

**HARKINS CUNNINGHAM**

RECORDATION NO. 18357 FILED 1425

ATTORNEYS AT LAW  
SUITE 600

1300 NINETEENTH STREET, N.W.  
WASHINGTON, D.C. 20036-1609  
202 973-7600  
FACSIMILE 202 973-7610

1995 1. 14 6 PM

INTERSTATE COMMERCE COMMISSION

WRITER'S DIRECT DIAL  
(202) 973-7601

1800 ONE COMMERCE SQUARE  
2005 MARKET STREET  
PHILADELPHIA, PA 19103-7042  
215 851-6700  
FACSIMILE 215 851-6710

18357-A  
RECORDATION NO. \_\_\_\_\_ FILED 1425

**DOCUMENTS FOR  
RECORDATION**

1995 1. 14 6 PM  
August 3, 1993  
INTERSTATE COMMERCE COMMISSION

3-215A021  
\$ 32.00

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Secretary Strickland:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the U.S. Code, and regulations and promulgated thereunder, are an original and two originally certified counterparts of one primary document and one secondary document described below. The primary document is a Lease Agreement, dated August 3, 1993, between First Security Bank of Utah, NA, as Owner Trustee ("Lessor") and Consolidated Rail Corporation ("Lessee"), (the "Lease"). The secondary document, relating to the Lease, is a Mortgage and Lease Assignment, dated August 3, 1993, among First Security Bank of Utah, NA, ("Borrower") and Concord Asset Management, Inc. ("Lender"), (the "Security Agreement").

The enclosed primary document is:

A Lease Agreement, dated as of August 3, 1993, between First Security Bank of Utah, NA, and Consolidated Rail Corporation.

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

Lessor: First Security Bank of Utah, NA, as Owner Trustee  
Corporate Trust Department  
79 South Main Street  
P.O. Box 30007  
Salt Lake City, UT 84130-0007

Aug 3 4:29 PM '93  
1112  
FOR OPENING UNIT

*Concord Asset Management, Inc.*

## HARKINS CUNNINGHAM

August 3, 1993

Page 2

Lessee: Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
P.O. Box 41425  
Philadelphia, PA 19101-25

The equipment affected by the Lease consists of Ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

The enclosed secondary document is:

A Mortgage and Lease Assignment, dated as of August 3, 1993, between First Security Bank of Utah, NA, and Concord Asset Management, Inc.

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

Borrower: First Security Bank of Utah, NA, as Owner  
Trustee  
Corporate Trust Department  
79 South Main Street  
P.O. Box 30007  
Salt Lake City, UT 84130-0007

Secured Party: Concord Asset Management, Inc.  
One Norwalk West  
40 Richards Avenue  
Norwalk, CT 06858

The equipment affected by the Mortgage and Lease Assignment consists of Ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

**HARKINS CUNNINGHAM**

August 3, 1993

Page 3

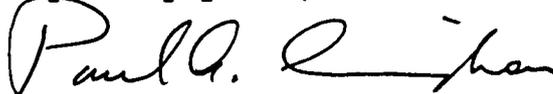
A short summary of the documents to appear in the index follows:

**Lease Agreement:** Lease Agreement, dated as of August 3, 1993, between First Security Bank of Utah, NA, as Owner Trustee, ("Lessor"), Corporate Trust Department, 79 South Main Street, P.O. Box 30007, Salt Lake City, UT 84130-0007 and Consolidated Rail Corporation ("Lessee"), Two Commerce Square, 2001 Market Street, P.O. Box 41425, Philadelphia, PA 19101-1425, covering ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

**Mortgage and Lease Assignment:** Mortgage and Lease Assignment, dated August 3, 1993, among First Security Bank of Utah, NA, ("Borrower"), Corporate Trust Department, 79 South Main Street, P.O. Box 30007, Salt Lake City, UT 84130-0007 and Concord Asset Management, Inc., the secured party ("Lender"), One Norwalk West, 40 Richards Avenue, Norwalk, CT 06858, covering ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

A fee of \$16.00 for each recordation is enclosed, totaling \$32.00. Please stamp and return any extra copies not needed by the Commission for recordation to the undersigned.

Very truly yours,



Paul A. Cunningham  
Counsel for Consolidated Rail  
Corporation

Interstate Commerce Commission  
Washington, D.C. 20423

8/3/93

OFFICE OF THE SECRETARY

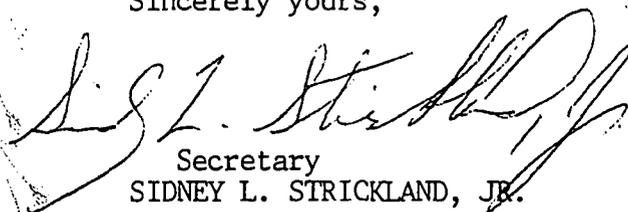
Paul A. Cunningham  
Counsel  
Harkins Cunningham  
1300 19th St N.W.  
Washington, D.C. 20036-1609

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 **8/3/93** at **1:45pm**, and assigned recordation number(s).

**18357 & 18357-A**

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

374 \*

AUG 3 1993 1:45 PM

INTERSTATE COMMERCE COMMISSION  
MORTGAGE AND LEASE ASSIGNMENT

This MORTGAGE AND LEASE ASSIGNMENT, dated as of August 3, 1993, is by and between First Security Bank of Utah, National Association, not in its individual capacity but solely as Owner Trustee having an office at 79 South Main Street, Salt Lake City, Utah 84111, (the "Borrower"), and Concord Asset Management, a New York corporation, having an office at 40 Richards Avenue, Norwalk, Connecticut 06856 (the "Lender").

WHEREAS, the Lender has agreed to make loans (the "Loans") to the Borrower pursuant to the Loan Agreement of even date herewith (the "Loan Agreement") between Lender, Borrower and Pac Rail III, a California corporation, to enable the Borrower to finance the purchase of the Units;

WHEREAS, it is a condition precedent of the Lender's obligation to the Borrower under the Loan Agreement to make the loans provided for therein that the Borrower execute and deliver this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Defined Terms.

1.1 Definitions. Capitalized terms used herein and defined in Appendix A hereto shall, except as such definitions may be specifically modified in the body of this Agreement for the purposes of a particular section, paragraph or clause, have the meaning given such terms in Appendix A.

1.2 Other Terms. Capitalized terms defined herein shall be given the meanings assigned in this Agreement. All references to documents defined herein or in the Loan Agreement shall refer to such documents as they may from time to time be amended, unless otherwise specified.

2. Security Interest.

As security for the payment and performance of the Obligations (and in the case of principal and interest on the Notes, whether as scheduled or upon acceleration) and of all costs of collection and enforcement of the Obligations, the Borrower hereby mortgages, pledges and assigns to the Lender, and hereby creates in and grants to the Lender, a continuing first priority mortgage and security interest in and to all

of its right, title and interest in and to, but none of its obligations or liabilities respecting, the following, and all replacements, proceeds and products of the following, whether now owned or hereafter acquired (collectively, the "Collateral"):

(a) all right, title and interest of the Borrower in and to each of the Units described in Exhibit A hereto or in any Mortgage Supplement, including all additions, alterations, or modifications thereto or replacements of any part thereof, whenever made or performed or acquired and all other items of tangible personal property of any kind acquired by the Borrower in connection with the acquisition of the Units, in each case whether now owned by the Borrower or hereafter acquired, together with all logs, manuals and data and inspection, maintenance, modification, overhaul records (and all rights and interests therein that the Borrower may have) relating to the Units whether maintained pursuant to Applicable Law or otherwise.

(b) the Lease including, without limitation, all amounts of Rent (including Interim Rent, Basic Rent, Gross Rent and Supplemental Rent), insurance proceeds, sales proceeds, requisition, indemnity and other payments of any kind for or with respect to the Units or otherwise or any of the Operative Documents and all rights of the Borrower as Lessor to exercise any election or option or to make any decision or determination or to give any notice, consent or waiver or approval under or in respect of the Lease or to accept any surrender of any of the Units or any part thereof, as well as all rights, powers and remedies on the part of the Borrower as Lessor, whether arising under the Lease or by statute or at law or in equity or otherwise, arising out of an Event of Default;

(c) all tolls, rents, issues, profits, products, insurance proceeds, revenues and other income of the property subject or required to be subject to the Lien of this Agreement;

(d) all moneys and securities from time to time deposited or required to be deposited with the Lender pursuant to any of the Operative Documents; and

(e) all proceeds of the foregoing.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Lender, its successors and assigns, and for the uses and purposes, and subject to the terms and provisions, set forth in this Agreement.

BUT EXCLUDING, however, from the property, rights and privileges subject to these granting clauses all Excluded Payments.

Without limiting the generality of the foregoing, and for the same consideration as set forth above, the Borrower hereby unconditionally, presently and irrevocably assigns, transfers and sets over to the Lender, its successors and assigns, as part of the Collateral hereby created, all estate, right, title and interest of the Borrower, as Lessor, in, to and under the Lease, including, without limitation, all amounts of Rent (including Interim Rent, Basic Rent, and Gross Rent (except for Excluded Payments)), insurance proceeds and requisition, indemnity and other payments of any kind for or with respect to the Units and all rights of the Borrower as Lessor to exercise any election or option or to make any decision or determination or to give any notice, consent, waiver or approval under or in respect of the Lease or to accept any surrender of any of the Units, or any part thereof, as well as all rights, powers and remedies on the part of the Borrower, as Lessor, whether arising under the Lease or by statute or at law or in equity, or otherwise arising out of any Event of Default. The foregoing assignment is intended as a present assignment and attaches upon and becomes fully effective upon the delivery hereof and is subject to no other condition or contingency for it to become so effective.

It is expressly agreed that all of the property of the Borrower subject to the Lien of this Agreement, including without limitation the Units, is security for any and all Obligations, and, upon the happening of any Event of Acceleration and for so long as the Event of Acceleration shall be continuing, the Lender shall be entitled to exercise the remedies provided herein and in the Loan Agreement.

The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not mortgage, assign or pledge, so long as this Agreement or the Loan Agreement shall remain in effect, any of its right, title or interest hereby mortgaged, assigned and pledged, to anyone other than the Lender, and any such attempted mortgage, assignment or pledge shall be void and that it will not, except as provided in this Agreement, (i) enter into any agreement amending or supplementing, or granting any consent or approval or giving any notice with regard to the Lease, (ii) accept any payment mortgaged, assigned and pledged hereunder, (iii) settle or compromise any material claim assigned hereunder arising under the Lease or (iv) submit or consent to the submission to arbitration of

any dispute, difference or other matter arising under or in respect of the Lease.

The Borrower does hereby ratify and confirm the Lease and does hereby agree that it will not, except as provided in this Agreement or the Loan Agreement, take any action altering, or omit to take any action required to prevent the alteration of, the Lease or this assignment or any of the rights created by the Lease or the assignment hereunder.

3. Representations, Warranties and Agreements.  
The Borrower represents, warrants and agrees as follows.

3.1 Performance of Lease; Payments under Lease. The Borrower will perform and comply with each and every term of the Lease, this Agreement and each other Security Agreement to which it is a party, the Loan Agreement and the Notes to be performed or complied with by the Borrower. The Borrower acknowledges that the Lessee shall make all payments of Rent and all other amounts required to be paid to or deposited with the Borrower, as Lessor, pursuant to the Lease, directly to the Lender, so long as the Loan Agreement shall remain in effect, at such address as the Lender may from time to time specify, for application as provided in the Loan Agreement. The Borrower agrees that should it receive any such payments so directed to the Lender or any proceeds for or with respect to the Collateral or as the result of the sale or other disposition thereof, it will promptly forward such payments to the Lender or in accordance with the Lender's instructions. Notwithstanding anything which may be to the contrary contained in this Section or elsewhere in this Agreement, it is understood and agreed that the Lender shall not be obligated to make any application of payments until the funds therefor have been received by the Lender in cash or other immediately available funds.

3.2 Attorney-in-Fact. The Borrower hereby irrevocably constitutes the Lender its true and lawful attorney, coupled with an interest, with full power (in the name of the Borrower or otherwise) for the purpose of enforcing the Borrower's rights as the Lessor under the Lease or otherwise under the Lease or any other item of Collateral which is an agreement or document and of effectuating any sale, assignment, transfer or delivery for the enforcement of this Agreement, whether pursuant to foreclosure or power of sale or otherwise, and to execute and deliver all bills of sale, assignments and other instruments as the Lender may consider necessary or appropriate, with full power of substitution. If so requested by the Lender or any

purchaser, the Borrower shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to the Lender or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

3.3 No Assumption by Lender. Anything contained herein or in any other document to the contrary notwithstanding: (a) the Borrower shall at all times remain primarily liable to the Lessee under the Lease, and to any other obligee under any Operative Document, to perform all its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (b) the exercise by the Lender of any of the rights assigned to it hereunder shall not release the Borrower from any of its duties or obligations under the Lease or under any other Operative Document; and (c) the Lender shall not have any obligation or liability under the Lease or under any other Operative Document by reason of, or arising out of, this Agreement, or be obligated to perform any of the obligations or duties of the Borrower under the Lease or under any other Operative Document or to make any payment or to make any inquiry as to the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder, or to pay or to see to the payment of or to make any filings in respect of any taxes levied on or with respect to the Lease or any other Operative Document, the payments thereunder or the Units.

3.4 Dealings with Lessee. Unless the prior written consent of the Lender (acting in its sole discretion) is obtained, the Borrower shall not waive, amend, modify, or in any way alter any of the terms of the Lease or any other Operative Document, or cancel or terminate the Lease or any other Operative Document or consent to or accept any cancellation, termination or surrender thereof, or waive any default under or breach of the Lease or any other Operative Document Agreement, or consent to or accept any prepayment of any amount under the Lease or any other Operative Document or agree to any discount of any amount thereunder, or give any other consent or notice with respect to the Lease or any other Operative Document or make any agreement with the Lessee or with any other Person with respect to the Lease or any other Operative Document. Borrower will enforce its rights against the Lessee under the Lease solely with the consent and at the direction of the Lender. Borrower will, promptly upon receipt thereof, deliver to the Lender copies

of any notice or other communication received by it from the Lessee in connection with the Lease.

3.5 Maintenance of Security Interest. The Borrower will at any time or times hereafter execute and file or record such financing statements (and amendments thereto and assignments thereof) and other documents and instruments and perform such acts as the Lender may from time to time reasonably request or as may be prudent or necessary to establish, perfect, maintain and continue the perfection and priority of and enforce a valid first priority security interest in the Collateral, and will pay all costs and expenses of: all filings and recordings, including taxes thereon; all searches necessary or reasonably deemed necessary by the Lender to establish and determine the validity and the priority of such security interest; and all cancellations and satisfactions of all Liens other than Permitted Liens. The Borrower hereby authorizes the Lender to sign and file such financing statements (and amendments thereto and assignments thereof) and such other documents and instruments and to perform such other acts without the signature or consent of the Borrower to the fullest extent permitted by Applicable Law in order to carry out the purposes, and subject to the terms, of this Agreement and the Loan Agreement.

3.6 Disposition of Collateral. The Borrower will not sell, transfer, convey, lease or otherwise dispose of the Collateral, or attempt or offer to do any of the foregoing, without the prior written consent of the Lender and unless the proceeds of any such sale, transfer, lease or other disposition are paid directly to the Lender in a manner reasonably acceptable to the Lender and are applied to the Notes pursuant to Section 7(j) of the Loan Agreement and to the other Obligations pursuant thereto. No provision contained in this Agreement shall be construed to authorize any sale, transfer, lease or other disposition of the Collateral by the Borrower except on the conditions contained in this paragraph.

3.7 Payment of Charges, etc. At any time after an Event of Acceleration or Potential Event of Acceleration (as determined by the Lender in its sole discretion), the Lender may (without any obligation to do so) at any time, as examples and not as limitations, effect insurance and necessary repairs to the Collateral and pay the premiums therefor and the costs thereof, pay and discharge any fees, assessments, charges, taxes, liens and encumbrances on the Collateral and perform any of the Borrower's obligations or exercise any of its rights under the Lease. All sums so

advanced or paid by the Lender shall be payable by the Borrower to the Lender on demand with interest at the rate per annum equal to the Overdue Rate and shall be a part of the Obligations.

### 3.8 Remedies Upon Event of Acceleration.

Upon the occurrence of an Event of Acceleration, the Lender may, without notice or demand of any kind, and in addition to any remedies provided in the Loan Agreement, (a) appropriate any and all balances, credits, deposits, accounts or moneys of or in the name of the Borrower then or thereafter with the Lender and (b) exercise all rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. Without limiting the foregoing, the Lender shall have the authority, but shall not be obligated, to: (a) notify the Lessee or any or all obligors on agreements or instruments constituting Collateral of the existence of the Lender's security interest and to require any or all such obligors to pay or remit all sums due or to become due directly to the Lender or its nominee; (b) in the name of the Borrower or otherwise, demand, collect, receive and receipt for, compound, compromise, settle and give acquittance for, and prosecute and discontinue any suits or proceedings in respect of any or all of the Collateral; (c) take any action which the Lender may deem necessary or desirable in order to realize on the Collateral, including, without limitation, performing any contract or endorsing in the name of the Borrower any checks, drafts, notes or other instruments or documents received in payment of or on account of the Collateral; (d) make any claim for, negotiate settlement of claims for, receive payment for and execute and endorse any documents, checks or other instruments in payment for loss, theft or damage under any insurance policy covering all or part of the Collateral; and (e) convey, transfer, sell, lease or otherwise dispose of any or all of the Collateral, free of all rights and claims therein and thereto of the Borrower, at any public or private sale (at which sale the Lender may bid for and purchase any or all of the Collateral).

### 3.9 Disposition and Care of Collateral;

Waivers. Upon an Event of Acceleration and, so long as no Event of Default has occurred and is continuing under the Lease, subject to the rights of the Lessee thereunder, the Borrower shall make the Collateral available or, cause the Collateral to be made available, to the Lender at a place (or places) to be designated by the Lender, and shall pay all costs of the Lender, including reasonable attorneys' fees, in the collection of any of the Obligations and the enforcement of any of the Lender's rights. If any notification of intended disposition of any of the Collateral is required by

law, such notification shall be deemed reasonably and properly given if given at least 10 days before such disposition. Lender may employ or use any agent or broker selected by it in connection with the sale or other disposition of the Collateral and any reasonable fees or expenses of such agent or broker shall be at the sole cost of the Borrower, such fees or costs to constitute Obligations hereunder. The Lender's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if the Lender exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and the Lender need not otherwise preserve, protect, insure or care for any Collateral. The Lender shall not be obligated to preserve any rights the Borrower may have against other parties or to realize on the Collateral at all or in any particular manner or order. No delay or failure by the Lender in the exercise of any right, remedy, power or privilege shall constitute a waiver thereof, and no single or partial exercise by the Lender of any right, remedy, power or privilege shall preclude other or further exercise thereof or the exercise of any other right, remedy, power or privilege, and no waiver shall be valid unless in writing and signed by the Lender, and then only to the extent specifically set forth in such writing.

3.10 Waiver of Appraisalment, etc. The Borrower agrees, to the full extent that it may lawfully so agree, that neither it nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption law now or hereafter in force in any locality where any property subject to the Lien hereof may be situated, in order to prevent, hinder or delay the enforcement or foreclosure of this Agreement, or the absolute sale of the Collateral or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof; and the Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may be lawful so to do, the benefit of all such laws, and any and all right to have any of the properties or assets comprising the Collateral marshalled upon any such sale.

3.11 Applications of Proceeds of Sale; Deficiency. The proceeds of the sale or other disposition of any of the Collateral shall be applied by the Lender to payment of Obligations as provided in the Loan Agreement. If the sale, collection or other disposition of the Collateral fails to

satisfy fully the Obligations, the Borrower shall remain liable to the Lender for any deficiency.

#### 4. Miscellaneous.

4.1 Notices. All written notices, requests and demands required or permitted to be given pursuant to this Agreement shall be given to or made upon each party hereto at the address set forth in the Loan Agreement, or to such other address as shall be designated by such party in a written notice to the other party. All notices, requests and demands given or made in accordance with the provisions of this Agreement shall be deemed to have been properly given when delivered as required by the Loan Agreement.

4.2 Benefit of Agreement. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and permitted assigns.

4.3 Assignment. Subject to the terms and provisions of the Loan Agreement, neither this Agreement nor any of the other Operative Documents may be assigned by the Borrower, in whole or in part, without the prior written consent of the Lender. The Lender may assign its interests in the Operative Documents as provided in the Loan Agreement.

4.4 Remedies. All remedies, rights, powers and privileges, either under this Agreement or by law or otherwise afforded the Lender shall be cumulative and not be exclusive of any remedies, rights, powers and privileges provided by law and shall be available until the Obligations have been paid in full in lawful money of the United States of America. All of such remedies may be exercised in any order of priority.

4.5 Continuing Security Interest; Release. Section 2 hereof shall create a continuing security interest in the Collateral and shall in full force and effect until payment in full of the Obligations and termination of such security interest as provided in the next sentence of this Section 4.5. The security interest granted by Section 2 hereof shall terminate when all Obligations shall have been paid in full, at which time, upon request and at the expense of the Borrower, the Lender shall execute and deliver termination statements to the Borrower for filing in each office in which a financing statement has been filed by the Lender, all without recourse upon or warranty by the Lender and at the cost and expense of the Borrower.

4.6 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by the Borrower to the Lender in connection with this Agreement shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument signed by an officer of the Borrower and delivered to the Lender pursuant to this Agreement shall be deemed representations, warranties and covenants hereunder of the Borrower.

4.7 Governing Law and Construction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. This Agreement has been delivered in the State of New York. Whenever possible, each provision of this Agreement and any other statement, instrument or transaction contemplated thereby or relating thereto shall be interpreted in such manner as to be effective and valid under applicable law, but if any provisions of this Agreement or any other statement, instrument or transaction contemplated thereby or relating thereto shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other statement, instrument or transaction contemplated thereby or relating thereto. In the event of any conflict within, between or among the provisions of this Agreement or any other statement, instrument or transaction contemplated thereby or relating thereto, those provisions giving the Lender the greater right shall govern.

4.8 Headings. Section headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Agreement.

4.9 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto were upon the same instrument.

\*

\*

\*

IN WITNESS WHEREOF, the parties have caused this Mortgage and Lease Assignment to be executed by their duly authorized officers as of the day first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not  
individually except as stated  
herein, but solely as Owner  
Trustee

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

Name: **Greg A. Hawley**  
Title: **Assistant Vice President**  
Date: **July 29, 1993**

CONCORD ASSET MANAGEMENT, INC.

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

Name:  
Title:

IN WITNESS WHEREOF, the parties have caused this Mortgage and Lease Assignment to be executed by their duly authorized officers as of the day first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not  
individually except as stated  
herein, but solely as Owner  
Trustee

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

CONCORD ASSET MANAGEMENT, INC.

By:           R. L. T.            
Name:  
Title: **ROBERT L. THOMAS**  
**Vice President**  
Date: August 3, 1993

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

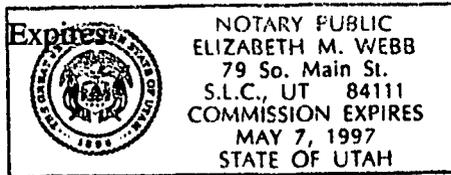
On July 29, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Greg A. Hawley, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed this instrument as the Assistant Vice President of First Security Bank of Utah, National Association, not in its individual capacity, but solely as Owner Trustee, or on behalf of the national association therein named, and acknowledged to me that the national association executed this instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

*Elizabeth M. Webb*  
Notary Public in and for Said State

My Commission Expires

[Notarial Seal]



STATE OF Connecticut )  
 : ss.:  
COUNTY OF Fairfield )

On the 3<sup>d</sup> day of August, 1993 before me personally came Robert L. Thomasto me know and being duly sworn did depose and say that (~~s~~)he resides at 86 Edward Street, Fairfield, CT 06430, and that (~~s~~)he is the Vice President of Concord Asset Management, Inc., the corporation described in and which executed the above instrument and that (~~s~~)he signed [his] [~~her~~] name thereto by order of the Board of Directors of such corporation.

  
Notary Public  
BRIDGET R. CONNOLLY  
Notary Public, State of Connecticut  
No. 61277  
Qualified in Fairfield County  
Commission Expires 4/30/96

**EXHIBIT A**

**DESCRIPTION OF THE UNITS**

Ten SD 40-2 locomotives as follows:

CR 6961 through 6970 - Inclusive

APPENDIX A

CONCORD ASSET MANAGEMENT, INC.  
FINANCING OF  
40 SD40-2 LOCOMOTIVES  
  
DEFINITIONS RELATING TO  
PARTICIPATION AGREEMENT,  
LOAN AGREEMENT, MORTGAGE  
AND LEASE ASSIGNMENT,  
BENEFICIAL INTEREST  
SECURITY AGREEMENT AND GUARANTEES,  
ALL DATED AS OF AUGUST 3, 1993

The definitions stated herein shall, except as otherwise provided, apply equally to both the singular and plural forms of the terms defined. Each definition of a document shall refer to such document as it may be amended or modified from time to time. Each definition of a party shall refer to such party and its successors and permitted assigns.

"Affiliate," with respect to a specified Person, means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of securities having ordinary voting power for the election of directors, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement," "this Agreement," "herein," "hereby," or other like terms mean the Operative Document in which such term is used.

"Applicable Law" means all applicable laws, treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including, without limitation, the Environmental Protection Agency, the United States Department of Transportation, the Federal Railroad Administration, the ICC, the Association of American Railroads and the Canadian Transportation Commission

and any successor agencies, and all orders and decrees of all courts and arbitrators in proceedings or actions in which the Person in question is a party.

"Assignment" means the Assignment, Assumption and Consent Agreement, dated as of August 3, 1993, between Original Lessor, Borrower, Lender and Lessee.

"Bank" means First Security Bank of Utah, National Association in its individual capacity.

"Basic Rent" shall have the meaning assigned to such term in Section 2 of the Lease.

"Beneficial Interest Security Agreement" means the Beneficial Interest Security Agreement dated as of August 3, 1993 between Beneficiary and Lender, as the same may be amended, modified or supplemented from time to time.

"Beneficiary" means Pac Rail III, a California corporation.

"Bills of Sale" means any of the full warranty bills of sale with respect to the Units identified therein delivered to the Owner Trustee by the Original Lessor on the First Delivery Date or by the Lessee on each Subsequent Delivery Date, in each case in form and substance satisfactory to the Lender.

"Borrower," means First Security Bank of Utah, National Association, not in its individual capacity but solely as owner trustee under the Trust Agreement except as otherwise provided.

"Business Day" means any day other than a Saturday, Sunday or day on which commercial banking institutions in New York, San Francisco or Pennsylvania are required or authorized by law to be closed.

"Capital Stock" of any Person means any and all shares, interests, participations or other equivalents (however designated) of capital stock and any rights, warrants or options to purchase corporate stock.

"Casualty Occurrence" has the meaning given in Section 12 of the Lease.

"Casualty Value" shall have the meaning assigned to such term in Section 12 of the Lease.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time, or any similar legislation of the United States enacted to supersede, amend or supplement such Code, and the rules and regulations issued thereunder, as now and hereafter in effect, and any reference to a provision or provisions of the Code shall also mean and refer to any successor provisions, however designated or distributed.

"Collateral" has the meaning given such term collectively in all of the Security Agreements.

"Commitment" of the Lender or "Lender's Commitment" means the commitment of the Lender referred to in Section 2(a) of the Loan Agreement.

"Corporate Guarantee" means the joint and several guarantee of Borrower and Parent in substantially the form of Exhibit A to the Loan Agreement.

"Delivery Date" means the First Delivery Date and each Subsequent Delivery Date.

"Dollars" and "\$" means the lawful currency of the United States of America.

"Event of Acceleration" has the meaning given such term in Section 16 of the Loan Agreement.

"Event of Default" means an Event of Default under the Lease.

"Excluded Payments" means any public liability insurance proceeds or indemnity payments of any kind payable under any Operative Documents to or for the benefit of the Bank or the Beneficiary for its own account, or for any of the respective directors, officers, employees, servants and agents thereof and proceeds of any insurance maintained by the Bank or Beneficiary for its own account and not required by any Operative Document.

"First Delivery Date" shall have the meaning assigned such term in Section 2(e) of the Participation Agreement.

"GAAP" shall mean generally accepted accounting principles consistently applied.

"Governmental Authority" shall mean any federal, state, municipal or other governmental department,

commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States or foreign country, including, without limitation, the Environmental Protection Agency, the United States Department of Transportation, the Federal Railroad Association, the Association of American Railroads, the Canadian Transportation Commission and any successor agencies.

"Gross Rent" shall have the meaning assigned to such term in Section 2 of the Lease.

"Guarantees" shall mean the Corporate Guarantee and the Individual Guarantee.

"Guaranteed Obligations" has the meaning given in Section 2 of each of the Guarantees.

"Guarantors" means, collectively, the Beneficiary, the Parent, Mr. Stucker and Mr. Garvey.

"Holder" means a holder from time to time of a Note.

"ICC" means the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Indebtedness" means, at any time and with respect to any Person, all indebtedness, obligations and liabilities which, in accordance with generally accepted accounting principles, consistently applied, are required to be classified upon the balance sheet of such Person as liabilities, and, without limiting the scope of the foregoing, the Liabilities shall include all capitalized or operating lease obligations of such Person and all other indebtedness, obligations and liabilities of such Person to any other Person: (a) for borrowed money; (b) evidenced by bonds, notes, debentures and other similar instruments; (c) under conditional sale or other title retention agreements relating to property purchased by such Person; (d) secured by any mortgage, pledge or other lien on property owned or acquired by such Person whether or not such indebtedness or obligation has, or such liabilities have, been assumed by such Person; and (e) for any guaranty by such Person of the indebtedness, obligations or liabilities of any other Person, all such indebtedness, obligations and liabilities to be determined in accordance with generally accepted accounting principles consistently applied.

"Individual Guarantee" means the joint and several guarantee of Mr. Stucker and Mr. Garvey in substantially the form of Exhibit B to the Loan Agreement.

"Installment Payment Date" shall mean the first day of each month commencing in the month immediately following the month in which the First Delivery Date occurs.

"Interest Rate" shall have the meaning given such term in Section 7(c) of the Loan Agreement.

"Interim Rent" shall have the meaning assigned to such term in Section 2 of the Lease.

"Lease" shall mean the Railroad Equipment Lease dated as of the 3rd day of August, 1993 by and between Borrower (as assignee of Pac Rail) and Lessee, amending and restating in its entirety the Railroad Equipment Lease dated as of the 13th day of November 1992 by and between Pac Rail and Lessee, including all exhibits, supplements and amendments thereto entered into from time to time.

"Lease Supplement" means a supplement to the Lease, in form and substance satisfactory to the Lender, executed on a Subsequent Delivery Date, and covering the Units delivered on such Delivery Date.

"Lender" means Concord Asset Management, Inc., a New York corporation.

"Lender's Commitment," "Commitment of the Lender," or other like terms means the amount of the Commitment of the Lender required to be made by the Lender pursuant to Section 2 of the Loan Agreement.

"Lessee" means Consolidated Rail Corporation, a Pennsylvania corporation, as lessee under the Lease.

"Lessor" means the Borrower, as lessor under the Lease.

"Lien" shall mean any transfer of ownership or purported transfer of ownership (whether by sale or otherwise), mortgage, pledge, lease, security interest, encumbrance, lien or charge of any kind whatsoever (including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement under the UCC of any jurisdiction).

"Loan Agreement" means the Loan Agreement, dated as of August 3, 1993, among the Lender, Borrower and the Beneficiary, as the same may be amended, modified or supplemented from time to time.

"Loan Documents" means, collectively, the Loan Agreement, the Security Agreements, the Notes and the Guarantees.

"Mortgage and Lease Assignment" the Mortgage and Lease Assignment dated as of August 3, 1993 between the Borrower and the Lender, as the same may be amended, modified or supplemented from time to time.

"Mortgage Supplement" means a supplement to the Mortgage and Lease Assignment, in form and substance satisfactory to the Lender, executed on a Subsequent Delivery Date, and covering the Units delivered on such Delivery Date.

"Mr. Stucker" means Brian D. Stucker, and individual residing at 618 Scott Street, San Francisco, CA 94123.

"Mr. Garvey" means Edward Garvey, an individual residing at 31 Viejo Vista Drive, Walnut Creek, CA 94595.

"Notes" means the Notes issued by the Borrower pursuant to Section 7(a) of the Loan Agreement substantially in the form set forth in Section 7(a) of the Loan Agreement.

"Obligations" shall mean the obligation of the Borrower to make due and punctual payment of principal of and interest on the Notes and all other obligations of the Borrower and Beneficiary to the Lender under the Loan Agreement, the Notes, the Security Agreements or any other of the Operative Documents, including without limitation, any amounts which the Lender is entitled to receive pursuant to clause (x) of Section 14(e) to the Participation Agreement.

"Officer's Certificate" means as to any company a certificate signed by the Chairman, the Vice Chairman, the President, any Vice President, any Assistant Vice President, the Treasurer or any Assistant Treasurer, the Secretary, or any Assistant Secretary.

"Operative Documents" means, collectively, the Participation Agreement, the Lease, the Bills of Sale, the Loan Agreement, the Security Agreements, the Notes, the Assignment, the Power of Attorney, the Tax Indemnity Agreement and the Guarantees.

"Original Lessor" means Pac Rail, a California Corporation.

"Original Loan" means the loan extended by the Lender under the Original Loan Agreement.

"Original Loan Agreement" means the Full Cost Loan Pool Agreement dated November 18, 1989 between Pac Rail and the Lender, covering the Ten Units.

"Original Mortgage" means the Mortgage and Lease Assignment dated as of November 13, 1992 between Pac Rail and the Lender, covering the Ten Units.

"Owner's Liens" shall mean any Liens arising as a result of (i) claims against or affecting the Beneficiary or the Borrower in its individual capacity or as Owner Trustee or any Affiliate of the foregoing to the extent not arising solely from participation in the transactions contemplated by the Operative Documents, or (ii) any act or omission of the Beneficiary or the Borrower in its individual capacity or as Owner Trustee or any Affiliate of the foregoing to the extent not required or expressly permitted or contemplated by the Operative Documents, or (iii) Taxes or claims imposed against the Beneficiary or the Borrower in its individual capacity or as Owner Trustee or any Affiliate of the foregoing (A) which the Lessee has not agreed to indemnify against pursuant to the Participation Agreement or the Tax Indemnity Agreement, or (B) as to which the Lessee has fully discharged such indemnity obligations or (iv) claims against the Beneficiary or the Borrower in its individual capacity or as Owner Trustee or any Affiliate of the foregoing to the extent arising out of the voluntary transfer by any such Person of all or any part of its interests in the Units or the Trust Estate or the Operative Documents (including, without limitation, by means of granting a security interest therein other than the Lien of the Security Agreement), other than a transfer pursuant to Section 15 or 17 of the Lease or Section 10 of the Loan Agreement.

"Owner Trustee" means First Security Bank of Utah, National Association, not in its individual capacity but solely as trustee under the Trust Agreement except as otherwise expressly provided.

"Overdue Rate" has the meaning given such term in Section 7(a) of the Loan Agreement.

"Pac Rail" shall mean Pac Rail, a California corporation.

"Parent" shall mean Pacific Rail Leasing Corporation, a California corporation.

"Participant" means the Beneficiary or the Lender.

"Participation Agreement" means the Participation Agreement, dated as of August 3, 1993 among Lessee, Beneficiary, Owner Trustee, Lender and Original Lessor, as the same may be amended, modified or supplemented from time to time.

"Permitted Liens" has the meaning given such term in Section 14 of the Loan Agreement.

"Permitted Conrail Liens" has the meaning given such term in Section 7(c) of the Participation Agreement.

"Person" shall mean any natural person, corporation, division of a corporation, partnership, trust, joint venture, association, company, estate, unincorporated organization or government or any agency or political subdivision thereof.

"Potential Event of Acceleration" means an event which but for the giving of notice or lapse of time or both would constitute an Event of Acceleration.

"Potential Event of Default" means an event which but for the giving of notice or the lapse of time or both would constitute an Event of Default.

"Power of Attorney" shall mean the Irrevocable Power of Attorney dated as of August 3, 1993 delivered to the Lender by the Beneficiary, the Borrower and Pac Rail.

"Regulations" means the Treasury Regulations, as amended from time to time, promulgated under the Code by the United States Treasury Department.

"Security Agreements" shall mean, collectively, the Beneficial Interest Security Agreement, the Mortgage and Lease Assignment, the Stock Pledge Agreements and the Power of Attorney.

"Stock Pledge Agreement" shall mean the Stock Pledge Agreement dated as of August 3, 1993 between Pac Rail and Lender.

"Subsequent Delivery Date" shall have the meaning assigned such term in Section 2(e) of the Participation Agreement.

"Subsidiary" shall mean, with respect to any Person, any corporation, association, joint venture, partnership or other business entity (whether now existing or hereafter organized) of which at least a majority of the voting stock or other ownership interests having ordinary voting power for the election of directors (or the equivalent) is, at the time as of which any determination is being made, owned or controlled by such Person or one or more subsidiaries of such Person or by such Person and one or more subsidiaries of such Person.

"Supplemental Rent" means all amounts, liabilities, and obligations (other than Rental) that the Lessee assumes or agrees to pay under a Lease to the Lessor, including, without limitation, Casualty Value payments referred to in Section 12 of the Lease, indemnity payments under Sections 8 and 9 of the Lease and other amounts specified to constitute "additional rent", whether or not designated as Supplemental Rent in any such case.

"Tax Indemnity Agreement" means the tax Indemnity Agreement, dated as of August 3, 1993, between Lessee, Lessor and Beneficiary, as the same may be amended, modified or supplemented from time to time.

"Tax" means any and all fees (including, without limitation, license, documentation and registration fees), taxes (including without limitation income, gross receipts, sales, rental, use, turnover, value-added, property (tangible and intangible), excise and stamp taxes), licenses, levies, imposts, duties, recording charges or fees, charges, assessments or withholdings of any nature whatsoever, together with any and all assessments, penalties, fines, additions to tax and interest thereon.

"Ten Units" means one or more of the SD 40-2 Locomotives purchased or to be purchased by Borrower from Pac Rail identified as CR 6961 through CR 6970 inclusive.

"Ten Unit Cost" means, for each such Unit, seven hundred twelve thousand five hundred seventy four dollars (\$455,000).

"Term" shall have the meaning assigned to such term in the Lease.

"Thirty Units" means one or more of the SD 40-2 Locomotives purchased or to be purchased by Borrower from Lessee identified as CR 6960 and CR 6971 through CR 6999 inclusive.

"Thirty Unit Cost" means, for each Unit, five hundred and five thousand dollars (\$505,000.00).

"Transaction Costs" means all of the reasonable out-of-pocket costs, fees and expenses incurred by the Lender, each of the Guarantors, the Borrower and Beneficiary in connection with the preparation, execution, delivery, filing and recording of the Operative Documents and the transactions contemplated thereby to occur on each Delivery Date, including:

(i) the fees, expenses and disbursements of  
(A) Lord Day & Lord, Barrett Smith, counsel for the Lender,  
(B) Ray, Quinney & Nebeker, counsel for the Borrower,  
(C) Hosie, Wes, McLaughlin & Sacks, counsel for the Beneficiary and the Guarantors, (D) Danelan, Cleary, Wood & Mash, P.C., special ICC Counsel;

(ii) the cost of the appraisals referred to in Section 4(d) of the Participation Agreement;

(iii) the cost of filing and recording documents with the ICC and of filing UCC financing statements;

(iv) the fees and expenses of the Lender, including, without limitation, (A) the fees payable under the any letter or agreement and (B) such out-of-pocket fees and expenses in connection with the preparation, execution, delivery and administration of the Loan Agreement, the Security Agreements, the Note and the making of the loan, and including but not limited to any internally allocated audit costs; and

(v) the initial fee of the Owner Trustee.

"Trust Agreement" shall mean the Trust Agreement dated as of August 3, 1993 between First Security Bank of Utah, National Association and the Beneficiary, as the same may be amended, modified or supplemented from time to time.

"Trust Estate" shall have the meaning assigned to such term in Section 1.02 of the Trust Agreement.

"UCC" means the Uniform Commercial Code as in effect in the applicable states of the United States of America.

"Units" means one or more of the SD40-2 Locomotives identified as CR 6960 through 6999 inclusive.