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May 27, 1994

RECORDATION NO. 10398-J FILED 1425
MAY 27 1994 - 12 45 PM
INTERSTATE COMMERCE COMMISSION

**Direct Dial: (202)466-6532**

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Secretary Strickland:

I have enclosed three originals and two certified copies of each of the three documents described below, to be recorded pursuant to 49 U.S.C. § 11303.

I. The first document is a Security Agreement, a secondary document, dated May 27, 1994. The primary documents to which this is connected are recorded under Recordation Nos. 10398 and 10621. We request that this document be recorded under Recordation Nos. 10398-G and 10621-D.

The names and addresses of the parties to the Security Agreement are:

Debtor:

Investors Asset Holding Corp.
Exchange Place
Boston, MA 02109

Debtor:

American Financial Group
Exchange Place
Boston, MA 02109

Counter Judith McDonald

Debtor:

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

Agent:

National Westminster Bank USA
175 Water Street
New York, NY 10038

A description of the equipment covered by the document consists of 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively.

II. The second document is an Assignment of Lease, a secondary document, dated May 27, 1994. The primary documents to which this is connected are recorded under Recordation Nos. 10398 and 10621. We request that this document be recorded under Recordation Nos. 10398-H and 10621-E.

The names and addresses of the parties to the Assignment of Lease are:

Assignor:

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

Assignee:

National Westminster Bank USA
175 Water Street
New York, NY 10038

A description of the equipment covered by the document consists of 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively.

III. The third document is a Guaranty, a secondary document, dated May 27, 1994. The primary documents to which this is connected are recorded under Recordation Nos. 10398 and 10621. We request that this document be recorded under Recordation Nos. 10398-I and 10621-F.

The names and addresses of the parties to the Guaranty are:

Guarantor:

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

Agent:

National Westminster Bank USA
175 Water Street
New York, NY 10038

A description of the equipment covered by the document consists of 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively.

A fee of $108.00 is enclosed. Please return three originals of each document to:

Louis E. Gitomer
Ball, Janik & Novack
Suite 1035
1101 Pennsylvania Avenue, N.W.
Washington, DC 20004

A short summary of the documents to appear in the index follows: (I) a Security Agreement between Investors Asset Holding Corp., Exchange Place, Boston, MA 02109, American Financial Group, Exchange Place, Boston, MA 02109, First Security Bank of Utah, National Association, 79 South Main Street, Salt Lake City, UT 84111, and National Westminster Bank USA, 175 Water Street, New York, NY 10038, covering 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively; (II) an Assignment of Lease between First Security Bank of Utah, National Association, 79 South Main Street, Salt Lake City, UT 84111, and National Westminster Bank USA, 175 Water Street, New York, NY 10038, covering 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively; and (III) a Guaranty between First Security Bank of Utah, National Association, 79 South Main Street, Salt Lake City, UT 84111, and National Westminster Bank USA, 175 Water Street, New York, NY 10038, covering 149 100-ton 4,650 cubic foot lined covered hopper cars numbered ATSF 317500-317572, and 317574-317649, all inclusive, previously numbered KPLX 20000-20072, and 20074-20149, all inclusive, respectively.

Very Truly Yours,

Louis E. Gitomer

Enclosures

RECORDATION NO. 10398 FILED 1425
MAY 27 1994 - 12 45 PM
INTERSTATE COMMERCE COMMISSION

# GUARANTY

GUARANTY entered into as of this 27th day of May, 1994, of **FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,** with an office at 79 South Main Street, Salt Lake City, Utah 84111 ("First Security"), not in its individual capacity but solely as Owner Trustee (hereinafter in such capacity referred to as the "Trustee") under the Koppel Inc. (1979) Equipment Trust No. 1 created as of May 31, 1979 (the "Railcar Trust") pursuant to that certain Master Trust Agreement, dated as of October 31, 1978, between First Security, as Owner Trustee, and ITEL Corporation, Equipment Finance Corporation ("ITEL"), as Trustor, and the Authorization and Direction under the Master Trust Agreement (the "Railcar Equipment Trust Authorization") dated as of May 15, 1979 between INVESTORS ASSET HOLDING CORP., a Massachusetts corporation ("IAHC"), as Trustee under the AFG/AT&SF 1994-1 Trust created pursuant to that certain Trust Agreement dated as of May 24 ~~13~~, 1994 by and between American Finance Group, as Trustor, and IAHC, as Trustee, as assignee of Residual Based Finance Corporation (assignee of Commerce Bank of Kansas City, N.A. and Commerce Bank of St. Louis, N.A.) (such Master Trust Agreement and Authorization and Direction being referred to as the "First Security Trust Agreement") in favor of **NATIONAL WESTMINSTER BANK USA**, as agent (the "Agent") under that certain Credit Agreement dated as of October 7, 1993 (together with all amendments, supplements and modifications thereto, the "Credit Agreement") among AMERICAN FINANCE GROUP, the lenders signatory thereto (the "Lenders") and the Agent.

## W I T N E S S E T H :

**WHEREAS,** pursuant to the Credit Agreement, the Lenders have made and have agreed to make, from time to time, loans (the "Loans") to the Borrower, such Loans being evidenced by a secured promissory note of the Borrower, to bridge finance the purchase of equipment to be sold to certain investment funds and for other working capital purposes, including the cost of operation and management of such funds;

**WHEREAS,** the Borrower, the Agent and certain affiliates of the Borrower, including the Owner Participant, have entered into a Security and Pledge Agreement dated as of October 7, 1993 pursuant to which, among other things, the Borrower and such affiliates granted the Agent, as security for the obligations of the Borrower under the Credit Agreement, a lien on all of the assets of the Borrower and such affiliates, including all of the beneficial interest of the Owner Participant in the Railcar Trust upon its acquisition thereof;

**WHEREAS**, simultaneously herewith the Owner Participant has acquired all of the beneficial interest in the Railcar Trust, which trust owns certain assets consisting of 149 100-ton 1979-built 4,650 CF Lined steel covered hopper cars bearing original marks KPLX numbers 20000 through 20149, inclusive, but excluding number 20073 (and new marks ATSF 317500 through 317649, inclusive, but excluding number 317573) and that certain Equipment Lease (the "Lease"), dated as of May 15, 1979 with The Atchison, Topeka and Santa Fe Railway Company (the "Lessee"), successor in interest to Mitsubishi International Corporation, successor in interest to Agrex, Inc. (formerly known as Koppel, Inc.);

**WHEREAS**, the Borrower has requested that the Lenders make a Loan to it under the Credit Agreement in the amount of $4,562,750.00 (the "Railcar Loan"), the proceeds of which are being used to enable the Owner Participant to acquire all of the beneficial interest in the Railcar Trust;

**WHEREAS,** the undersigned have determined that it is in their best interests and in pursuit of their business purposes as an integral part of the business of the Borrower, the Owner Participant and their affiliates and reasonably necessary and convenient in connection with the conduct of the business conducted and proposed to be conducted by them, to induce the Lenders to extend the Railcar Loan and other credit to the Borrower under the Credit Agreement, that the credit available under the Credit Agreement will directly or indirectly inure to their benefit and that they will therefore derive direct and indirect economic benefits from the proceeds of the Loans; and

**WHEREAS,** the undersigned acknowledge that they have been advised by the Agent that the Lenders are unwilling to extend the Railcar Loan to the Borrower unless the undersigned executes and delivers this Guaranty and the agreements, including the Security Agreement of even date herewith by the Trustee in favor of the Agent (the "Security Agreement"), to be executed by the undersigned in connection herewith;

**NOW, THEREFORE,** in consideration of the foregoing premises and the covenants, agreements, representations and warranties hereinafter set forth, it is agreed as follows:

**1.** **Definitions.** Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Credit Agreement.

**2.** **Guaranty.** The Trustee hereby unconditionally and irrevocably guarantee to the Agent, for the account of the Agent and the Lenders, the full and punctual payment, when due, whether at stated maturity, by acceleration or otherwise, of the Railcar

Loan and of all of the other Obligations (as defined in the Security Agreement), including, without limitation, all amounts required to be paid by the Borrower under the Credit Agreement and the Notes, as well as the payment and performance of all other obligations, liabilities and indebtedness of whatever nature of the Borrower to the Agent and the Lenders, arising under or in connection the Credit Agreement, whether now existing or hereafter arising, direct or indirect, joint or several, absolute or contingent, due or to become due, secured or unsecured, when and as the same shall become due and payable, whether at acceleration or otherwise. This Guaranty is an absolute and unconditional guaranty of payment and not of collectibility only, and may be enforced by the Agent on behalf of the Lenders without first resorting to any other right or remedy which it may have against the Borrower. If the Borrower shall fail to pay punctually any of the Obligations when and as the same shall be come due and payable (taking into account any grace period for such payment provided under the Credit Agreement), or if an Event of Default shall otherwise occur under the Credit Agreement, then the Agent may, without notice to the Borrower (except such notice as shall be specifically required under the Credit Agreement) or the Trustee, declare the Obligations, to be immediately due and payable as to the Trustee, and the Trustee shall forthwith upon demand pay the same in immediately available funds to the Agent, for the account of the Agent and the Lenders.

3. **Obligations of Trustee Not Affected.** This Guaranty is a continuing guaranty and all liabilities to which it applies or may apply shall be conclusively presumed to have been created in reliance hereon. The liabilities and obligations of the Trustee hereunder are primary and unconditional and shall remain in full force and effect without regard to, and shall not be affected or impaired in any respect by, (a) any assignment, transfer, amendment, modification, rescission or cancellation of, or addition or supplement to, any of the other Loan Documents (as defined in the Credit Agreement); (b) the invalidity, illegality or unenforceability, in whole or in part, of any of the other Loan Documents; (c) any exercise, non-exercise, waiver, release or cancellation by the Agent or any Lender of any right, remedy, power or privilege under or in respect of any of the Loan Documents; (d) any consent, release, extension, indulgence, or any other action, inaction or omission under or in respect of any of the Loan Documents or of or with respect to the Borrower; (e) any receivership, insolvency, bankruptcy, liquidation, reorganization, arrangement, readjustment, composition, dissolution or other similar proceeding involving or affecting the Borrower; (f) any sale, exchange, release, transfer, assignment, conveyance, or other dealing with or disposition of the Collateral, including the Railcars (as defined in the Security Agreement); (g) any improper filing or recording or any

failure by the Agent to file, record or to otherwise perfect or continue perfection of any lien or security interest in favor of the Agent on any of the Collateral, or to preserve, maintain or otherwise properly deal with any of the Collateral, including the Railcars; (h) any defense, set-off or counterclaim asserted by the Borrower; or (i) any other cause or circumstance whatsoever, including, without limitation, any other act, things, omission or delay which would or might in any manner or to any extent vary the risk of the Trustee or which would or might otherwise operate as a discharge of the Trustee as a matter of law, whether or not the Trustee shall have notice or knowledge of any of the matters referred to in this Section 3.

**4. Security.** As security for the payment of the Obligations and all other amounts payable hereunder, concurrently herewith, the Trustee is granting to the Agent pursuant to the Security Agreement and the Assignment of Lease being executed by the Trustee concurrently herewith (the "Railcar Loan Lease Assignment") a lien on and security interest on all assets and properties held in the Railcar Trust and the Owner Participant is granting a lien on and security interest on its beneficial interest in the Railcar Trust. Upon the occurrence of an Event of Default, in addition to all other rights and remedies which the Agent has under the Loan Documents, the Agent, on behalf of the Agent and the Lenders, is hereby authorized at any time and from time to time, to exercise all of its rights and remedies with respect to the Collateral subject to the Security Agreement and the Railcar Loan Lease Assignment without prior notice to the Trustee. Notwithstanding anything to the contrary contained in this Guaranty, in the event that the Borrower's entire beneficial interest in the Railcar Trust shall be acquired by a Permitted Transferee pursuant to a Transferee Agreement and as permitted under the Credit Agreement, the Agent shall not have recourse to such Collateral owned by such Permitted Transferee or the Railcar Trust except to the extent that a Transferee Event of Default (as defined in such Transferee Agreement) shall have occurred or shall exist under such Transferee Agreement.

**5. Waivers and Consents.** Except as otherwise specifically provided herein, the Trustee hereby waives (a) notice of acceptance of this Guaranty or of any action taken or not taken in reliance hereon; (b) presentment, demand, notice and protest of any kind with respect to the Obligations; (c) notice of any of the matters referred to in Section 3 of this Guaranty; and (d) all other notices and demands which may be required by statute, rule or law or otherwise to preserve any right of the Agent against the Borrower with respect to the delivery, acceptance, performance, default or enforcement of this Guaranty or any of the other Loan Documents, including, without limitation, notice or protest and dishonor, notice of acceptance, default or non-payment. The Trustee hereby waives any claims, rights or

remedies which it may now have or hereafter acquire against the Borrower that arise under the Loan Documents and/or from the performance by it of its obligations hereunder, including, without limitation, any claims, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification or participation in any claim, right or remedy of the Agent or any Lender against the Borrower or any security which the Agent or any Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise, and if any amount shall be paid to the Trustee on account of such rights, each and every amount so paid shall forthwith be paid to the Agent, for the account of the Agent and the Lenders, to be credited and applied against the Obligations.

6. **Reinstatement**. Notwithstanding anything contained herein to the contrary, if after receipt of any payment of all or any part of the Obligations, the Agent or any Lender is for any reason compelled to surrender such payment to any Person because such payment is determined to be void or voidable as a preference, an impermissible set-off, a diversion of trust funds or for any other reason, this Guaranty shall continue in full force and the Trustee shall be liable to, and shall indemnify and hold the Agent and the Lenders harmless for, the amount of such payment surrendered until the Agent and the Lenders shall have been finally and irrevocably paid in full. The provisions of the foregoing sentence shall be and remain effective notwithstanding any contrary action which may have been taken by the Agent in reliance upon such payment, and any such contrary action so taken shall be without prejudice to the rights of the Agent and the Lenders under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

7. **Subordination**. Any and all rights of the Trustee to the payment of any and all present and future indebtedness of the Borrower to the Trustee shall be subordinate and subject to the rights of the Lenders to payment in full of the Obligations, and all of the Obligations shall be paid in full before any payment or other distribution, whether in the form of case or otherwise, shall be made by the Borrower to the Trustee. In the event that any payment or distribution shall be received by the Trustee contrary to the provisions of this Section, whether in connection with any insolvency, bankruptcy, liquidation, reorganization, arrangement, readjustment, composition, dissolution or other similar proceeding involving the Borrower, or otherwise, such payment or distribution shall be paid over to the Agent for the account of the Agent and the Lenders for application to the Obligations, and the Trustee hereby irrevocably assigns to the Agent, on behalf of the Agent and the Lenders, all of its claims against and all rights in and to all indebtedness due to the

Trustee from the Borrower, and the Trustee hereby irrevocably authorizes and appoints the Agent to effect the collection of any amounts due thereon for application to the payment of the Obligations.

8. **Representations and Warranties and Covenants**. First Security, both in its individual capacity and as Owner Trustee, hereby makes the following representations, warranties and covenants:

(a) First Security is and will continue to be a national banking association duly organized, validly existing and in good standing under the laws of the United States of America and has and will continue to have the requisite power and authority to act as trustee under the First Security Trust Agreement and to enter into and perform its obligations under this Guaranty and any other agreements or documents being executed and delivered by it in connection herewith (the "Security Documents") in its capacity as Owner Trustee. The Railcar Trust has been duly created under the First Security Trust Agreement.

(b) First Security has taken all necessary action to authorize the execution and delivery and performance by it in its individual capacity or as Owner Trustee, as the case may be, of the First Security Trust Agreement, this Guaranty and the other Security Documents being executed and delivered. No consent or approval of any person (including, without limitation, stockholders of First Security), and no giving of notice to or registration with, any federal or Utah governmental authority or agency governing the banking or trust powers of First Security is or will be required in connection with the execution, delivery or performance by First Security, in its individual capacity or as Owner Trustee, as the case may be, of the First Security Trust Agreement, this Guaranty or the other Security Documents.

(c) The execution and delivery by First Security, in its individual capacity or as Owner Trustee, as the case may be, of the First Security Trust Agreement, this Guaranty and the other Security Documents, and performance by First Security, in its individual capacity or as Owner Trustee, as the case may be, hereunder and thereunder, will not violate any provision of law governing the banking or trust powers of First Security and will not conflict with or result in a breach of any order, writ, injunction, ordinance, resolution, decree, or other similar document or instrument of any governmental body or the Articles of Association or by-laws of First Security, or create (with or without the giving of notice or lapse of time, or both) a default under any agreement, bond, note or indenture to which it is a party or by which it is bound or any of its properties or assets is affected, or result in the imposition of any lien, charge or

encumbrance of any nature whatsoever upon any of the properties or assets owned by or used in connection with the business of First Security (other than any liens, charges or encumbrances arising out of the performance by First Security of its obligations as Owner Trustee under the Security Documents).

(d) The First Security Trust Agreement, this Guaranty and the other Security Documents have been duly executed and delivered by First Security, in its individual capacity or as Owner Trustee, as the case may be, and each of such documents constitutes its valid and legally binding obligation, enforceable against it in accordance with the respective terms thereof, subject to applicable bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and to general principles of equity.

(e) First Security, in its capacity as Owner Trustee of the Trust, owns and will continue to own no assets other than Collateral and has and will continue to have no indebtedness, liabilities or obligations other than under the Loan Documents and the Lease and will conduct no business other than the ownership and operation of the Collateral (subject to instructions from the Owner Participant as beneficiary to the contrary under the First Security Trust Agreement).

(f) There are no outstanding judgments, actions or proceedings pending before any governmental body with respect to or, to the best knowledge of First Security, threatened against or affecting First Security, nor are there any such actions or proceedings in which First Security is a plaintiff or complainant which might have an adverse affect on the Collateral owned by the Railcar Trust or on the ability of First Security to enter into and perform its obligations under the First Security Trust Agreement, this Guaranty and the other Security Documents.

(g) There are (i) no taxes payable by First Security, as Owner Trustee, solely by reason of First Security having its principal office in, or performing certain duties as Owner Trustee in, the State of Utah, and (ii) no taxes payable by First Security in its individual capacity (other than franchise or other taxes based on or measured by any fees or compensation received by First Security in its individual capacity for services rendered in connection with the transactions contemplated hereby), in each case imposed by the State of Utah or any political subdivision thereof or by the United States of America in connection with the transactions contemplated herein and First Security will file on a timely basis all federal, state and local tax returns required to be filed by it and will pay all taxes shown by such returns to be due and payable on or before the due dates thereof, which taxes, if unpaid, could constitute a

lien, charge or encumbrance on the Collateral owned by the Railcar Trust.

(h) The Railcar Trust and the Trustee have their principal place of business, and the place at which they keep their books and records at 79 South Main Street, Utah 84111. First Security, in its individual capacity or as Owner Trustee, shall not, without at least thirty (30) days' prior written notice to the Bank, change its corporate structure, its name or the address of its principal place of business or the place where it and the Railcar Trust maintains their records with respect to any of the Collateral owned by the Railcar Trust.

9. **Reimbursement**. The Trustee hereby agrees (a) to indemnify and hold harmless the Agent and the Lenders (to the full extent permitted by law) from and against any and all claims, demands, losses, judgments and liabilities (including, without limitation, liabilities for penalties) of whatever nature, and (b) to pay the Agent an amount equal to the amount of all costs and expenses, including, without limitation, legal fees and reimbursements, in either case arising out of or resulting from or in connection with this Guaranty and all related documents whether or not the transactions contemplated hereby are consummated) or the administration, enforcement or exercise of any right or remedy granted to the Agent and the Lenders hereunder or thereunder. The foregoing indemnity includes reasonable costs incurred by the Agent or the Lenders in connection with any action or proceeding which may be instituted in respect of the foregoing by the Agent or the Lenders, or by any other Person either against the Agent or the Lenders or in connection with which any officer or employee of the Agent or the Lenders is called as a witness or deponent, including, but not limited to, the reasonable fees and disbursements of counsel to the Agent and the Lenders and out-of-pocket costs incurred by the Agent or the Lenders in appearing as a witness or in otherwise complying with the legal process served upon it. Any amounts which may become payable by the Trustee pursuant to the foregoing indemnity shall be added to its obligations hereunder and shall, for all purposes hereunder, be included in the Obligations.

The Trustee shall be liable for any and all costs incurred by the Agents or the Lenders in taking any action pursuant to this Guaranty or to enforce any of the rights of the Agent or the Lenders hereunder and all such costs and expenses, including (to the extent permitted by law), without limitation, reasonable attorneys' fees, expenses and disbursements, shall be repayable to the Agent, on behalf of the Agent and the Lenders, upon its demand therefore and shall bear interest from the date of demand therefor to the date of repayment at the rate provided with respect to such amounts in Section 2.5(c) of the Credit

Agreement, which obligations shall for all purposes hereunder be included in the Obligations.

All indemnities and agreements contained in this Section 9 shall survive the expiration or termination of this Guaranty for any reason without the necessity of executing any further document or instrument.

**10. Consent to Service; Waiver of Jury Trial.** The Trustee irrevocably consents that any legal action or proceeding against it under, arising out of or in any manner relating to this Guaranty, the Security Documents or any other instrument or document required to be executed and delivered by it hereunder may be brought in the Supreme Court of the State of New York, County of New York, or in the United States District Court for the Southern District of New York. The Trustee, by its execution and delivery of this Guaranty, expressly and irrevocably assents and submits to the personal jurisdiction of any of such courts in any such action or proceeding. The Trustee further irrevocably consents to the service of summons, notice, or other process relating to any such action or proceeding by delivery thereof to it by hand or by mail in the manner provided for in Section 15 hereof. The Trustee hereby expressly and irrevocably waives any claim or defense in any such action or proceeding in either such court based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis. Nothing in this Section 10 shall affect or impair in any manner or to any extent the right of the Agent or any Lender to commence legal proceedings or otherwise proceed against the Trustee in any jurisdiction or to serve process in any manner permitted by law.

**11. No Waiver or Amendment; Cumulative Remedies.** No course of dealing between the Trustee and the Agent or any Lender and no failure to exercise or delay in exercising on the part of the Agent or any Lender any right, power or privilege under the terms of this Guaranty, under the terms of any other Loan Document or under the terms of any other agreements, instruments or documents between the Agent or any Lender and the Borrower or between the Agent, any Lender and any other Person shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude the exercise of any other or further privilege. No amendment, rescission or modification of any provision of this Guaranty shall be effective unless expressly set forth in a writing duly executed by the Agent and consented to by the Majority Banks. The rights and remedies provided herein or in any other Loan Documents are cumulative and not exclusive of, or in derogation of, any other rights or remedies provided at law, in equity or otherwise. This Guaranty and the Loan Documents set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements and

understandings of the parties hereto with respect to the subject matter hereof.

**12.** **Successors and Assigns.** This Guaranty shall be binding upon, and shall inure to the benefit of and be enforceable by, the respective successors and assigns of the Agent and the Trustee. Notwithstanding the foregoing, the Agent may assign or delegate all or any part of its rights under this Guaranty to any Person or may designate any Person to act on behalf of the Agent with respect to any rights and privileges of the Agent hereunder, but the Trustee may not assign or delegate all or any part of its obligations hereunder.

**13.** **Term of Guaranty.** This Guaranty shall remain in full force and effect until the Security Agreement shall have been terminated with the consent of the Agent.

**14.** **Survival.** All representations and warranties made herein, in any agreement or in any statements, notices, invoices, certificates, schedules, designations, documents or other instruments delivered to the Agent in connection with this Guaranty or any other agreement shall survive the execution and delivery of this Guaranty and the Credit Agreement, the issuance and delivery of the Notes and the extension of any credit or the making of the Loans or advances under the Notes.

**15.** **Notices.** All notices, requests and other communications pursuant to this Guaranty shall be in writing, and shall be delivered personally, by registered or certified mail, postage prepaid, return receipt requested, or by facsimile, with electronic confirmation of receipt, addressed or sent (a) if to the Trustee, to:

First Security Bank of Utah, National Association
79 South Main Street
Salt Lake City, Utah 84111
Attn: Corporate Trust Department
Facsimile #: (801) 246-5053

and (b) and if to the Agent, to the place provided for notice to the Agent pursuant to the terms of the Credit Agreement. Any notice, request or communication hereunder shall be deemed to have been given when received, if sent by personal delivery, or five (5) Business Days after deposit with a United States Postal Depository, if sent by registered or certified mail, and when transmitted, if sent by facsimile, addressed as aforesaid. Any notice by facsimile shall be confirmed by regular first class or by registered or certified mail, sent to the address as provided above, within one (1) Business Day of transmission of such facsimile notice. Any party may change the person or address to

whom or which the notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed.

**16. Enforceability.** Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Trustee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

**17. Governing Law.** This Guaranty, and all rights and obligations of the parties hereunder, shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such state.

**18. Limitation of Liability.** It is expressly understood and agreed by and between the parties hereto that, anything herein to the contrary notwithstanding, each and all of the agreements, representations, warranties and covenants made herein or in the other Security Documents by First Security are made and intended for the purpose of binding the Trustee only in its capacity as First Security under the First Security Trust Agreement, and this Guaranty and the other Security Documents are executed and delivered by the Trustee solely in the exercise of the powers conferred upon it as Owner Trustee under the First Security Trust Agreement and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against First Security (except for the willful misconduct or gross negligence of the First Security) and recourse of the Agent under this Guaranty and the other Loan Documents in respect of any breach by the Trustee of their obligations hereunder shall be solely to the assets covered by the Security Documents and any other assets owned by the Railcar Trust. Notwithstanding the foregoing, First Security makes the agreements, representations, warranties and covenants in Section 8 of this Guaranty, in Sections 3 (first sentence only), 5, 6(a), 7, 8(c) and 10 of the Security Agreement and in Section 4 and the first sentence of 6(a) of the Lease Assignment personally, and its personal liability attaches in respect of any breaches thereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the 27th day of May, 1994, to be effective as of the date first set forth above.

First Security Bank of Utah, National Association, in its individual capacity only as expressly set forth herein, and otherwise solely as Owner Trustee under the First Security Trust Agreement

By: _____

Title: Asst. Vice President

STATE OF UTAH )
) ss.:
COUNTY OF SALT LAKE )

On the 27th day of May, 1994, before me personally came Tanta Lisa Clayton, to me known, who, being by me duly sworn, did depose and say: that he/she is a Asst. Vice President of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association described in and which executed the foregoing instrument as Owner Trustee; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

Notary Public

NOTARY PUBLIC
ROBERT ALLEN LINDSAY
79 S. MAIN ST.
SALT LAKE CITY, UT 84111
COMMISSION EXPIRES
JULY 1, 1995
STATE OF UTAH

BALL, JANIK & NOVACK

## CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy to the original Guaranty, dated May 27, 1994, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

Louis E. Gitomer
May 27, 1994