by the Lessor in the absence of the relevant requirement to make such deduction or withholding, except that the Lessee shall not be required to pay an additional amount to the Lessor with respect to any Taxes excluded from indemnification pursuant to Clause 7.03(c) to (k) inclusive. The Lessee will promptly deliver to the Lessor any receipts, certificates or other proof evidencing the amounts paid or payable by it in respect of any such deduction or withholding as aforesaid. Payment of additional amounts hereunder will not preclude and shall be without prejudice to, claims by the Lessee against any third party or the Manufacturer or the right to maintain an independent action.

- 5.05 All interest payable pursuant to this Agreement shall be calculated on the basis of a 360 day year and the actual number of days elapsed.
- 5.06 If any obligations of the Lessee to make payment to the Lessor under this Agreement are settled by the release of funds held by the Bank or in connection with any payment pursuant to the acknowledgement to the Security Assignment (signed on behalf of the Lessee), the parties agree that such settlement shall satisfy the relevant payment obligations of the Lessee under this Agreement.
- 5.07 Any payment made by the Lessee pursuant to the provisions of any Security Assignment shall satisfy the corresponding payment obligations of the Lessee to the Lessor under this Agreement.

6. DELIVERY, INSTALLATION AND ACCEPTANCE OF THE EQUIPMENT

6.01 Acceptance of the Equipment by the Lessor under the Sale Agreement (and as evidenced by the Lessor executing any relevant certificate required under the Head Lease Agreement) shall be conclusive evidence (as between the Lessor and the Lessee, but without prejudice to claims by the Lessor or the Lessee against any third party or the Manufacturer) that the Lessee on Commencement has accepted delivery of the Equipment for the purposes of this Agreement and that the Lessee has examined the Equipment and found it to be complete, in good order and condition, fit for the purpose for which the Lessee requires it and in every way satisfactory to the Lessee.

6.02 (a) The Lessor hereby:

(i) assigns to the Lessee for the Lease Period with respect to each item of Equipment any and all warranties and other such rights against the Manufacturer or any third party that have been assigned to the Lessor under the Head Lease Agreement for such item of Equipment to the extent that the same are assignable and agrees to use its reasonable efforts at the Lessee's sole expense to procure any and all necessary consents so to assign; and

(ii) undertakes forthwith on becoming aware of the same to assign any additional warranties or other such rights or any rights similar thereto or otherwise pertaining to such item of Equipment or the operation, maintenance or service thereof, that may arise during the Lease

Period or otherwise are currently not known or considered or covered by this Agreement and that the Lessor has the right to assign.

Any amounts received by the Lessee as payment under any warranty so assigned may be applied as deemed necessary and desirable by the Lessee to repair or maintain such item of Equipment (including, in each case, the Lessee's direct labour costs and general overheads relating to such repair and maintenance).

To the extent that any such rights of the Lessor in respect of any item of Equipment may not be assigned to the Lessee or otherwise made available to the Lessee, the Lessor shall on request of the Lessee (but subject to the Lessee first ensuring that the Lessor is indemnified and secured to its reasonable satisfaction against all Losses) appoint the Lessee as the Lessor's true and lawful attorney-in-fact during the Lease Period for such item of Equipment with full power and authority (in the name of the Lessor or otherwise) to exercise any and all such rights solely for the benefit of the Lessee and to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due under such rights, to elect remedies thereunder, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings in connection therewith which the Lessee may deem necessary or advisable.

The Lessor shall, at the Lessee's sole expense, execute all such documents and do all such acts

and things as the Lessee shall reasonably require in order to establish or perfect any assignment of warranty rights as set forth in this Clause 6.02(a).

(b) The Lessor will not by its own voluntary act interfere with the Lessee's quiet enjoyment of the Equipment save in accordance with the terms and conditions of this Agreement.

6.03 (a) Save as provided in Clause 6.02 the Lessee acknowledges and agrees that the Lessor does not let or supply the Equipment with or subject to any term, condition, representation or warranty whatsoever (whether express or implied or whether statutory, collateral hereto or otherwise) relating to the state, quality, description, capacity, design, construction, operation, use or performance of the Equipment or to the merchantability, repair or fitness for any purpose of the Equipment or otherwise whatsoever. All such terms, conditions, representations and warranties are hereby expressly excluded and extinguished to the extent permitted by law.

(b) The Lessee shall not be entitled to any remission of rent in respect of any period during which the Equipment is unserviceable, and the Lessor shall not be liable to provide the Lessee with any replacement Equipment during any such period or at all, or following any termination of the leasing of the Equipment under this Agreement.

(c) The Lessor shall have no liability whatsoever to the Lessee (including liability in tort and in contract, loss of profit or for damage of any kind howsoever caused or arising) for any defect

in, whether in relation to quality or otherwise, failure of, or unsuitability for any purpose of the Equipment or arising out of or in connection with the Equipment or the manufacture, assembly, possession, use, performance, transportation or removal of the Equipment or arising out of or in connection with the purchase of the Equipment or the leasing of the Equipment under this Agreement including delay in delivery whether the same be due to any act, omission, negligence or wilful default of the Lessor or its directors, officers, employees or agents, or to faulty design, workmanship or materials or to any other cause whatsoever (unless, and then to the extent only that, such liability cannot be excluded by applicable law). The provisions of this sub-clause will not preclude and shall be without prejudice to, claims by the Lessee against any third party or the Manufacturer.

7. INDEMNITY

7.01 The Lessee hereby agrees that it will fully and effectually indemnify the Lessor and any member thereof and any of their respective directors, officers, employees and agents (save in the case of their negligence or wilful default), to the extent that it is able to do so under its constitutive documents, against all actions, liabilities, claims, demands, proceedings and judgments brought or established against any of them by the Lessee or any third party or parties or by any employee, servant, agent or subcontractor of the Lessee or the Lessor or any third party or parties or their respective dependents, and against all Losses arising, directly or indirectly, in connection with the Equipment including, but not limited to, any of the foregoing which arise by reason of or in connection with:

- (a) the acquisition, ownership, hiring, use, supply, operation, management, control, possession, installation, performance, maintenance, repair, removal or disposal of the Equipment; or
- (b) any defect in or failure or faulty design of the Equipment; or
- (c) any product or strict liability relating to the Equipment; or
- (d) any infringement or alleged infringement of industrial property, copyright, intellectual property or other rights; or
- (e) any failure to obtain, or breach of, any such permission, licence or permit as is referred to in Clause 10.05;

but the indemnity contained in this Clause 7.01 shall not apply to the liability of the Lessor to pay Taxes on or in respect of the Equipment (to which liability Clause 7.02 shall apply).

7.02 The Lessee agrees that it will fully and effectively indemnify the Lessor against any and all Taxes (except those Taxes which are excluded from this indemnification by Clause 7.03) which the Lessor may be or become liable to pay on or in respect of the Equipment or the premises at which the Equipment is located including but not limited to Taxes levied or imposed on or by reason of the purchase, ownership or disposal of the Equipment or the leasing thereof under this Agreement.

7.03 The following Taxes shall not be indemnifiable by Lessee pursuant to this Clause 7:

- (a) Danish Taxes;

- (b) UK Taxes;
- (c) Taxes imposed with respect to any period after the Equipment is no longer leased under this Agreement other than Taxes imposed in connection with any transaction or event that is contemplated by the Operative Documents;
- (d) Taxes that result from, or that would not be imposed in the absence of, the recklessness or wilful misconduct of the Lessor;
- (e) Taxes that result from, or that would not be imposed in the absence of, the failure of the Lessor or any member of the Lessor to claim an exemption from tax or withholding of tax, if upon reasonable request by the Lessee, the Lessor fails to furnish the representations, forms, and other documentation necessary to claim such exemption;
- (f) Taxes that would not have been imposed had the only transactions entered into by the Lessor been the transactions contemplated by the Operative Documents;
- (g) United States federal income taxes that are imposed as a result of (i) the income or the earnings and profits from the transactions contemplated by the Operative Documents being treated as effectively connected with the conduct of a trade or business of the Lessor or Head Lessor within the United States within the meaning of Sections 882 and 884 of the United States Internal Revenue Code, or (ii) the Lessor or Head Lessor having a "permanent establishment" in the United States in respect of the transactions contemplated by the Operative

Documents, as such term is defined in either the Convention Between the United States and Denmark Relating to Taxes on Incomes or the United States Kingdom Income Tax Convention; provided that (1) the execution and delivery of the Operative Documents, (2) the performance of the transactions contemplated by the Operative Documents in accordance with their respective terms and (3) any office or other fixed place of business of the Lessee shall be disregarded in determining whether the Lessor or Head Lessor is engaged in a trade or business within the United States or has a permanent establishment in the United States;

- (h) Taxes imposed on or with respect to any transfer or other disposition of the Equipment or any part thereof or interest therein (other than a transfer that occurs as a result of a termination pursuant to Clause 11) by the Lessor or Head Lessor or otherwise pursuant to a provision in any Operative Document;

- (i) (A) United States withholding taxes that would not have been imposed if the Head Lessor (i) was a general partnership of Denmark and (ii) did not have and was not deemed to have a "permanent establishment" in the United States to which the profits in respect of the Operative Documents are allocable, as such terms are defined in the Convention Between the United States and Denmark Relating to Taxes on Income, and (B) United States withholding taxes that would not have been imposed if the Lessor (i) was a company of the United Kingdom and (ii) did not have and was not deemed to have a "permanent establishment" in the United States to which the profits in respect of the Operative Documents are allocable, as such

terms are defined in the Convention Between the United States - United Kingdom Income Tax Convention; provided that for purposes of this Clause 7.03(i) there shall not be taken into account (1) the execution and delivery of the Operative Documents, (2) the performance of the transactions contemplated by the Operative Documents in accordance with their respective terms and (3) any office or other fixed place of business of the Lessee;

(j) (A) Taxes imposed with respect to a successor Head Lessor that is not a resident of Denmark, respectively, or an entity organized in Denmark or under the law of Denmark, in excess of the Taxes that would have been imposed with respect to the original Lessor signatory hereto, and (B) Taxes imposed with respect to a successor Lessor that is not a resident of the United Kingdom, respectively, or an entity organized in the United Kingdom or under the law of the United Kingdom, in excess of the Taxes that would have been imposed with respect to the original Lessor signatory hereto; and

(k) Taxes arising as a result of the representations and warranties set out in Clause 2.02 proving to have been incorrect or as a result of any breach by the Lessor of any of its covenants set forth herein or by the Head Lessor as a result of its breach of any of its covenants in the Head Lease Agreement.

7.04 (a) If a claim shall be made against the Lessor for any Taxes for which the Lessee is obligated to indemnify the Lessor pursuant to this Clause 7, the Lessor shall as soon as possible, notify the Lessee in writing of such claim. If the Lessee or the Lessor shall so request in writing within

30 days after receipt of such notice, such claim shall be contested in accordance with the provisions of this Clause 7.04. In the event of any such contest, the Lessee shall first ensure that the Lessor is indemnified and secured to its reasonable satisfaction against all Losses, and shall then assume responsibility for contesting such Taxes in the name of the Lessor or in the name of the Lessee, if permissible under applicable law. In connection with any contest, the Lessee shall use legal advisers approved by the Lessor.

(b) If the Lessor shall obtain a refund or credit of or other offset with respect to all or part of any Taxes paid or advanced by the Lessee, the Lessor shall, subject to the Lessee having made any increased payment in accordance with this Clause 7 and to the extent that the Lessor can do so without prejudicing the retention of the amount of such refund, credit or other offset and without prejudice to the ability of the Lessor and each member of the Lessor to obtain any other relief or allowance which may be available to it, pay the Lessee such amount as the Lessor determines in its absolute discretion which is the proportion of such refund, credit or offset as will leave the Lessor (after such refund, credit or offset) in no worse position than it would have been in had there been no such deduction or withholding from the payment by the Lessee referred to above plus any interest received by (or credited to the benefit of) the Lessor or that would have been so received or credited but for offset by other items provided always that:

(i) the Lessor shall be the sole judge, acting in good faith, of the amount of

such refund or credit and of the date on which it is received;

- (ii) the Lessor shall have an absolute discretion as to the order and manner in which it employs or claims refunds or credits available to it; and
- (iii) the Lessor shall not be obliged to disclose to the Lessee any information regarding its tax affairs or computations or for the Lessor to re-arrange its tax affairs.

(c) The Lessor shall supply the Lessee with such information that the Lessor considers it appropriate to make available, reasonably requested by the Lessee, as may be necessary or advisable to enable the Lessee to control any proceeding. The Lessee shall keep the Lessor fully informed in relation to any contest of Taxes indemnified pursuant to this Clause 7 and shall provide the Lessor with such information regarding any contest of such Taxes as the Lessee may reasonably require from time to time.

(d) The Lessee shall not make, accept or enter into a settlement or other compromise with respect to any Taxes indemnified pursuant to this Clause 7 and which the Lessee is contesting, or forgo or terminate any proceeding with respect to Taxes indemnified pursuant to this Clause 7, without the prior written consent of the Lessor (such consent not to be unreasonably withheld) and in particular (but without limitation) the Lessee shall do nothing which would result in any liability on the part of the Lessor.

(e) In all events and circumstances, the Lessor and the Lessee shall act in good faith in conducting any contest, or in filing any return or report or claim.

(f) All computations required to be made under this Clause 7 shall be made in the first instance by the Lessor, acting reasonably and in good faith, and the results of such computation shall be delivered to the Lessee in writing. At the reasonable request of the Lessee, the accuracy of such computations shall be verified by independent accountants selected by the Lessor and acceptable to the Lessee. The computations of the accounting firm shall be final, binding and conclusive upon the Lessee and the Lessor. The Lessee shall pay the costs of such verification.

7.05 It is agreed by the parties hereto that the rights of the Lessee as provided for by Clause 7.04 relate solely to the Lessor and not to any shareholder, member or partner thereof, as the case may be.

8. INSURANCE

8.01 The Lessee shall at all times during the Lease Period and at its own cost and expense insure and maintain insurance of the Equipment through itself or with reputable insurers against all risks (including but not limited to loss or damage from any cause and any legal liability to third parties which may be incurred by the Lessor, the Bank or any Affiliate of the Bank or to its directors, officers, employees or agents in relation to the Equipment) usual in relation to equipment similar to the Equipment and agreed in each such case to a value, in the case of insurance against loss of or damage to any item of the Equipment, not less than the aggregate of Termination Value A and Termination Value B.

- 8.02 In the event that the Lessee is not insuring the Equipment through itself or another department, unit or affiliate of the Lessee (collectively a "Lessee Affiliate"), the policies effecting such insurance shall have the interest of the Lessor, the Bank and any Affiliate of the Bank noted on them and shall provide that (and the Lessee shall procure that) all moneys payable under any insurance effected pursuant to Clause 8.01 in respect of Total Loss of any item of Equipment shall either following the occurrence of an event referred to in Clause 11.02 be paid to the Lessor or otherwise be paid to the Lessee for application in accordance with the provisions of Clause 12.05 and in respect of any other damage to the Equipment shall be paid to the Lessee.
- 8.03 The Lessee shall not effect any other insurance relating to the Equipment if a claim under such insurance would result in the operation of any contribution clause in any insurance referred to in Clause 8.01.
- 8.04 In the event that the Lessee is not insuring the Equipment through itself or a Lessee Affiliate, the Lessee shall at such times as the Lessor may request produce to the Lessor a duplicate of every policy of insurance referred to in Clause 8.02 and every receipt for the payment of the premiums thereunder.
- 8.05 In the event of repairable damage to the Equipment, not constituting a Total Loss, the Lessee shall promptly repair the same or replace such item of damaged Equipment in accordance with the terms of Clause 12.05(b).
- 8.06 The Lessee shall not use or knowingly permit the Equipment to be used for any purpose not permitted by the terms or conditions of any of the insurance policies for the time being related to the Equipment or do or allow to be done any act or thing whereby such policies may be or become invalidated, cancelled or altered whether

automatically or at the insistence of the insurer or otherwise prejudice the interest of the Lessor in such policies.

8.07 If at any time the Equipment or any item thereof is not so insured as aforesaid, or if the Lessee shall fail to produce any such policy or receipt as aforesaid, the Lessor shall be entitled (but not obliged) at the expense of the Lessee to insure the Equipment and keep it so insured until either the Equipment is sold pursuant to Clause 14 or the Equipment is again insured by the Lessee in accordance with this Clause 8 and/or the relevant policy or receipt is produced and the Lessee will pay to the Lessor on demand any sums expended by the Lessor for such purpose with interest from the time of such expenditure until such repayment at the rate and in the manner described in Clause 5.03.

8.08 Without prejudice to any other provision of this Agreement the Lessee agrees to indemnify the Lessor against any loss, liability, damage, claim, demand or expense whatsoever (whether arising in contract, tort or otherwise) suffered or incurred by the Lessor and arising out of or in connection with any failure by the Lessee to comply with its obligations under this Clause 8.

9. LOCATION AND POSSESSION

9.01 It is agreed that title to Equipment shall remain vested in the Lessor throughout the Lease Period (or, in relation to any item of Equipment, until any earlier Total Loss or purchase) and the Lessee shall have no right, title or interest in the Equipment except the right to possession and use of the Equipment and to sublease the Equipment upon the terms and conditions of this Agreement.

9.02 Without prejudice to Clause 9.01 the Lessee undertakes:

- (a) not without the prior written consent of the Lessor to sublease or part with possession of the Equipment other than by way of a sublease to a Lessee Affiliate;
- (b) not without the prior written consent of the Lessor to, or purport to, sell, assign, mortgage, pledge, or otherwise encumber, or otherwise dispose of the Equipment or any interest therein or in this Agreement other than to an Affiliate of the Lessee and to prevent the creation of any charge, mortgage, pledge, lien or other encumbrance thereon or disposal of the same other than a Permitted Lien (and a Permitted Lien for this purpose means a lien for Taxes or other government charges or levies or any supplier's, repairer's, or other like possessory lien arising in the ordinary course of business by statute or by operation of law in the ordinary course of business and not by way of contract in respect of, in any such case, moneys not yet due and payable or moneys claimed to be due and payable to the extent that the obligation to pay such moneys is being contested in good faith by appropriately and diligently conducted proceedings);
- (c) to use its best endeavours not to allow any Equipment to be confiscated or seized and to notify the Lessor as soon as the Lessee becomes aware of any such confiscation or seizure and, at its cost and expense, to use all reasonable endeavours to procure an immediate release of the relevant Equipment from such confiscation or seizure;
- (d) to ensure that at all times there is clearly and legibly displayed on each item of Equipment (i) the identification number thereof (as shown in

the Sale Agreement relating to the acquisition of the relevant item of Equipment by the Head Lessor) and (ii) a fireproof nameplate stating that the relevant item is the property of the Head Lessor and is leased to the Lessee;

- (e) not to do or permit to be done any act or thing which would jeopardize the rights of the Lessor in the Equipment and to inform the Lessor forthwith of the happening of any event which would jeopardize rights or involve the Lessor in any proceedings, loss or liability in relation to the Equipment; and
- (f) to execute all such documents and do every act or thing as the Lessor may reasonably request for the purposes of establishing, protecting and maintaining the right, title and interest of the Lessor in the Equipment.

9.03 The Lessor undertakes not to do any act or thing which would jeopardize the rights of the Lessee in the Equipment and to inform the Lessee, as soon as possible after the Lessor becoming aware thereof of the happening of any event which would jeopardize rights or involve the Lessee in any proceedings, loss or liability in relation to the Equipment.

9.04 The Lessee may at its own expense make or cause to be made such alterations or modifications of and additions to the items of Equipment as may be required from time-to-time to meet the then prevailing rules of the New York City Transit Authority or otherwise (including, without limitation, applicable laws, rules or regulations), in any reasonable manner that does not and will not adversely affect the value of any item of Equipment or the rights of the Lessor therein or under this Agreement or any other Operative Document.

10. COVENANTS

10.01 The Lessee shall:

- (a) inform the Lessor forthwith on becoming aware of the same of the occurrence of any event mentioned in Clause 11.02; and
- (b) inform the Lessor forthwith on becoming aware of the same of the occurrence of any Total Loss of any item of Equipment.

10.02 Save in the event of its wilful default the Lessor shall not be responsible for any loss or damage to the Equipment during the leasing thereof hereunder. The Lessee shall use the Equipment in a skillful and proper manner and shall at its own cost and expense maintain the Equipment in good and substantial repair and in sound operating condition (fair wear and tear only excepted), including by the replacement of worn and defective parts, and shall in accordance with Clause 8.05 make good all damage to the Equipment (other than damage giving rise to a Total Loss of any Equipment) whether or not occasioned by its own act or default and shall not knowingly permit the Equipment to be overloaded or used for any purposes or beyond any tolerance for which it is not designed or reasonably suitable.

10.03 The Lessee shall not without the prior written consent of the Lessor (such consent not to be unreasonably withheld) subject to Clause 9.04 make any alteration in or addition to the Equipment or remove any component thereof which is likely to make the Equipment unsafe or to reduce the value of the Equipment. The cost of all alterations, additions, removals or components, substitutions, replacements and renewals shall be borne by the Lessee. Except as provided in the next sentence, any alteration, modification, improvement or upgrading of any item of Equipment made by and paid for by the Lessee at the

Lessee's own choice pursuant to this Clause 10.03 shall remain the property of the Lessee provided that, at redelivery to the Lessor, such item of Equipment complies with the provisions of Clause 13 in that the original equipment or equivalent equipment is properly installed by the Lessee prior to redelivery. Any and all replacement parts installed on and additions made to any item of Equipment (a) that are replacements of existing parts constituting part of the Equipment owned by the Lessor, (b) that are not readily removable without causing material damage to such Equipment, (c) in the course of ordinary and proper maintenance of such Equipment or (d) that are required by applicable law, rules or regulations for the operation or use of such Equipment, shall constitute additions to such Equipment and shall immediately, and without further act or instrument, be deemed, upon the Lessee procuring that title and property vests in the Lessor, to be subject to this Agreement, and the Lessee shall comply with all provisions of this Agreement applicable to such additions.

10.04 The Lessee shall use its best endeavours to take such measures as are communicated in writing to the Lessee by the Lessor or any supplier or manufacturer of the Equipment, and shall take such other steps as are necessary, to ensure that the Equipment will be safe without risk to health and properly used.

10.05 The Lessee shall use its best endeavours to obtain and effect and keep effective all permissions, licences and permits which may from time to time be required in connection with the Equipment or in any jurisdiction in which the Equipment may at any time be located and shall not knowingly use or permit the Equipment to be used in contravention of any statute or regulation for the time being in force in any such jurisdiction or by agreement which is binding on the Lessee or any of its property or otherwise in any way contrary to law or in contravention of any patent or other industrial property rights of any

third parties. The Lessee shall pay any licence duties, insurance premiums, fees, registration charges, royalties, rents, rates, taxes, charges and impositions of whatsoever nature payable in respect of the Equipment or any such premises or in respect of the use thereof.

- 10.06 The Lessee shall use its best endeavours to permit the Lessor (at the Lessor's cost except following occurrence of an event described in Clause 11.02 when at the Lessee's cost) or its authorized representatives at all reasonable times to inspect the Equipment.
- 10.07 The Lessee shall give the Lessor all such information as the Lessor may reasonably request with regard to the Equipment, the Lessee and the performance by the Lessee of its obligations hereunder, and shall if so requested by the Lessor procure that a director or other responsible officer of the Lessee shall certify as correct any such information.
- 10.08 The Lessor covenants and agrees that:
- (a) the Lessor will not, without the prior written consent of the Lessee, modify, amend, supplement, consent with respect to, or give any waiver under, the Security Agreement to which it is a party or any other Operative Document to which it is a party; and
 - (b) the Lessor will not create, incur, assume or suffer to exist, and the Lessor will take all such action as may be necessary or advisable to discharge, any Lessor Lien other than Permitted Lessor Liens.
- 10.09 For the avoidance of doubt, the Lessor shall not be under any obligation to make any payment to the Lessee or any other person in respect of the Lessor's obligations under

this Agreement except as expressly stated in this Agreement.

11. TERMINATION

11.01 If any railcar forming part of the Equipment shall become a Total Loss during the Lease Period, the leasing of such railcar shall terminate on the Total Loss Payment Date unless the Lessee exercises its rights of replacement under the provisions of Clause 12.05(b).

11.02 If any one or more of the following events shall have occurred namely:

- (a) any amount becoming payable under this Agreement or under the NYCTA Indemnity Letter is not paid within five Business Days of the due date for payment thereof, or, in the case of sums payable on demand, within a period of ten Business Days following receipt of such demand; or
- (b) the Lessee makes default under, or in the due and punctual observance and performance of, any other provision in this Agreement or NYCTA makes default under, or in the due and punctual observance and performance of, any other provision in the NYCTA Indemnity Letter which default is not, in the opinion of the Lessor, capable of remedy, or any such default arises which is, in the opinion of the Lessor, capable of remedy and is not remedied within fourteen days after receipt by the Lessee or, as the case may be, NYCTA of notice from the Lessor specifying action to remedy the default in question; or
- (c) any representation or warranty made pursuant to Clause 2.01 proves to have been incorrect when made; or

- (d) any governmental licence, authorization, consent or approval at any time necessary to enable the Lessee to comply with its obligations under this Agreement or NYCTA to comply with its obligations under the NYCTA Indemnity Letter is revoked or withheld or materially (in the opinion of the Lessor) modified or is otherwise not granted or fails to remain in full force and effect; or
- (e) the Lessee or NYCTA shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally within the meaning of section 123 of the Insolvency Act 1986, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Lessee or NYCTA, which proceedings are not dismissed within 14 days, seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it and its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or any substantial part of its property; or the Lessee or NYCTA shall authorize any of the actions set forth above in this Clause 11.02(e); or
- (f) the Lessee or NYCTA ceases or threatens to cease to carry on its business or (without the prior written consent of the Lessor) disposes or threatens to dispose of a substantial (in the opinion of the Lessor) part of its business, property or assets, unless a disposal of property or assets at fair market value, or a substantial

(in the opinion of the Lessor) part of the same is seized or appropriated; or

- (g) the Head Lessor becomes liable to pay any sum to the Bank under Clause 3.9 of the Loan Agreement to compensate the Bank for deductions or withholdings attributable to US Taxes;

it shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Lessee under, this Agreement or an agreed terminating event the occurrence of which will (in any such case) entitle the Lessor by notice to the Lessee (or automatically in the case of any event occurring as specified in Clause 11.02 (e)) to terminate the leasing of the Equipment hereunder and recover the amounts provided for in Clause 12.02 either as liquidated damages or as an agreed sum payable on the occurrence of such event.

- 11.03 (a) If the Bank declares the Loan to have become immediately due and payable pursuant to Clause 3.10 of the Loan Agreement, the leasing of the Equipment hereunder shall immediately and automatically terminate on the date on which the Loan becomes due and payable pursuant to such declaration, then:

- (i) the provisions of Clause 12.01 shall then apply if the relevant Event of Termination specified in Clauses 3.10(a), 3.10(b), 3.10(c) or 3.10(k)(i) or the relevant Event of Termination specified in Clause 3.10(d), 3.10(e), 3.10(f), 3.10(g), 3.10(i), 3.10(j) or 3.10(k)(i) or (ii) of the Loan Agreement and such Event of Termination has occurred in relation to any party other than the Lessee or NYCTA; and

(ii) the provisions of Clause 12.02 shall apply if the relevant Event of Termination specified in Clause 3.10(d), 3.10(e), 3.10(f), 3.10(g), 3.10(i), 3.10(j) or 3.10(k)(i) or (ii) of the Loan Agreement and such Event of Termination has occurred in relation to, or in connection with, the Lessee or NYCTA.

(b) (A) If the Bank accelerates repayment of the Loan pursuant to Clause 3.8 of the Loan Agreement (and notice of such acceleration is not withdrawn pursuant to Clause 3.9 of the Loan Agreement) the leasing of the Equipment hereunder shall terminate on the date on which the Loan becomes due and payable pursuant to Clause 3.8 of the Loan Agreement; then

(i) if the Bank makes any relevant determination or determinations due to any circumstances specified and contemplated in Clause 3.8(i) of the Loan Agreement in relation to Taxes (other than US Taxes) or additional costs (other than US additional costs) as specified and contemplated by Clause 3.8(i)(cc), the provisions of Clause 12.01 shall apply;

(ii) if the Bank makes any relevant determination or determinations due to any circumstances specified and contemplated in Clause 3.8(i) of the Loan Agreement in relation to US Taxes or US additional costs as

specified and contemplated by Clause 3.8(i)(cc) of the Loan Agreement, the provisions of Clause 12.02 shall apply;

(iii) if the Bank makes any relevant determination or determinations due to any circumstances specified and contemplated in Clause 3.8(a)(ii) of the Loan Agreement in relation to any event or circumstance which has occurred pursuant to any applicable law, regulation, request, requirement, directive or guidance (whether or not having force of law) other than of the US, the provisions of Clause 12.01 shall apply; and

(iv) if the Bank makes any relevant determination or determinations due to any circumstances specified in Clause 3.8(a)(ii) of the Loan Agreement in relation to any event or circumstance which has occurred pursuant to any applicable law, regulation, request, requirement, directive or guidance (whether or not having force of law) of the US, the provisions of Clause 12.02 shall apply.

(B) If the Bank declares the Loan to have become immediately due and payable pursuant to Clause 3.10 of the Loan Agreement, the leasing of the Equipment

hereunder shall automatically terminate on the date on which the Loan becomes due and payable pursuant to such declaration, then:

(i) the provisions of Clause 12.01 shall apply if the relevant Event of Termination is one specified in Clause 3.10(k)(iii) of the Loan Agreement and such Event of Termination has occurred in relation to, or in connection with, any jurisdiction other than the US; or

(ii) the provision of Clause 12.02 shall apply if the relevant Event of Termination is one specified in Clause 3.10(k)(iii) of the Loan Agreement and such Event of Termination has occurred in relation to, or in connection with the US.

(C) If the Bank declares the Loan to have become due and payable pursuant to Clause 3.8(c) of the Loan Agreement the leasing of the Equipment hereunder shall automatically terminate on the date the Loan becomes due and payable pursuant to such declaration and then the provisions of Clause 12.01 shall apply.

11.04 If any of the following shall occur:

(i) the transactions contemplated by one or more of the Operative Documents become illegal in the UK;

- (ii) the Lessor makes default under, or in the due and punctual observance and performance of, any other provision in this Agreement which default is not, in the reasonable opinion of the Lessee, capable of remedy, or any such default arises which is, in the reasonable opinion of the Lessee, capable of remedy and is not remedied within fourteen days after receipt by the Lessee of notice from the Lessor specifying action to remedy the default in question;
- (iii) any representation or warranty made pursuant to Clause 2.02 proves to have been incorrect when made;
- (iv)
 - (aa) the Lessor shall consent to the appointment of a custodian, receiver, trustee or liquidator (or other similar official) of the Lessor, any item of Equipment or a substantial part of the Lessor's property, or a court of competent jurisdiction shall determine that the Lessor is generally not paying its debts as they fall due, or the Lessor shall make a general assignment for the benefit of creditors;
 - (bb) a winding-up or administration order is made against the Lessor;
 - (cc) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent (express or legally implied) of the Lessor, a custodian, receiver, trustee or liquidator (or other similar official) of the Lessor, any item of Equipment or any substantial part of the Lessor's property, or sequestering

any item of Equipment or any substantial part of the property of the Lessor, and any such order, judgment or decree or appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 14 days after the date of entry thereof;

(dd) a bona fide petition against the Lessor in a proceeding under applicable bankruptcy laws or other insolvency laws, as now or hereafter in effect, shall be filed and shall not be stayed, withdrawn or dismissed within 14 days thereafter or if, under the provisions of any law providing for reorganization or winding-up of debtors that may apply to the Lessor, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessor, any item of Equipment or any substantial part of the Lessor's property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 14 days; or

(ee) any other procedure, similar or analogous to those referred to in clauses (aa) through (dd) above, for the relief of financially distressed debtors under applicable laws in England is entered into by the Lessor voluntarily or involuntarily and, if such procedure shall have been entered into involuntarily, shall be unstayed and remain in effect for a period of 14 consecutive days;

- (v) the Head Lessor becomes liable to pay any sum to the Bank under Clause 3.9 of the Loan Agreement to compensate the Bank for deductions or withholdings attributable to Taxes (other than US Taxes)

then in respect of the event or circumstance specified in (i) above the leasing of the Equipment hereunder shall immediately and automatically terminate and in respect of the events in (ii), (iii), (iv) or (v) above the Lessee may, by written notice to the Lessor, terminate the leasing of the Equipment on a date specified in such notice (which date shall not be less than 30 days from the date such notice is given).

11.05 If the leasing of the Equipment is terminated by either party to the Head Lease Agreement in accordance with the provisions of the Head Lease Agreement other than under Clause 11.01 of the Head Lease Agreement, the leasing of the Equipment hereunder shall terminate automatically. Upon such termination:

- (i) the Lessor shall exercise its purchase option as set forth in Clause 15 of the Headlease; and
- (ii) the Lessee shall, on the relevant Termination Date, pay to the Lessor an amount equal to the aggregate of:
 - (a) all rent and other payments due but unpaid under this Agreement at the Termination Date together with any interest at the Default Rate from the date on which such rent or other payment fell due to the due date; and

(b) Termination Value A in relation to the relevant Termination Date;

in each such event the obligations of the Lessee to pay rent on any Payment Date occurring after the relevant Termination Date shall cease and upon receipt of all amounts payable under this Clause 11.05, (i) the Lessee shall exercise the purchase option set out in Clause 15, and (ii) the Lessor shall convey all of its right, title and interest in and to the Equipment to the Lessee or whomsoever the Lessee shall have designated in writing in accordance with the Transfer Protocol, and the other obligations of the parties hereunder shall terminate except for obligations that expressly survive any such termination, provided that:

(aa) the Lessee shall be and remain liable to pay to the Lessor any and all US Taxes payable on such passing of property and title, and

(bb) all indemnities and exclusions contained in this Agreement in favour of the Lessor and the Lessee and under the NYCTA Indemnity Letter in favour of the Lessor shall continue in full force and effect for a period that shall expire on the earlier of either 24 months after the Termination Date or 24 months after the expiry of the Lease Period by effluxion of time.

11.06 If a Bank Insolvency Event occurs the leasing of the Equipment hereunder shall terminate immediately and automatically whereupon the Lessee shall pay directly to the Bank on the date such Bank Insolvency Event occurs the outstanding balance of the Loan and accrued interest thereon which shall be equal to the Termination Value A pursuant to this Agreement and thereupon the Lessor shall convey all of its rights, title and interest in and to the Equipment to the Lessee or whomsoever the Lessee

shall designate in writing in accordance with the Transfer Protocol.

12. PAYMENTS ON TERMINATION

12.01 Upon any termination pursuant to Clause 11.03(a)(i), 11.03(b)(A)(i), Clause 11.03(b)(B)(i), Clause 11.03(b)(A)(iii), Clause 11.03(b)(C) or Clause 11.04, the Lessee shall, on the relevant Termination Date, pay or cause to be paid to the Lessor an amount equal to the aggregate of:

- (i) all rent and other payments due but unpaid under this Agreement at the Termination Date together with any interest at the Default Rate from the date on which such rent or other payment fell due to the due date; and
- (ii) Termination Value A in relation to the relevant Termination Date;

in which event the obligations of the Lessee to pay rent on any Payment Date occurring after the relevant Termination Date shall cease and upon receipt of all amounts payable under this Clause 12.01, (i) the Lessor shall convey all of its right, title and interest in and to the Equipment to the Lessee or whomsoever the Lessee shall have designated in writing in accordance with the Transfer Protocol, and (ii) the other obligations of the parties hereunder shall terminate except for obligations that expressly survive any such termination provided that:

- (aa) the Lessee shall be and remain liable to pay to the Lessor any and all US Taxes payable on such passing of property and title, and
- (bb) all indemnities and exclusions contained in this Agreement in favour of the Lessor and the Lessee shall continue in full force and effect for a period that shall expire on the earlier of either

24 months after the Termination Date or 24 months after the expiry of the Lease Period by effluxion of time.

12.02 Upon (a) the occurrence of any event described in Clause 11.02 or (b) any repudiation of this Agreement by the Lessee which is accepted by the Lessor (whether or not one of the events specified in Clause 11.02) or (c) the transactions contemplated by one or more of the Operative Documents becomes illegal in the US, or (d) a termination of the leasing of the Equipment hereunder shall occur under Clause 11.03(a)(ii), or (e) a termination of the leasing of the Equipment shall occur under Clause 11.03(b)(A)(ii) or Clause 11.03(b)(A)(iv), or (f) a termination of the leasing of the Equipment shall occur under Clause 11.03(b)(B)(ii), then the leasing of the Equipment hereunder shall terminate on the date (u) in the case of (a) above, 14 days after the Lessor gives notice to the Lessee of such event described in Clause 11.02, (v) in the case of (b) above, on the date on which the Lessor accepts such repudiation in writing, (w) in the case of (c) above, on the date on which the Lessor gives notice of termination of the leasing of the Equipment hereunder as a result of such illegality, or, as the case may be, (x) in the case of (d) above, on the date on which the Clause 11.03(a)(ii) provision for the termination of the leasing of the Equipment hereunder occurs, (y) in the case of (e) above, on the date on which the Clause 11.03(b)(A)(ii) or Clause 11.03(b)(A)(iv) provision for the termination of the leasing of the Equipment hereunder occurs or (z) in the case of (f) above, on the date on which the Clause 11.03(b)(B)(ii) provision for the termination of the leasing of the Equipment hereunder occurs; and in any such event on the Termination Date the Lessee shall pay or cause to be paid to the Lessor an amount equal to the aggregate of:

- (i) all rent and other payments due but unpaid under this Agreement at the Termination Date together with any interest at the Default Rate from the date on which such rent or other payment falls due to the due date (after as well as before judgment); and
- (ii) Termination Value A in relation to the Termination Date; and
- (iii) Termination Value B in relation to the Termination Date, except upon the occurrence of any event described in Clause 11.02(a) in which event the amount payable shall be Termination Value C in relation to the relevant Termination Date;

and upon payment of all such sums due hereunder, the Lessor shall convey all of its rights, title and interest in and to the Equipment to the Lessee or whomsoever the Lessee shall have designated in writing in accordance with the Transfer Protocol.

12.03 The Lessee shall pay to the Lessor on demand any costs or expenses incurred by the Lessor in tracing, repossessing or recovering the Equipment or collecting any moneys payable under this Agreement, together with interest (both before and after any judgment or winding up of the Lessee) at the Overdue Rate from the date on which any such costs or expenses were incurred by the Lessor to the date of actual receipt.

12.04 The obligation of the Lessee to pay the amounts calculated pursuant to Clause 12.02 shall be absolute and remain in full force and effect notwithstanding that the event giving rise to the termination of the leasing of the Equipment shall be the illegality in accordance with the laws of the United States or the State of New York, it being the declared intention of the parties that the

provisions of this Clause 12 and the obligation of the Lessee to pay the amounts so calculated shall survive any such illegality and that no moneys paid hereunder by the Lessee to the Lessor shall in any event or circumstances be repayable to the Lessee.

12.05 Upon the occurrence of a Total Loss of all of the Equipment or any railcar forming part of the Equipment the Lessee shall either:

- (a) on the Total Loss Payment Date (unless prior thereto the Lessee shall have exercised its rights under Clause 12.05(b) in respect of such railcar forming part of the Equipment) pay to the Lessor by way of agreed compensation, in the case of a Total Loss of all the Equipment an amount equal to Termination Value A and Termination Value B or, in the case of a Total Loss of any item forming part of the Equipment, the appropriate proportion of each of the same (appropriate proportion being, for this purpose, that proportion which the cost to the Lessor under the Sale Agreement of the relevant item of Equipment bears to Total Cost) and upon receipt by the Lessor of each amount payable pursuant to this Clause 12.05(a) in the case of a Total Loss of any railcar forming part of the Equipment the Lessor shall (i) deliver to the Lessee a schedule setting out the rent which will thereafter be payable by the Lessee under Clause 4.01 and Termination Value A and Termination Value B which will thereafter apply in consequence of such payment (such Schedule, to be conclusive in the absence of manifest error and the resulting reduction referred to therein of rent, Termination Value A and Termination Value B to be on a pro rata basis); and (ii) in the case of a Total Loss of all of the Equipment and a Total Loss of any item forming part of the Equipment,

convey all of its rights, title and interest in and to the subject part of the Equipment to the Lessee or to whomsoever the Lessee shall have designated in writing in accordance with the Transfer Protocol; or

- (b) before the date occurring thirty days prior to the Total Loss Payment Date, (i) arrange for property in and title to an item of equipment substantially similar to, and having a value and utility not less than, the item of Equipment which has become a Total Loss to be vested in the Lessor free from encumbrances in manner satisfactory to the Lessor and (ii) deliver to the Lessor a schedule identifying the replacement item of equipment and the item of Equipment which it has replaced whereupon (and with effect from such vesting of property and title) the replacement item of equipment shall become an item of Equipment for the purposes of this Agreement.

12.06 It is hereby expressly agreed between the parties hereto if any Payment Date occurs, on or after the date of such Total Loss of all of the Equipment or any railcar forming part of the Equipment and such Payment Date is prior to the Total Loss Payment Date, the Lessee shall pay to the Lessor on such Payment Date any rent expressed to be as payable on such Payment Date in accordance with the terms hereof and as if no Total Loss in respect of all the Equipment or any railcar forming part of the Equipment had occurred and that such amount of rent shall be paid in addition to the Termination Value A and Termination Value B payable by the Lessee under Clause 12.05(a). It is further thereby agreed that the leasing of the Equipment shall automatically terminate on the Total Loss Payment Date.

12.07 The certificate of the Lessor as to any amounts payable and/or to be applied pursuant to this Clause 12 shall in the absence of an error manifest on the face thereof be binding on the parties hereto.

12.08 The provisions of this Clause 12 shall not be construed so as to prevent the Lessor from claiming damages from the Lessee in respect of any antecedent breach of the Lessee's obligations hereunder or in respect of any breach of such obligations not entitling the Lessor to terminate the leasing of the Equipment pursuant to the provisions of Clause 11.

13. RETURN OF EQUIPMENT

13.01 Subject to the Lessee's option to purchase set out in Clause 15, upon any failure by the Lessee to pay all sums due as provided for by Clauses 12.01 and 12.02 or upon expiry of the Lease Period by effluxion of time, (a) the Lessee will at the Lessee's own expense forthwith return or redeliver the Equipment, in the condition required by Clause 10.02, to the Lessor at such place as may be agreed between the Lessor and the Lessee in the State of New York or failing such agreement as reasonably specified by the Lessor (or, in the case of failure by the Lessee to pay all sums due as provided for by Clauses 12.01 and 12.02, specified by the Lessor) and (b) the Lessor or its servants or agents may at any time whether before or after the making of any such request and without any notice and at the expense of the Lessee retake possession of the Equipment and for this purpose shall be entitled (by way of irrevocable licence hereby granted by the Lessee) freely to enter into and upon any premises occupied by or under the control of the Lessee and if the Equipment is not on premises occupied by or under the control of the Lessee, the Lessee shall indemnify the Lessor its servants and agents against any and all costs, expenses and consequences of the Lessor entering upon such premises to retake possession.

13.02 Forthwith upon being requested by the Lessor to do so following any failure by the Lessee to pay all sums due as provided for by Clauses 12.01 and 12.02 the Lessee shall at its own expense, and to the extent that the relevant benefit is capable of assignment, assign to the Lessor or any purchaser of the Equipment from the Lessor the benefit of any licence held by it which is necessary for the operation of the Equipment.

13.03 Following return or redelivery of the Equipment pursuant to Clause 13.01 the Lessee shall, if so requested by the Lessor, store, insure and maintain the Equipment until such time as they are sold pursuant to Clause 14 (and all costs and expenses thereby incurred shall be paid by the Lessee).

14. SALE OF EQUIPMENT

14.01 Subject to the Lessee's option to purchase set out in Clause 15, if, (a) following expiry of the Lease Period which has been extended pursuant to Clause 15.05 by effluxion of time or (b) failure by the Lessee to pay all sums due as provided for by Clauses 12.01 and 12.02, then the Lessee shall return or redeliver the Equipment to the Lessor or if the Lessor shall have recovered possession thereof pursuant to Clause 13.01, then in either such case the Lessor shall use reasonable endeavours to sell such Equipment in good faith on the open market in a reasonably commercial manner. The net proceeds of any such sale shall be the amount, exclusive of any sales or similar Tax thereon received by the Lessor upon sale of the relevant Equipment after deduction of any expenses incurred in connection with the recovery of possession of such Equipment or the sale thereof, including any expenses incurred by the Lessor in repairing, reinstating, storing or insuring the Equipment prior to sale and any commission paid in connection with such sale. The Lessor shall not be liable to the Lessee in

any manner in respect of any failure to recover possession of any Equipment or any delay in recovering possession thereof or in respect of any delay in selling any Equipment or for any failure to sell the Equipment at any particular price.

14.02 Following a sale of any Equipment pursuant to Clause 14.01(a) the net proceeds of sale shall be applied as follows and in the following order:

- (a) in or towards discharge of any amounts then or to become owing to the Lessor under this Agreement or under the NYCTA Indemnity Letter; and
- (b) in payment by the Lessor to the Lessee of an amount equal to any surplus in consideration of the Lessee maintaining the Equipment in accordance with the terms of this Agreement.

Any payment under this Clause 14.02 shall be subject to the right of the Lessor to retain from amounts so to be paid to the Lessee (and apply any sum so retained in or towards discharge of) sums equal to any and all amounts which are then or which will become owing by the Lessee under this Agreement.

14.03 Following a sale of any Equipment pursuant to Clause 14.01(b) the net proceeds of sale shall be applied as follows and in the following order:

- (a) in or towards discharge of the amounts due to the Lessor under Clause 12.02 (other than each of Termination Value A, Termination Value B and Termination Value C which have become payable and are unpaid) if and to the extent not then discharged or satisfied together with interest accrued thereon pursuant to Clause 5.03;

- (b) in retention of an amount equal to the above mentioned Termination Value A, Termination Value B and Termination Value C (if and to the extent not then discharged or satisfied) together with interest accrued thereon pursuant to Clause 5.03 to be held as security by the Lessor, for the payment by the Lessee of the aforesaid sums;
- (c) in or towards discharge of any other amounts then or to become owing to the Lessor under this Agreement or under the NYCTA Indemnity Letter; and
- (d) in payment by the Lessor to the Lessee of an amount equal to any surplus in consideration of the Lessee maintaining the Equipment in accordance with the terms of this Agreement.

Any payment under this Clause 14.03 shall be subject to the right of the Lessor to retain from amounts so to be paid to the Lessee (and apply any sum so retained in or towards discharge of) sums equal to any and all amounts which are then or which will become owing by the Lessee under this Agreement.

14.04 Following the expiry of the Lease Period by effluxion of time the Lessee shall have the right to act as the Lessor's exclusive agent for the sale of the Equipment upon terms (a) that no condition, warranty or representation on the part of the Lessor, whether express or implied and whether relating to description, state, quality, repair, fitness or otherwise shall be given or made by or on behalf of the Lessor save and except for a warranty that the Lessor will transfer such title to the Equipment as it obtained under the Sale Agreement (any such conditions and warranties on the part of the Lessor to be expressly excluded in any agreement entered into for such sale), (b) the Lessee may sell the Equipment to any person provided such sale is for the fair market

value and otherwise on commercially reasonable terms, and (c) the purchase price shall be applied in accordance with Clause 14.02 or, as the case may be, Clause 14.03.

15. OPTION TO PURCHASE

15.01 The Lessor undertakes to the Lessee that it will exercise the purchase option set out in Clause 15 of the Head Lease Agreement only at the Lessee's direction and request and only if the Lessee has exercised the purchase option set out in this Clause 15.

15.02 In the event that the Lessor purchases the Equipment under the Head Lease Agreement as contemplated by Clause 15.01, the Lessee shall be entitled to purchase part or all of the Equipment, and thereby to terminate the leasing of such part or all of the Equipment under this Agreement, on any Payment Date (other than in respect of the 9th and final Payment Date, in which case the Lessee shall be entitled only to purchase all of the Equipment) subject to and conditional upon the Lessee or its agent or attorney giving to the Lessor not less than two months prior written notice stating its intention so to direct the Lessor to exercise its purchase option under Clause 15 of the Head Lease Agreement and specifying the Payment Date on which such purchase is to occur (which notice shall identify the Equipment to be purchased and be irrevocable and shall constitute the amount payable by the Lessee pursuant to Clause 15.03(b) an amount due and owing from the Lessee to the Lessor on the date so specified).

15.03 On the Payment Date specified in any notice given pursuant to Clause 15.02 ("the Purchase Option Date") the Lessee shall pay or cause to be paid to the Lessor an amount equal to the aggregate of:

- (a) all rent and other amounts due but unpaid under this Agreement at the Purchase Option Date; and
- (b) in respect of all the Equipment, a purchase price equal to each of Termination Value A and Termination Value C in relation to the Purchase Option Date or, in the case of a purchase of part of the Equipment, an amount equal to the appropriate proportion (as determined by the provisions of Clause 12.05(a)) of each of Termination Value A and Termination Value C in relation to the due date and upon receipt by the Lessor of the appropriate amount the Lessor shall in the case of a purchase of part of the Equipment deliver to the Lessee a Schedule setting out the rent which will thereafter be payable by the Lessee under Clause 4.01 and Termination Value A and Termination Value C which will thereafter apply in consequence of such payment (such Schedule to be conclusive in the absence of manifest error and the resulting reduction referred to therein of rent, Termination Value A and Termination Value C to be on a pro rata basis).

15.04 The obligation of the Lessee to pay rent shall terminate on payment of the sums in respect of such Equipment referred to in Clause 15.03(b), provided that the Lessee shall remain under an obligation to pay rent if it has purchased only part of the Equipment and thereafter the Lessee shall pay rent as set out in the Schedule referred to in Clause 15.03(b) and upon receipt by the Lessor on the due date of the amount described in Clause 15.03, (i) the Lessor shall convey all of its right, title and interest in and to part or all of the Equipment to the Lessee or whomsoever the Lessee shall have designated in writing in accordance with the Transfer Protocol, and (ii) the other obligations of the parties hereunder shall

terminate except for obligations that expressly survive any such termination, provided that:

- (a) the Lessee shall be and remain liable to pay to the Lessor any and all U.S. Taxes payable on such passing of property and title; and
- (b) all indemnities and exclusions relating to such item of Equipment contained in this Agreement in favour of the Lessor shall continue in full force and effect for a period that shall expire on the earlier of either 24 months after the due date or 24 months after the expiry of the Lease Period by effluxion of time.

15.05 In the event that the Lessee does not exercise the purchase option under this Clause 15 on the 9th and final Payment Date then the leasing of the Equipment hereunder and this Agreement shall be extended automatically for a period of one year from such date and the Lessee shall, on such date, be obliged to and shall pay on the 9th and final Payment Date one final annual non-refundable rental payment in respect of such period in an amount equal to \$3,156,854.82. The Lessee shall in any event pay to the Lessor the rental payment due on such 9th and final Payment Date, provided that the Lessee shall be under no obligation to pay such rental payment if the Lessee has paid such non-refundable rental payment payable on the 9th and final Payment Date.

16. COSTS AND EXPENSES

16.01 The Lessee will reimburse the Lessor on demand for all legal costs and, subject to receipt of reasonably sufficient back-up documentation, other out-of-pocket costs, charges and expenses incurred by the Lessor in recovering rent or other warrants payable by the Lessee hereunder. Other than as provided in the foregoing sentence, each party shall bear its own costs and

expenses in connection with the preparation, negotiation and execution of this Agreement and the transactions contemplated hereby.

16.02 If the Lessee is in breach of any of its obligations under this Agreement the Lessor shall be entitled (but not bound and without prejudice to any other rights which it may have) to remedy such breach and if the Lessor incurs any expenditure or liability in remedying such breach, or otherwise incurs any expenditure or liability in relation to the Equipment which should have been incurred by the Lessee, the Lessor shall be entitled to recover such expenditure, or an amount equal to such liability, from the Lessee together with interest thereon at the Overdue Rate from the date on which any such expenditure was incurred by the Lessor to the date of payment thereof by the Lessee (both before and after any relevant judgment).

17. ASSIGNMENT

17.01 Save with the prior written consent of the Lessor (such consent not to be unreasonably withheld, provided, however, that such consent shall not be deemed unreasonably withheld if, but without limitation, any such assignment or purported assignment would increase any cost, expense, charge or indemnity that the Lessor is assuming hereunder or result in the imposition of any Tax) this Agreement shall not be capable of assignment by the Lessee, other than the Lessee's rights under Clause 15.02 which shall be fully assignable. The Lessee shall be permitted to sublease the Equipment to any Lessee Affiliate of the Lessee, and in addition may sublease the Equipment to any third party with the prior written consent of the Lessor.

17.02 The Lessor may assign and/or transfer its interest in and/or obligations under this Agreement or the Loan

Agreement with the prior written consent of the Lessee and the Bank (such consent not to be unreasonably withheld or delayed).

17.03 The Lessor shall be entitled to assign the benefit of this Agreement to the Bank or any Affiliate of the Bank.

17.04 In case of an assignment or transfer by the Lessor that otherwise satisfies the requirements of this Clause 17, the Lessee shall enter the name and address of the assignee upon the books kept by the Lessee for the purpose of identifying the person entitled to receive payments from the Lessee under this Agreement. Such assignment or transfer shall become effective only upon entry of the assignment or transfer on the books kept by the Lessee for the purpose of identifying the person entitled to payments from the Lessee under this Agreement, and no purported assignee or transferee shall have a right to any payment from the Lessee under this Agreement until such person is registered as the new lessor on the books of the Lessee. The Lessee undertakes to make such entry immediately on being provided with the relevant details of any person entitled to payments from the Lessee under this Agreement.

18. NOTICES

Except as otherwise specifically provided herein, all notices and other communications required or permitted under the terms and provisions hereof shall be in writing and in English and shall be delivered or sent by first class pre-paid mail or by telex or telecopier to the parties hereto at the address set forth on the final page of this Agreement beneath the signatures (or such other address as the relevant party shall have last specified to the other party in accordance with the provisions hereof).

Any notice so delivered shall be deemed given (i) when despatched (if sent by telex and the answerback has been received), (ii) when left at the relevant address (if delivered) (iii) when received (if given by telecopier) or (iv) ten days after posting (if sent by post).

19. MISCELLANEOUS

19.01 No neglect, delay or indulgence on the part of the Lessor in enforcing the terms and conditions of this Agreement shall prejudice the rights of the Lessor hereunder or thereunder or be construed as a waiver thereof.

19.02 Each of the indemnities given by the Lessee to the Lessor under this Agreement shall survive and continue in full force and effect for a period that shall expire on the earlier of either 24 months after the applicable Termination Date or 24 months after the expiry of the Lease Period by effluxion of time, notwithstanding the making of any payments pursuant to Clause 11 or Clause 12 or the disposal of the Equipment.

19.03 This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.

20. LAW AND JURISDICTION

20.01 This Agreement shall be construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the English Courts to settle any disputes which may arise in connection with this Agreement.

20.02 Any party may, notwithstanding Clause 20.01, bring proceedings in connection with this Agreement in any other court of competent jurisdiction, including in particular (but without limitation) the courts of New York.

20.3.1 Each of the Lessor and the Lessee shall at all times maintain an agent for service of process in England.

20.3.2 The Lessor appoints Beaumont & Son at present of Lloyds Chambers, 1 Portsoken Street, London, E1 8AW and the Lessee appoints Legibus Secretaries Limited of Royex House, Aldermanbury Square, London, EC2V 7LD as their respective agents for that purpose. Neither the Lessor nor the Lessee may revoke such appointment.

20.3.3 If for any reason an agent appointed under this Clause 20.3 ceases to act as such, the Lessor or the Lessee, as appropriate, shall promptly appoint another such agent and notify the other party of the appointment and the new agent's name and address.

20.04 The Lessee agrees that should the Lessor bring a legal action or proceedings against it or its assets in relation to any matters arising out of this Agreement no immunity from such legal action or proceedings (which shall be deemed to include, without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of the Lessee or with respect to its assets, the Lessee hereby irrevocably waiving any such right of immunity which it or its assets now has or may hereafter acquire to the extent permitted by applicable law and the Lessee hereby consents generally in respect of any legal action or proceedings arising out of or in connection with this Agreement to the giving out of any relief or the issue of any process in connection with such action or proceedings including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgment which may be made or given in such action or proceedings.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

APPENDIX A

RENT PAYMENTS

<u>(i)</u>	<u>(ii)</u>
<u>Payment Date</u>	<u>Rent (\$)</u>
21 Feb 1993	216,937.32
21 Feb 1994	216,937.32
21 Feb 1995	216,937.32
21 Feb 1996	216,937.32
21 Feb 1997	216,937.32
21 Feb 1998	216,937.32
21 Feb 1999	216,937.32
21 Feb 2000	216,937.32
21 Feb 2001	216,937.32

APPENDIX B

CLAUSE 3.03 REQUIREMENTS

The documents or other requirements referred to in Clause 3.03 are the following:

- (a) confirmation from US counsel appointed by or acceptable to the Lessor that the Lessee has power to enter into this Agreement and that the Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and enforceable obligation of the Lessee;
- (b) specimen signatures, formally authenticated by the Lessee, of each of the authorized signatories referred to in Clause 3.03(b); and
- (c) the insurance documents described in Clause 8.04.

APPENDIX C

TERMINATION VALUES

Termination Value A, Termination Value B and Termination Value C mean, as at any date, the amount specified in Columns (ii), (iii) and (iv) below respectively opposite the date in Column (i) below which is, or immediately precedes, that date and in the case of Termination Value A on a Termination Date which is not a Payment Date as set out in column (i) Termination Value A shall mean such Termination Value A as set out in column (ii) opposite such Payment Date together with an amount equal to interest on such sum from such immediately preceding date to the Termination Date or other date on which such Termination Value is payable at the rate of 7% per annum if the relevant date is not a date stated below.

(i)	(ii)	(iii)	(iv)
<u>Payment Date</u>	<u>Termination Value A (\$)</u>	<u>Termination Value B (\$)</u>	<u>Termination Value C (\$)</u>
21 Aug 1992	3,094,650.00	371,358.00	557,037.00
21 Feb 1993	2,988,432.39	352,285.30	528,427.95
21 Feb 1994	2,983,590.76	315,417.62	473,126.43
21 Feb 1995	2,978,405.51	276,705.81	415,058.72
21 Feb 1996	2,972,852.25	236,059.52	354,089.28
21 Feb 1997	2,967,482.92	193,267.16	289,900.75
21 Feb 1998	2,961,154.46	148,446.61	222,669.92
21 Feb 1999	2,954,376.86	101,392.33	152,088.50
21 Feb 2000	2,947,118.24	51,995.47	77,993.20
21 Feb 2001	2,939,917.50	(0.00)	(0.00)

Termination Value A, Termination Value B and Termination Value C as at each Date shown above do not include the instalment of rent due on that date (which shall be due and payable by the Lessee on that date).

APPENDIX D
CERTIFICATE OF DELIVERY AND ACCEPTANCE

TO: The Lessor

ACCEPTANCE CERTIFICATE

We hereby confirm and certify to you that:

- (i) we have duly received the Equipment and we hereby acknowledge that the Equipment is the Equipment (as defined in the Lease detailed below);
- (ii) we have duly inspected the Equipment and we are satisfied that the Equipment is complete and in all respects in satisfactory working order and condition;
- (iii) all safety regulations in relation to the Equipment have been complied with and all required or recommended safety apparatus or appliances (if any) have been correctly installed or supplied with the Equipment as the case may be;
- (iv) full and proper information and instruction manuals relating to the use, operation (and maintenance where appropriate) of the Equipment has been received by us; and
- (v) insurance cover in respect of the Equipment has been effected in accordance with the terms of the Lease.

Description of the Lease

Lease dated [] August 1992 and made between [the Lessor] and [the Lessee].

Dated: _____, 1992

.....

For and on behalf of
[the Lessee]

APPENDIX E

CLAUSE 3.04 REQUIREMENTS

The documents or other requirements referred to in Clause 3.04 are the following:

- (a) an officer's certificate of the Lessor;
- (b) confirmation from English counsel appointed by or acceptable to the Lessee that the Lessor has power to enter into this Agreement and that the Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and enforceable obligation of the Lessor; and
- (c) the opinion of US counsel appointed by or acceptable to the Lessee, in form and substance satisfactory to the Lessee.

APPENDIX F

TOTAL COST DETAILS

R-68 subway railcar manufactured by
Westinghouse Amrail Company with
serial number 2885: \$1,547,325.00

R-68 subway railcar manufactured by
Westinghouse Amrail Company with
serial number 2890: \$1,547,325.00

Total Cost: \$3,094,650.00

EXECUTION:

SIGNED BY X N BRUCE)
DULY AUTHORISED FOR AND)
ON BEHALF OF)
HIGGINS LEASING LIMITED)

N Bruce

SIGNED BY Edward C. Armentaric)
DULY AUTHORISED FOR AND)
ON BEHALF OF)
TRIBOROUGH BRIDGE AND TUNNEL)
AUTHORITY)



NOTICE DETAILS:

Triborough Bridge and Tunnel Authority:

Address: Randall's Island
New York
NY 10035
USA

Attention: Executive Director/Chief Financial Officer

Telephone: 0101 212 878-7000

Telecopier: 0101 212 878-7031

Higgins Leasing Limited:

Address: 67 Hope Park
Bromley
Kent BR7 3RG

Attention: Company Secretary

Telephone: -

Telecopier: -

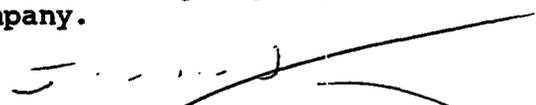
Telex: -

Kingdom of England

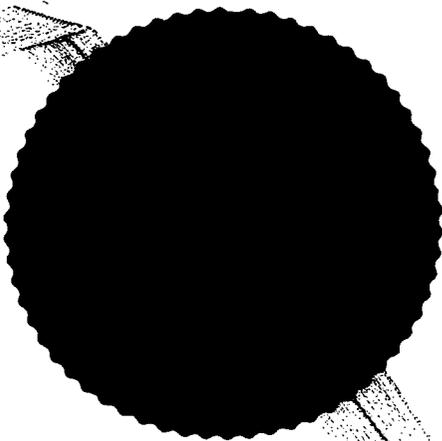
ss.:

City of London

On this 26th day of August 1992, before me personally appeared Nyree Bruce, to me personally known, who being by me duly sworn, says that she is a director of Higgins Leasing Limited, that the foregoing instrument was signed on behalf of such company by authority of its board of directors and she acknowledged that the execution of the foregoing instrument was the free act and deed of such company.


Signature of Notary Public

Notary Public London, England
(J. B. BURGESS)
My Commission Expires with Life



This copy has been compared with the original document and is a complete and identical copy of such original.


Notary Public

JAMES A. NASH
NOTARY PUBLIC State of New York
No. 4794779
Qualified in Queens County **93**
Commission Expires March 30, 19

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