

DONELAN, CLEARY, WOOD & MASER, P. C.

ATTORNEYS AND COUNSELORS AT LAW

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RECORDATION NO. 15283 FILED 1425

May 6, 1994

MAY 6 - 1994 - 9 15 AM

INTERSTATE COMMERCE COMMISSION

Recordation No. 15283-C

0100215001

\$18.00

RECEIVED THE OFFICE OF THE SECRETARY  
MAY 6 9 09 AM '94  
LICENSING DIVISION

Dear Mr. Strickland:

On behalf of ATEL Financial Corporation, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, executed counterparts of a secondary document, not previously recorded, entitled Purchase Agreement and Assignment of Lease ("Assignment") dated as of May 4, 1994.

The parties to the enclosed Assignment are:

West One Bank, Idaho - ASSIGNOR/SELLER  
101 South Capital Boulevard  
Boise, Idaho 83733

ATEL Financial Corporation - ASSIGNEE/BUYER  
6th Floor  
235 Pine Street  
San Francisco, CA 94104

The said Assignment, among other things, acts to assign to the Assignee the right, title and interest of the Assignor as lessor in the Equipment Lease Agreement ("Lease") recorded August 11, 1987 under Recordation No. 15283 and should be recorded as "-C" under the same Recordation No. as the said Lease, namely as Recordation No. 15283-C.

The equipment covered by the instant Assignment is the equipment covered in the above-mentioned Lease.

A short summary of the Assignment to appear in the ICC Index is as follows:

"Assignment of above lease."

Please index separately the name of the above-mentioned Assignee in the ICC "Vendee/Assignee" Index Book ("white pages") as follows:

Index under ATEL Financial Corporation saying, "See Recordation No. 15283-C."

Enclosed is a check in the amount of eighteen dollars (\$18.00) in payment of the filing fees.

*Handwritten signature: Carolyn A. Hannon*

DONELAN, CLEARY, WOOD & MASER, P. C.

Letter to Honorable Strickland, Jr.

May 6, 1994

Page 2

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

Allen H. Harrison, Jr.  
*Attorney for ATEL Financial Corporation  
for the purpose of this filing.*

Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423  
Enclosures  
BY HAND

8371 -020

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/6/94

OFFICE OF THE SECRETARY

Allen H Harrison Jr.  
Donelan Cleary Wood & Maser  
1275 K St N.W. Suite 850  
Washington, D.C. 20005-4078

Dear sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 5/6/94 at 9:15am, and assigned  
recordation number(s). 15283-C

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. 15283-C FILED 1425

MAY 6 - 1994 - 9 15 AM

INTERSTATE COMMERCE COMMISSION

**PURCHASE AGREEMENT AND ASSIGNMENT OF LEASE**

This Purchase Agreement and Assignment of Lease ("Agreement") dated as of May 4, 1994, by and between West One Bank, Idaho, an Idaho corporation, successor in interest to West One Bank, Idaho, N.A., a national banking association, having its principal place of business at 101 South Capitol Boulevard, 8th Floor, Boise, Idaho 83702 ("Seller") and ATEL Financial Corporation, a California corporation, having its principal place of business at 235 Pine Street, 6th Floor, San Francisco CA 94104 ("Buyer").

**BACKGROUND**

Seller has acquired and owns the equipment and all attachments and accessions thereto (collectively, the "Equipment") listed and described on Exhibit "A" attached hereto and made a part hereof. The Equipment has been leased to The Denver and Rio Grande Western Railroad Company ("Lessee") pursuant to an Equipment Lease Agreement dated as of July 31, 1987 between Seller as lessor, and Lessee as lessee including Amendments Number One through Three and Individual Equipment Record ("IER") Nos. 1 through 7, inclusive and Individual Equipment Record ("IER") End Doors Nos. 1 through 4, inclusive (the Equipment Lease Agreement as amended and the IERS and IER, End Doors and any and all other instruments, agreements or documents relating to the overall transaction are hereinafter referred to as the "Lease").

Buyer desires to purchase from Seller and Seller desires to sell to Buyer, the Equipment.

Seller desires to assign to Buyer, and Buyer desires to assume from Seller all of the right, title, and interest of Seller in, to and under the Lease.

NOW, THEREFORE, for good and valuable consideration (receipt of which is hereby acknowledged) the parties hereto, desiring to be legally bound, hereby agree as follows:

1. **PURCHASE OF EQUIPMENT**

1.1 **Conveyance of Equipment.** Subject to the terms and conditions hereof, Seller sells, assigns, transfers, conveys and delivers to Buyer, and Buyer hereby purchases from Seller, the Equipment free and clear of all claims, liens and encumbrances,

arising by or through Seller or arising as a result of any claims against Seller, except for the rights of Lessee under the Lease. The Equipment shall be deemed delivered in the States of California, Iowa, Oregon, Michigan and Minnesota, and Seller will deliver to Buyer a bill of sale (the "Bill of Sale") substantially in the form of Exhibit "B" attached hereto.

1.2 Assignment of Lease. Subject to the terms and conditions hereof, Seller hereby sells, assigns, transfers, conveys and delivers to Buyer all of Seller's right, title and interest as lessor in and to the Lease, including, without limitation, rentals, insurance, casualty, and indemnification amounts and other sums due or to become due under the Lease, however, excluding rentals payable under the Lease prior to May 6, 1994 (the "Closing Date"). Prior to funding, Seller will deliver to Buyer a Notice and Acknowledgement of Assignment executed by Buyer, Lessee, and Seller (the "Notice of Assignment") substantially in the form of Exhibit "C" attached hereto.

1.3 Purchase Price. The entire consideration for the purchase of the Equipment and the assignment of the Lease shall be Seven Million One Hundred Thirty Thousand Dollars (\$7,130,000) ("Purchase Price") which shall be paid by Buyer to Seller by wire transfer or other immediately available funds on the Closing Date.

1.4 Subordination. The sale of the Equipment is hereby made expressly subject to the rights of Lessee and its successors and assigns under the Lease.

## 2. REPRESENTATION AND WARRANTIES

2.1 Representations and Warranties of the Seller. Seller represents and warrants to, and covenants and agrees with, Buyer as follows:

a. (i) to the best of Seller's knowledge, neither the sale nor use of the Equipment violates or infringes the patent, trademark, trade name, or other rights of any person; (ii) to the best of Seller's knowledge, the Lease has been duly executed and delivered, constitutes the valid and binding obligation of the Lessee and is enforceable against the Lessee in accordance with its terms (subject to laws of general application affecting creditors' rights), and no defaults, or conditions which with the passage of time or giving of notice or both would constitute defaults, exist thereunder by such Lessee; (iii) there is no payment default under the Lease and the Lessee has made all required Lease payments through December 30, 1993; (iv) the Lease has been duly executed and delivered by Seller, constitutes the valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms (subject to laws of general application affecting creditors' rights), and no defaults, or conditions which

with the passage of time or giving of notice or both would constitute defaults, exist thereunder by Seller; (v) no defaults, or conditions which with the passage of time or giving of notice or both would constitute material defaults, exist by Seller under any agreement, instrument, or document relating to the Lease and (vi) the Equipment is in the possession and control of the Lessee in accordance with the terms and conditions of the Lease

b. On the date hereof Seller owns, and by this Agreement conveys to Buyer, title to the Equipment, free and clear of any leases, liens, claims, and encumbrances arising by or through Seller or arising as a result of any claims against Seller other than the Lease. Seller has not entered into and has no knowledge of any other agreements, leases, liens, or encumbrances affecting the Equipment other than the Lease. Seller has properly made all governmental filings and/or recordings necessary for a valid reservation of unencumbered title and for securing a precautionary first perfected security interest in the Equipment.

c. Seller is a duly and validly organized and existing Idaho corporation in good standing under the laws of the State of Idaho and has all necessary power and authority to own its properties and carry on its business in the places where such properties are located and such business is conducted.

d. Seller has the power and authority to enter into this Agreement, the Bill of Sale, and all other instruments and documents executed and delivered and/or received, or to be executed and delivered and/or received, in the connection with the transactions herein referred to and to carry out the sale and transfer of the Equipment to Buyer and the transactions contemplated hereunder (this Agreement, the Bill of Sale, and all such other instruments and documents are hereinafter referred to collectively as the "Documents").

e. There is no action, suit or proceeding pending against Seller before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Seller of any Document. No approval of, or consent from, any governmental authority, person or entity not a party thereto is required for the execution, delivery or performance by Seller of any Document.

f. The execution and delivery of the Documents by Seller and the performance by it of its obligation thereunder, including, without limitation, the conveyance of the Equipment and acceptance of the Purchase Price in exchange therefore, have been duly authorized by all necessary action of Seller's and do not violate or conflict with (i) any provisions of Seller's Articles of Incorporation or By-Laws, (ii) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative

agency or other governmental authority, or (iii) any other agreement to which Seller is a party or by which Seller is or may be bound.

g. The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Seller enforceable in accordance with their respective terms, subject, however, to laws of general application affecting creditor's rights.

h. All sales, use, property, other taxes, licenses, tolls, inspection and/or other fees, bonds, interest with respect thereto, which were or may be required to be paid or obtained in connection with the original acquisition of the Equipment by Seller, or the lease of the Equipment to the Lessee have been, or when due will promptly be, paid in full, or provision for the payment thereof by the Lessee has been provided for in the Lease.

i. Seller has furnished, or will upon request, furnish or make available to Buyer a true, correct and complete copy of each and every document delivered to or by Seller in connection with the purchase of the Equipment by Seller and in connection with the leasing of the Equipment to the Lessee under the Lease.

j. Notwithstanding any resale certificate provided by Buyer, Seller shall pay, when due, fifty percent (50%) of all sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates, including penalties and interest with respect thereto, now or hereafter imposed by, or required to be paid to or obtained from any jurisdiction in connection with the purchase of the Equipment by Buyer.

k. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 2.1 OR IN THE BILL OF SALE, THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, ITS CONDITION, ITS FITNESS FOR A PARTICULAR PURPOSE, ITS MERCHANTABILITY, OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE.

2.2 Representation and Warranties of the Buyer. The Buyer represents and warrants to, and covenants and agrees with, the Seller as follows:

a. Buyer is a corporation duly and validly organized under the laws of the State of California and has all necessary power and authority to own its properties and carry on its business where such properties are located and such business is conducted, and is acquiring the Equipment solely for its own account and not with a view to or for resale, distribution, or subdivision of its interests herein.

b. Buyer has the power and authority to enter into the Documents and to carry out the transactions contemplated thereunder. There is no action, suit or proceeding pending against Buyer before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Buyer of any Document. No approval of, or consent from any governmental authority, person or entity not a party thereto is required for the execution, delivery or performance by Buyer of any Documents.

c. The execution and delivery of the Documents by Buyer, and the performance of its obligations thereunder have been duly authorized by all necessary action of Buyer and do not violate or conflict with (i) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or (ii) any other agreement to which Buyer is a party or by which Buyer may be bound.

d. The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Buyer enforceable in accordance with their respective terms, subject, however, to laws of general application affecting creditors' rights.

e. Buyer shall pay, when due, fifty percent (50%) of all sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates, including penalties and interest with respect thereto, now or hereafter imposed by, or required to be paid to or obtained from any jurisdiction, other than the State of California, in connection with the purchase of the Equipment by Buyer.

### 3. CONDITIONS PRECEDENT

3.1 Buyer's Obligations. Buyer's obligations to purchase the Equipment and the assignment of the Lease is subject (unless waived by Buyer) to the satisfaction of the following conditions on or prior to the Closing Date:

(a) Buyer shall have received fully executed original counterparts of the Lease;

(b) Buyer shall have received a fully executed original counterpart of this Agreement;

(c) Buyer shall have received a fully executed original of the Notice of Assignment;

(d) Buyer shall have received an executed original of the Bill of Sale.

(e) Buyer shall have received an incumbency certificate from Seller in form and substance reasonably satisfactory to Buyer.

(f) Buyer shall have received certificates or other satisfactory evidence of the maintenance of the insurance required pursuant to the Lease with Buyer as loss payee and/or additional insured;

(g) this Agreement (or notices or memoranda hereof) and such other documents as are deemed necessary or appropriate by Buyer shall have each been recorded or filed for record in such public offices as may be necessary or appropriate in order to protect the rights of Buyer hereunder and under the Lease.

3.2 Seller's Obligations. The obligations of Seller hereunder are subject (unless waived by Seller) to the satisfaction of the following conditions on or prior to the Closing Date:

(a) Seller shall have received a fully executed original counterpart of this Agreement;

(b) Seller shall have received the Purchase Price.

(c) Seller shall have received a fully executed original of the Notice of Assignment.

#### 4. MANUFACTURER'S REPRESENTATIONS

Seller hereby assigns to Buyer all agreements, warranties and representations of the manufacturer of each item of the Equipment or, alternatively, will arrange for the enforcement for Buyer's benefit of such representations and warranties to the extent they are not assignable.

#### 5. INDEMNIFICATION

5.1 Seller's Indemnification. Seller will indemnify Buyer and protect, defend and hold it harmless from and against (i) any and all loss, cost, damage, injury or expense, including, without limitation, reasonable attorneys' fees, wheresoever and howsoever arising which Buyer or its partners, or its affiliates, or any of their directors, officers, agents, or employees may incur by reason of any breach by Seller of any of the representations by, or obligations of, Seller set forth in the Documents, and (ii) against any and all loss sustained or reasonable expense incurred by Buyer, including, without limitation, reasonable attorneys' fees, as the result of, or arising out of, the imposition on the Equipment of any Federal, State or other tax lien or foreclosure of such lien, by virtue of the failure to pay or the underpayment by Seller of the Federal, State, or other taxes payable by Seller, except for any such tax obligation payable by the Lessee pursuant to the Lease. In the event any claim for indemnification hereunder arises

on account of a claim or action made or instituted by a third person, or entity, against Buyer, Buyer shall notify Seller promptly after the receipt of notice by Buyer that such claim has been made or that such action has been commenced. Seller shall be entitled to maintain the sole defense of such claim or action by counsel of its own choosing. If Seller shall maintain the sole defense of such claim or action the same shall not be settled without its prior written consent (which consent shall not be unreasonably withheld).

5.2 Buyer's Indemnification. Buyer will indemnify Seller and protect, defend and hold it harmless from and against any and all loss, cost, damage, injury or expense, including without limitation, reasonable attorneys' fees, wheresoever and howsoever arising which Seller or its subsidiaries or stockholders, or any of its, or their, directors, officers, agents, employees, or stockholders, may incur by reason of any breach by Buyer of any of the representations by, or obligations of, Buyer set forth in the Documents. In the event any claim for indemnification hereunder arises on account of a claim or action made or instituted by a third person against Seller, Seller shall notify Buyer promptly after the receipt of notice by Seller that such claim has been made or that such action has been commenced. Buyer shall be entitled to maintain the sole defense of such claim or action by counsel of its own choosing. If Buyer shall maintain the sole defense of such claim or action, the same shall not be settled without Seller's prior written consent (which consent shall not be unreasonably withheld).

## 6. MISCELLANEOUS

6.1 Survival. The representations and warranties made herein shall survive the execution and delivery of this Agreement and the consummation of the transactions described herein.

6.2 Successors and Assigns. The rights and obligations of the parties hereunder shall inure to the benefit of, and be binding and enforceable upon, the respective successors, assigns and transferees of either party.

6.3 Notice. Any notice, request or other communication to either party by the other hereunder shall be given in writing and shall be deemed given on the earlier of the date the same is (i) personally delivered, or mailed, postage prepaid and addressed to the party for which it is intended at the address set forth at the head of this Agreement together with a copy to one additional addressee, if previously designated by the party to receive the notice hereunder. The place to which notices or copies of notices are to be given to either party may be changed from time to time by such party by written notice to the other party.

6.4 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED UNDER THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT LAWS THEREOF.

6.5 Attorneys Fees. In the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including attorneys fees.

6.6 Captions. Captions used herein are inserted for reference purposes only and shall not affect the interpretation or construction of this Agreement.

6.7 Entire Agreement. This Agreement is the entire agreement between Buyer and Seller with respect to the subject matter hereof and there are no other agreements, express or implied.

6.8 Amendments. This Agreement may be amended or varied only by a document, in writing, of even or subsequent date hereof, executed by Buyer and Seller.

6.9 Further Assurances. Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party in order to fully carry out the intent and accomplish the purposes of the Documents and the transactions referred to therein, including, without limitation, any instruments or documents required by the Lessee.

6.10 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

6.11 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement as of the day and year first above written.

**SELLER:**

**BUYER:**

WEST ONE BANK, IDAHO

ATEL FINANCIAL CORPORATION

By: 

By: \_\_\_\_\_

Title: SVT

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this day of May \_\_\_\_, 1994, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of ATEL FINANCIAL CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF Idaho )  
 ) ss  
COUNTY OF Ada )

On this day of May 6<sup>th</sup>, 1994, before me personally appeared David A. Cook, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of WEST ONE BANK, IDAHO, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Richard J. Morrison  
Notary Public

My commission expires: 3-8-99

Exhibit A to Purchase  
Agreement and Assignment  
of Lease dated as of  
May 4, 1994, to Bill  
of Sale and to Notice and  
Acknowledgment of Assignment

**349 Auto Racks**

Identified as The Denver and Rio Grande Western Railroad Company  
Numbers, as follows:

<b>TYPE</b>	<b>NUMBERS</b>	<b>NUMBER OF UNITS</b>
Bi-level	450-649	200
Bi-level	774-798	25
Tri-level	650-773	124
	<b>Total:</b>	<b>349</b>

Exhibit B to  
Purchase Agreement and  
Assignment of Lease  
dated as of May 4, 1994

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that West One Bank, Idaho, successor in interest to West One Bank, Idaho, N.A. ("Seller"), in consideration for good and valuable consideration received from Atel Financial Corporation ("Buyer"), the receipt and sufficiency of which is hereby acknowledged, has bargained, sold, transferred, assigned, set over, and conveyed, unto the Buyer, its successors and assigns forever, free and clear of all liens, claims, and encumbrances of any nature whatsoever arising by or through Seller or arising as a result of any claim against Seller, all of the personal property described on the attached Exhibit A incorporated herein by reference (the "Equipment") excepting only and subject to the Equipment Lease Agreement dated as of July 31, 1987 between Seller as lessor and The Denver and Rio Grande Western Railroad Company as lessee.

TO HAVE AND TO HOLD the Equipment unto the Buyer, its successors, and assigns, to its and their own use and behalf forever.

Seller hereby affirms, represents and warrants that it has the full right, title, and interest in the Equipment.

Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims or liabilities resulting from any misrepresentation by, and or breach of warranty, covenant, or agreement of Seller set forth herein.

Seller, for itself and its successors and assigns, further covenants and agrees to do execute, and deliver, or to cause to be done, executed, and deliver, all such further acts, transfers, and assurances, reasonably requested by Buyer for the better assuring, conveying, and confirming unto Buyer and its successors and assigns, the Equipment hereby bargained, sold assigned, transferred, set over, and conveyed, as Buyer and its successors and assigns shall request.

This Bill of Sale and representations, warranties, and covenants herein contained shall inure to the benefit of Buyer and its successors and assigns, shall be binding upon Seller and its successors, assigns.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be  
executed as of this May \_\_, 1994.

Seller:

West One Bank, Idaho

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT**

Reference is hereby made to Equipment Lease Agreement dated as of July 31, 1987 and to the Individual Equipment Record ("IER") Nos. 1 through 7, inclusive and Individual Equipment Record ("IER") End Doors, Nos. 1 through 4, inclusive between West One Bank, Idaho, successor in interest to West One Bank, Idaho, N.A., as lessor ("Lessor") and The Denver and Rio Grande Western Railroad Company as lessee ("Lessee") (the Equipment Lease Agreement, the IERs and IERs End Doors and any and all other documentation relating to the transaction contemplated thereby is hereinafter referred to as the "Lease".)

Lessor hereby gives Lessee notice and Lessee hereby acknowledges receipt of notice that Lessor has assigned to ATEL Financial Corporation, whose offices are at 235 Pine Street, 6th Floor, San Francisco, California 94104 ("Assignee") all of its rights, in the Lease and the equipment leased thereunder ("Equipment"). Lessee agrees to make payment of any and all monies due or to become due Lessor thereunder to Assignee commencing with the payment due June 30, 1994 until Assignee instructs Lessee otherwise in writing.

In recognition of the reliance by Lessor and Assignee upon this Notice and Acknowledgment of Assignment and in consideration of the agreement by Lessor and Assignee to not interfere with Lessee's quiet possession of the Equipment subject to the terms of the Lease, Lessee certifies, confirms and agrees as follows:

1. That the Lessee will not assert against Assignee any defense, claim, counterclaim, recoupment, setoff, or right to cancel or terminate the Lease which Lessee may have against Lessor. Lessee agrees that it will pay to Assignee all monies due or to become due under the Lease without regard to any such defense, claim, counterclaim, recoupment, setoff or right whether arising under this Lease or any other transaction or otherwise and will not seek to recover any part of the same from Assignee, provided that Lessee shall not be obligated to make any payment or perform any obligation under the Lease in favor of Assignee if, when no Event of Default shall have occurred and be continuing, Assignee interferes with Lessee's right to quiet enjoyment of the Equipment. Notwithstanding the foregoing, nothing herein shall be deemed to relieve Lessor of any of its obligations to Lessee under the Lease.

2. That the Equipment is in Lessee's possession and control, that the Equipment has been inspected by duly authorized representatives of Lessee and has been fully and finally accepted by duly authorized

'9. ' This Notice and Acknowledgment of Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

**ATEL Financial Corporation**

**The Denver and Rio Grande Western  
Railroad Company**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**West One Bank, Idaho**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

representatives of Lessee as the Equipment under the Lease and found to be in good working order and suitable for the Lessee's purposes in all respects.

3. That the Lease has been duly executed and delivered by Lessee, constitutes the valid and binding obligation of the Lessee and is enforceable against the Lessee in accordance with its terms except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4. That the Lease is in full force and effect and has not been modified or amended except as set forth in Amendments Number One through Three, inclusive. Any future modification, termination, amendment or supplement to the Lease or settlement of amounts due thereunder shall be ineffective without Assignee's prior written consent, which will not be unreasonably withheld.

5. That neither Lessee nor, to Lessee's knowledge, Lessor has breached the Lease in any respect and that payments of any and all monies due under the Lease have been and will continue to be paid in strict accordance with the terms of the Lease. As of May 1, 1994 there are eight (8) successive rental payments of \$754,690.88 each due under the Lease semiannually in arrears on each June 30 and December 30 through December 30, 1997.

6. Lessor hereby notifies Lessee and Lessee acknowledges that Assignee is entitled to the benefits of each and every right accorded Lessor in the Lease, including but not limited to remedies, inspection rights, indemnity rights, right to give consent, right to receive payment of costs and expenses incurred in exercising rights and remedies under the Lease, including reasonable attorney's fees, and the right to receive notices and other documents required to be furnished under the Lease.

7. That Lessee has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease, the rents reserved thereunder or the Equipment. Lessee agrees to not enter into any assignment, sublease or other transfer of its rights, duties, obligations or interests in the Lease or Equipment except in accordance with the provisions of the Lease.

8. That all representations and duties of Lessor intended to induce Lessee to enter into this Lease, whether required by the Lease or otherwise, have been fulfilled.

## NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Reference is hereby made to Equipment Lease Agreement dated as of July 31, 1987 and to the Individual Equipment Record ("IER") Nos. 1 through 7, inclusive and Individual Equipment Record ("IER") End Doors, Nos. 1 through 4, inclusive between West One Bank, Idaho, successor in interest to West One Bank, Idaho, N.A., as lessor ("Lessor") and The Denver and Rio Grande Western Railroad Company as lessee ("Lessee") (the Equipment Lease Agreement, the IERs and IERs End Doors and any and all other documentation relating to the transaction contemplated thereby is hereinafter referred to as the "Lease".)

Lessor hereby gives Lessee notice and Lessee hereby acknowledges receipt of notice that Lessor has assigned to ATEL Financial Corporation, whose offices are at 235 Pine Street, 6th Floor, San Francisco, California 94104 ("Assignee") all of its rights, in the Lease and the equipment leased thereunder ("Equipment"). Lessee agrees to make payment of any and all monies due or to become due Lessor thereunder to Assignee commencing with the payment due June 30, 1994 until Assignee instructs Lessee otherwise in writing.

In recognition of the reliance by Lessor and Assignee upon this Notice and Acknowledgement of Assignment and in consideration of the agreement by Lessor and Assignee to not interfere with Lessee's quiet possession of the Equipment subject to the terms of the Lease, Lessee certifies, confirms and agrees as follows:

1. That the Lessee will not assert against Assignee any defense, claim, counterclaim, recoupment, setoff, or right to cancel or terminate the Lease which Lessee may have against Lessor. Lessee agrees that it will pay to Assignee all monies due or to become due under the Lease without regard to any such defense, claim, counterclaim, recoupment, setoff or right whether arising under this Lease or any other transaction or otherwise and will not seek to recover any part of the same from Assignee, provided that Lessee shall not be obligated to make any payment or perform any obligation under the Lease in favor of Assignee if, when no Event of Default shall have occurred and be continuing, Assignee interferes with Lessee's right to quiet enjoyment of the Equipment. Notwithstanding the foregoing, nothing herein shall be deemed to relieve Lessor of any of its obligations to Lessee under the Lease.

2. That the Equipment is in Lessee's possession and control, that the Equipment has been inspected by duly authorized representatives of Lessee and has been fully and finally accepted by duly authorized

representatives of Lessee as the Equipment under the Lease and found to be in good working order and suitable for the Lessee's purposes in all respects.

3. That the Lease has been duly executed and delivered by Lessee, constitutes the valid and binding obligation of the Lessee and is enforceable against the Lessee in accordance with its terms except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4. That the Lease is in full force and effect and has not been modified or amended except as set forth in Amendments Number One through Three, inclusive. Any future modification, termination, amendment or supplement to the Lease or settlement of amounts due thereunder shall be ineffective without Assignee's prior written consent, which will not be unreasonably withheld.

5. That neither Lessee nor, to Lessee's knowledge, Lessor has breached the Lease in any respect and that payments of any and all monies due under the Lease have been and will continue to be paid in strict accordance with the terms of the Lease. As of May 1, 1994 there are eight (8) successive rental payments of \$754,690.88 each due under the Lease semiannually in arrears on each June 30 and December 30 through December 30, 1997.

6. Lessor hereby notifies Lessee and Lessee acknowledges that Assignee is entitled to the benefits of each and every right accorded Lessor in the Lease, including but not limited to remedies, inspection rights, indemnity rights, right to give consent, right to receive payment of costs and expenses incurred in exercising rights and remedies under the Lease, including reasonable attorney's fees, and the right to receive notices and other documents required to be furnished under the Lease.

7. That Lessee has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease, the rents reserved thereunder or the Equipment. Lessee agrees to not enter into any assignment, sublease or other transfer of its rights, duties, obligations or interests in the Lease or Equipment except in accordance with the provisions of the Lease.

8. That all representations and duties of Lessor intended to induce Lessee to enter into this Lease, whether required by the Lease or otherwise, have been fulfilled.

9. This Notice and Acknowledgment of Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

**ATEL Financial Corporation**

**The Denver and Rio Grande Western  
Railroad Company**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**West One Bank, Idaho**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## PURCHASE AGREEMENT AND ASSIGNMENT OF LEASE

This Purchase Agreement and Assignment of Lease ("Agreement") dated as of May 4, 1994, by and between West One Bank, Idaho, an Idaho corporation, successor in interest to West One Bank, Idaho, N.A., a national banking association, having its principal place of business at 101 South Capitol Boulevard, 8th Floor, Boise, Idaho 83702 ("Seller") and ATEL Financial Corporation, a California corporation, having its principal place of business at 235 Pine Street, 6th Floor, San Francisco CA 94104 ("Buyer").

### BACKGROUND

Seller has acquired and owns the equipment and all attachments and accessions thereto (collectively, the "Equipment") listed and described on Exhibit "A" attached hereto and made a part hereof. The Equipment has been leased to The Denver and Rio Grande Western Railroad Company ("Lessee") pursuant to an Equipment Lease Agreement dated as of July 31, 1987 between Seller as lessor, and Lessee as lessee including Amendments Number One through Three and Individual Equipment Record ("IER") Nos. 1 through 7, inclusive and Individual Equipment Record ("IER") End Doors Nos. 1 through 4, inclusive (the Equipment Lease Agreement as amended and the IERS and IER, End Doors and any and all other instruments, agreements or documents relating to the overall transaction are hereinafter referred to as the "Lease").

Buyer desires to purchase from Seller and Seller desires to sell to Buyer, the Equipment.

Seller desires to assign to Buyer, and Buyer desires to assume from Seller all of the right, title, and interest of Seller in, to and under the Lease.

NOW, THEREFORE, for good and valuable consideration (receipt of which is hereby acknowledged) the parties hereto, desiring to be legally bound, hereby agree as follows:

#### 1. PURCHASE OF EQUIPMENT

1.1 Conveyance of Equipment. Subject to the terms and conditions hereof, Seller sells, assigns, transfers, conveys and delivers to Buyer, and Buyer hereby purchases from Seller, the Equipment free and clear of all claims, liens and encumbrances,

arising by or through Seller or arising as a result of any claims against Seller, except for the rights of Lessee under the Lease. The Equipment shall be deemed delivered in the States of California, Iowa, Oregon, Michigan and Minnesota, and Seller will deliver to Buyer a bill of sale (the "Bill of Sale") substantially in the form of Exhibit "B" attached hereto.

1.2 Assignment of Lease. Subject to the terms and conditions hereof, Seller hereby sells, assigns, transfers, conveys and delivers to Buyer all of Seller's right, title and interest as lessor in and to the Lease, including, without limitation, rentals, insurance, casualty, and indemnification amounts and other sums due or to become due under the Lease, however, excluding rentals payable under the Lease prior to May 6, 1994 (the "Closing Date"). Prior to funding, Seller will deliver to Buyer a Notice and Acknowledgement of Assignment executed by Buyer, Lessee, and Seller (the "Notice of Assignment") substantially in the form of Exhibit "C" attached hereto.

1.3 Purchase Price. The entire consideration for the purchase of the Equipment and the assignment of the Lease shall be Seven Million One Hundred Thirty Thousand Dollars (\$7,130,000) ("Purchase Price") which shall be paid by Buyer to Seller by wire transfer or other immediately available funds on the Closing Date.

1.4 Subordination. The sale of the Equipment is hereby made expressly subject to the rights of Lessee and its successors and assigns under the Lease.

## 2. REPRESENTATION AND WARRANTIES

2.1 Representations and Warranties of the Seller. Seller represents and warrants to, and covenants and agrees with, Buyer as follows:

a. (i) to the best of Seller's knowledge, neither the sale nor use of the Equipment violates or infringes the patent, trademark, trade name, or other rights of any person; (ii) to the best of Seller's knowledge, the Lease has been duly executed and delivered, constitutes the valid and binding obligation of the Lessee and is enforceable against the Lessee in accordance with its terms (subject to laws of general application affecting creditors' rights), and no defaults, or conditions which with the passage of time or giving of notice or both would constitute defaults, exist thereunder by such Lessee; (iii) there is no payment default under the Lease and the Lessee has made all required Lease payments through December 30, 1993; (iv) the Lease has been duly executed and delivered by Seller, constitutes the valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms (subject to laws of general application affecting creditors' rights), and no defaults, or conditions which

with the passage of time or giving of notice or both would constitute defaults, exist thereunder by Seller; (v) no defaults, or conditions which with the passage of time or giving of notice or both would constitute material defaults, exist by Seller under any agreement, instrument, or document relating to the Lease and (vi) the Equipment is in the possession and control of the Lessee in accordance with the terms and conditions of the Lease

b. On the date hereof Seller owns, and by this Agreement conveys to Buyer, title to the Equipment, free and clear of any leases, liens, claims, and encumbrances arising by or through Seller or arising as a result of any claims against Seller other than the Lease. Seller has not entered into and has no knowledge of any other agreements, leases, liens, or encumbrances affecting the Equipment other than the Lease. Seller has properly made all governmental filings and/or recordings necessary for a valid reservation of unencumbered title and for securing a precautionary first perfected security interest in the Equipment.

c. Seller is a duly and validly organized and existing Idaho corporation in good standing under the laws of the State of Idaho and has all necessary power and authority to own its properties and carry on its business in the places where such properties are located and such business is conducted.

d. Seller has the power and authority to enter into this Agreement, the Bill of Sale, and all other instruments and documents executed and delivered and/or received, or to be executed and delivered and/or received, in the connection with the transactions herein referred to and to carry out the sale and transfer of the Equipment to Buyer and the transactions contemplated hereunder (this Agreement, the Bill of Sale, and all such other instruments and documents are hereinafter referred to collectively as the "Documents").

e. There is no action, suit or proceeding pending against Seller before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Seller of any Document. No approval of, or consent from, any governmental authority, person or entity not a party thereto is required for the execution, delivery or performance by Seller of any Document.

f. The execution and delivery of the Documents by Seller and the performance by it of its obligation thereunder, including, without limitation, the conveyance of the Equipment and acceptance of the Purchase Price in exchange therefore, have been duly authorized by all necessary action of Seller's and do not violate or conflict with (i) any provisions of Seller's Articles of Incorporation or By-Laws, (ii) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative

agency or other governmental authority, or (iii) any other agreement to which Seller is a party or by which Seller is or may be bound.

g. The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Seller enforceable in accordance with their respective terms, subject, however, to laws of general application affecting creditor's rights.

h. All sales, use, property, other taxes, licenses, tolls, inspection and/or other fees, bonds, interest with respect thereto, which were or may be required to be paid or obtained in connection with the original acquisition of the Equipment by Seller, or the lease of the Equipment to the Lessee have been, or when due will promptly be, paid in full, or provision for the payment thereof by the Lessee has been provided for in the Lease.

i. Seller has furnished, or will upon request, furnish or make available to Buyer a true, correct and complete copy of each and every document delivered to or by Seller in connection with the purchase of the Equipment by Seller and in connection with the leasing of the Equipment to the Lessee under the Lease.

j. Notwithstanding any resale certificate provided by Buyer, Seller shall pay, when due, fifty percent (50%) of all sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates, including penalties and interest with respect thereto, now or hereafter imposed by, or required to be paid to or obtained from any jurisdiction in connection with the purchase of the Equipment by Buyer.

k. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 2.1 OR IN THE BILL OF SALE, THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, ITS CONDITION, ITS FITNESS FOR A PARTICULAR PURPOSE, ITS MERCHANTABILITY, OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE.

2.2 Representation and Warranties of the Buyer. The Buyer represents and warrants to, and covenants and agrees with, the Seller as follows:

a. Buyer is a corporation duly and validly organized under the laws of the State of California and has all necessary power and authority to own its properties and carry on its business where such properties are located and such business is conducted, and is acquiring the Equipment solely for its own account and not with a view to or for resale, distribution, or subdivision of its interests herein.

b. Buyer has the power and authority to enter into the Documents and to carry out the transactions contemplated thereunder. There is no action, suit or proceeding pending against Buyer before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Buyer of any Document. No approval of, or consent from any governmental authority, person or entity not a party thereto is required for the execution, delivery or performance by Buyer of any Documents.

c. The execution and delivery of the Documents by Buyer, and the performance of its obligations thereunder have been duly authorized by all necessary action of Buyer and do not violate or conflict with (i) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or (ii) any other agreement to which Buyer is a party or by which Buyer may be bound.

d. The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Buyer enforceable in accordance with their respective terms, subject, however, to laws of general application affecting creditors' rights.

e. Buyer shall pay, when due, fifty percent (50%) of all sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates, including penalties and interest with respect thereto, now or hereafter imposed by, or required to be paid to or obtained from any jurisdiction, other than the State of California, in connection with the purchase of the Equipment by Buyer.

### 3. CONDITIONS PRECEDENT

3.1 Buyer's Obligations. Buyer's obligations to purchase the Equipment and the assignment of the Lease is subject (unless waived by Buyer) to the satisfaction of the following conditions on or prior to the Closing Date:

(a) Buyer shall have received fully executed original counterparts of the Lease;

(b) Buyer shall have received a fully executed original counterpart of this Agreement;

(c) Buyer shall have received a fully executed original of the Notice of Assignment;

(d) Buyer shall have received an executed original of the Bill of Sale.

(e) Buyer shall have received an incumbency certificate from Seller in form and substance reasonably satisfactory to Buyer.

(f) Buyer shall have received certificates or other satisfactory evidence of the maintenance of the insurance required pursuant to the Lease with Buyer as loss payee and/or additional insured;

(g) this Agreement (or notices or memoranda hereof) and such other documents as are deemed necessary or appropriate by Buyer shall have each been recorded or filed for record in such public offices as may be necessary or appropriate in order to protect the rights of Buyer hereunder and under the Lease.

3.2 Seller's Obligations. The obligations of Seller hereunder are subject (unless waived by Seller) to the satisfaction of the following conditions on or prior to the Closing Date:

(a) Seller shall have received a fully executed original counterpart of this Agreement;

(b) Seller shall have received the Purchase Price.

(c) Seller shall have received a fully executed original of the Notice of Assignment.

#### 4. MANUFACTURER'S REPRESENTATIONS

Seller hereby assigns to Buyer all agreements, warranties and representations of the manufacturer of each item of the Equipment or, alternatively, will arrange for the enforcement for Buyer's benefit of such representations and warranties to the extent they are not assignable.

#### 5. INDEMNIFICATION

5.1 Seller's Indemnification. Seller will indemnify Buyer and protect, defend and hold it harmless from and against (i) any and all loss, cost, damage, injury or expense, including, without limitation, reasonable attorneys' fees, wheresoever and howsoever arising which Buyer or its partners, or its affiliates, or any of their directors, officers, agents, or employees may incur by reason of any breach by Seller of any of the representations by, or obligations of, Seller set forth in the Documents, and (ii) against any and all loss sustained or reasonable expense incurred by Buyer, including, without limitation, reasonable attorneys' fees, as the result of, or arising out of, the imposition on the Equipment of any Federal, State or other tax lien or foreclosure of such lien, by virtue of the failure to pay or the underpayment by Seller of the Federal, State, or other taxes payable by Seller, except for any such tax obligation payable by the Lessee pursuant to the Lease. In the event any claim for indemnification hereunder arises

on account of a claim or action made or instituted by a third person, or entity, against Buyer, Buyer shall notify Seller promptly after the receipt of notice by Buyer that such claim has been made or that such action has been commenced. Seller shall be entitled to maintain the sole defense of such claim or action by counsel of its own choosing. If Seller shall maintain the sole defense of such claim or action the same shall not be settled without its prior written consent (which consent shall not be unreasonably withheld).

5.2 Buyer's Indemnification. Buyer will indemnify Seller and protect, defend and hold it harmless from and against any and all loss, cost, damage, injury or expense, including without limitation, reasonable attorneys' fees, wheresoever and howsoever arising which Seller or its subsidiaries or stockholders, or any of its, or their, directors, officers, agents, employees, or stockholders, may incur by reason of any breach by Buyer of any of the representations by, or obligations of, Buyer set forth in the Documents. In the event any claim for indemnification hereunder arises on account of a claim or action made or instituted by a third person against Seller, Seller shall notify Buyer promptly after the receipt of notice by Seller that such claim has been made or that such action has been commenced. Buyer shall be entitled to maintain the sole defense of such claim or action by counsel of its own choosing. If Buyer shall maintain the sole defense of such claim or action, the same shall not be settled without Seller's prior written consent (which consent shall not be unreasonably withheld).

## 6. MISCELLANEOUS

6.1 Survival. The representations and warranties made herein shall survive the execution and delivery of this Agreement and the consummation of the transactions described herein.

6.2 Successors and Assigns. The rights and obligations of the parties hereunder shall inure to the benefit of, and be binding and enforceable upon, the respective successors, assigns and transferees of either party.

6.3 Notice. Any notice, request or other communication to either party by the other hereunder shall be given in writing and shall be deemed given on the earlier of the date the same is (i) personally delivered, or mailed, postage prepaid and addressed to the party for which it is intended at the address set forth at the head of this Agreement together with a copy to one additional addressee, if previously designated by the party to receive the notice hereunder. The place to which notices or copies of notices are to be given to either party may be changed from time to time by such party by written notice to the other party.

6.4 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED UNDER THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT LAWS THEREOF.

6.5 Attorneys Fees. In the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including attorneys fees.

6.6 Captions. Captions used herein are inserted for reference purposes only and shall not affect the interpretation or construction of this Agreement.

6.7 Entire Agreement. This Agreement is the entire agreement between Buyer and Seller with respect to the subject matter hereof and there are no other agreements, express or implied.

6.8 Amendments. This Agreement may be amended or varied only by a document, in writing, of even or subsequent date hereof, executed by Buyer and Seller.

6.9 Further Assurances. Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party in order to fully carry out the intent and accomplish the purposes of the Documents and the transactions referred to therein, including, without limitation, any instruments or documents required by the Lessee.

6.10 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

6.11 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement as of the day and year first above written.

**SELLER:**

WEST ONE BANK, IDAHO

**BUYER:**

ATEL FINANCIAL CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: ABott  
Title: President

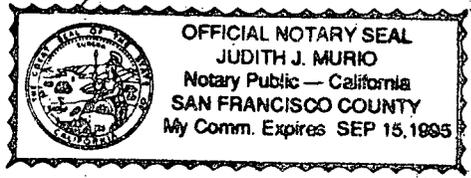
STATE OF California )  
COUNTY OF San Francisco ) ss

On this day of May 3, 1994, before me personally appeared A. Ball, to me personally known, who being by me duly sworn, says that he is the President of ATEL FINANCIAL CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Judith J. Murio  
Notary Public

My commission expires: Sept. 15, 1995



STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this day of May \_\_\_\_\_, 1994, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of WEST ONE BANK, IDAHO, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires:

Exhibit A to Purchase  
Agreement and Assignment  
of Lease dated as of  
May 4, 1994, to Bill  
of Sale and to Notice and  
Acknowledgment of Assignment

349 Auto Racks

Identified as The Denver and Rio Grande Western Railroad Company  
Numbers, as follows:

TYPE	NUMBERS	NUMBER OF UNITS
Bi-level	450-649	200
Bi-level	774-798	25
Tri-level	650-773	124
	Total:	349

Exhibit B to  
Purchase Agreement and  
Assignment of Lease  
dated as of May 4, 1994

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, that West One Bank, Idaho, successor in interest to West One Bank, Idaho, N.A. ("Seller"), in consideration for good and valuable consideration received from Atel Financial Corporation ("Buyer"), the receipt and sufficiency of which is hereby acknowledged, has bargained, sold, transferred, assigned, set over, and conveyed, unto the Buyer, its successors and assigns forever, free and clear of all liens, claims, and encumbrances of any nature whatsoever arising by or through Seller or arising as a result of any claim against Seller, all of the personal property described on the attached Exhibit A incorporated herein by reference (the "Equipment") excepting only and subject to the Equipment Lease Agreement dated as of July 31, 1987 between Seller as lessor and The Denver and Rio Grande Western Railroad Company as lessee.

TO HAVE AND TO HOLD the Equipment unto the Buyer, its successors, and assigns, to its and their own use and behalf forever.

Seller hereby affirms, represents and warrants that it has the full right, title, and interest in the Equipment.

Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims or liabilities resulting from any misrepresentation by, and or breach of warranty, covenant, or agreement of Seller set forth herein.

Seller, for itself and its successors and assigns, further covenants and agrees to do execute, and deliver, or to cause to be done, executed, and deliver, all such further acts, transfers, and assurances, reasonably requested by Buyer for the better assuring, conveying, and confirming unto Buyer and its successors and assigns, the Equipment hereby bargained, sold assigned, transferred, set over, and conveyed, as Buyer and its successors and assigns shall request.

This Bill of Sale and representations, warranties, and covenants herein contained shall inure to the benefit of Buyer and its successors and assigns, shall be binding upon Seller and its successors, assigns.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of this May \_\_, 1994.

Seller:

West One Bank, Idaho

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT**

Reference is hereby made to Equipment Lease Agreement dated as of July 31, 1987 and to the Individual Equipment Record ("IER") Nos. 1 through 7, inclusive and Individual Equipment Record ("IER") End Doors, Nos. 1 through 4, inclusive between West One Bank, Idaho, successor in interest to West One Bank, Idaho, N.A., as lessor ("Lessor") and The Denver and Rio Grande Western Railroad Company as lessee ("Lessee") (the Equipment Lease Agreement, the IERs and IERs End Doors and any and all other documentation relating to the transaction contemplated thereby is hereinafter referred to as the "Lease".)

Lessor hereby gives Lessee notice and Lessee hereby acknowledges receipt of notice that Lessor has assigned to ATEL Financial Corporation, whose offices are at 235 Pine Street, 6th Floor, San Francisco, California 94104 ("Assignee") all of its rights, in the Lease and the equipment leased thereunder ("Equipment"). Lessee agrees to make payment of any and all monies due or to become due Lessor thereunder to Assignee commencing with the payment due June 30, 1994 until Assignee instructs Lessee otherwise in writing.

In recognition of the reliance by Lessor and Assignee upon this Notice and Acknowledgement of Assignment and in consideration of the agreement by Lessor and Assignee to not interfere with Lessee's quiet possession of the Equipment subject to the terms of the Lease, Lessee certifies, confirms and agrees as follows:

1. That the Lessee will not assert against Assignee any defense, claim, counterclaim, recoupment, setoff, or right to cancel or terminate the Lease which Lessee may have against Lessor. Lessee agrees that it will pay to Assignee all monies due or to become due under the Lease without regard to any such defense, claim, counterclaim, recoupment, setoff or right whether arising under this Lease or any other transaction or otherwise and will not seek to recover any part of the same from Assignee, provided that Lessee shall not be obligated to make any payment or perform any obligation under the Lease in favor of Assignee if, when no Event of Default shall have occurred and be continuing, Assignee interferes with Lessee's right to quiet enjoyment of the Equipment. Notwithstanding the foregoing, nothing herein shall be deemed to relieve Lessor of any of its obligations to Lessee under the Lease.

2. That the Equipment is in Lessee's possession and control, that the Equipment has been inspected by duly authorized representatives of Lessee and has been fully and finally accepted by duly authorized

representatives of Lessee as the Equipment under the Lease and found to be in good working order and suitable for the Lessee's purposes in all respects.

3. That the Lease has been duly executed and delivered by Lessee, constitutes the valid and binding obligation of the Lessee and is enforceable against the Lessee in accordance with its terms except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4. That the Lease is in full force and effect and has not been modified or amended except as set forth in Amendments Number One through Three, inclusive. Any future modification, termination, amendment or supplement to the Lease or settlement of amounts due thereunder shall be ineffective without Assignee's prior written consent, which will not be unreasonably withheld.

5. That neither Lessee nor, to Lessee's knowledge, Lessor has breached the Lease in any respect and that payments of any and all monies due under the Lease have been and will continue to be paid in strict accordance with the terms of the Lease. As of May 1, 1994 there are eight (8) successive rental payments of \$754,690.88 each due under the Lease semiannually in arrears on each June 30 and December 30 through December 30, 1997.

6. Lessor hereby notifies Lessee and Lessee acknowledges that Assignee is entitled to the benefits of each and every right accorded Lessor in the Lease, including but not limited to remedies, inspection rights, indemnity rights, right to give consent, right to receive payment of costs and expenses incurred in exercising rights and remedies under the Lease, including reasonable attorney's fees, and the right to receive notices and other documents required to be furnished under the Lease.

7. That Lessee has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease, the rents reserved thereunder or the Equipment. Lessee agrees to not enter into any assignment, sublease or other transfer of its rights, duties, obligations or interests in the Lease or Equipment except in accordance with the provisions of the Lease.

8. That all representations and duties of Lessor intended to induce Lessee to enter into this Lease, whether required by the Lease or otherwise, have been fulfilled.

9. This Notice and Acknowledgment of Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

**ATEL Financial Corporation**

**The Denver and Rio Grande Western  
Railroad Company**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**West One Bank, Idaho**

By: \_\_\_\_\_  
Title: \_\_\_\_\_