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SIDLEY & AUSTIN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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18468 FILED NOV 12 1993 PM INTERSTATE COMMERCE COMMISSION

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November 12, 1993

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18468 FILED NOV 12 1993 PM INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Recordations Unit
Room 2303
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Dear Ms. Lee:

Enclosed are three original counterparts of each of the documents described below, to be recorded pursuant to 49 U.S.C. § 11303.

The first document, Equipment Lease Agreement dated as of November 12, 1993, is a primary document. The names and addresses of the parties to such document are as follows:

Southern Pacific Transportation Company
One Market Plaza, Room 666
San Francisco, CA 94105

AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, NJ 07962-1983

The second document, Lease Supplement No. 1 dated November 12, 1993, is a secondary document. The names and addresses of the parties to such document are as follows:

Southern Pacific Transportation Company
One Market Plaza, Room 666
San Francisco, CA 94105

AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, NJ 07962-1983

Counterparts - Sarah Cox

The third document, Lease Supplement No. 2 dated November 12, 1993, is a secondary document. The names and addresses of the parties to such document are as follows:

Southern Pacific Transportation Company
One Market Plaza, Room 666
San Francisco, CA 94105

AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, NJ 07962-1983

The equipment affected by the documents consists of one hundred seventy-seven 100-ton, twin trough coil steel flat cars described in Lease Supplement No. 1 to the Equipment Lease and one hundred fifteen 100-ton quadruple hopper cars designed for rotary or bottom dump service specifically described in Lease Supplement No. 2 to the Equipment Lease Agreement.

A filing fee of $54.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned.

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

Equipment Lease Agreement dated as of November 12, 1993, between AT&T Commercial Finance Corporation, as Lessor and Southern Pacific Transportation Company, as Lessee, covering hopper and steel coil cars identified by the Lessee in the Lease Supplements.

Lease Supplement No. 1 dated November 12, 1993 between AT&T Commercial Finance Corporation, as Lessor, and Southern Pacific Transportation Company, as Lessee, covering coil steel cars identified by the Lessee in Schedule A thereto.

Lease Supplement No. 2 dated November 12, 1993 between AT&T Commercial Finance Corporation, as Lessor, and Southern Pacific Transportation Company, as Lessee, covering hopper cars identified by the Lessee in Schedule A thereto.

Very truly yours,

G. Paul Moates

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

11/12/93

OFFICE OF THE SECRETARY

G. Paul Moates
Sidley & Austin
1722 Eye Street, NW
Washington, DC.20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/12/93 at 3:35PM , and assigned recordation number(s). 18468-18468-A,18468-B and 18468-C.

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

EXECUTION COPY

18468

NOV 12 1993 3 25 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of November 12, 1993

between

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
Lessee

and

AT&T COMMERCIAL FINANCE CORPORATION,
Lessor

100 TON TWIN TROUGH COIL STEEL FLAT CARS AND ALUMINUM/ STEEL 100 TON QUADRUPLE HOPPER CARS DESIGNED FOR ROTARY OR BOTTOM DUMP SERVICE

FILED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO 49 U.S.C. § 11303
ON NOVEMBER 12, 1993 AT _____ _.M.
RECORDATION NUMBER _____

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (this "Agreement") is entered into as of this 12th day of November, 1993 between AT&T Commercial Finance Corporation, a Delaware corporation ("Lessor"), and Southern Pacific Transportation Company, a Delaware corporation ("Lessee").

1. **LEASE AGREEMENT.** Subject to the satisfaction or waiver of the conditions set forth herein, Lessor agrees to purchase from the manufacturer or manufacturers ("Seller") thereof and to lease to Lessee, and Lessee agrees to lease from Lessor, the railcars constituting coil steel cars and hopper cars (each such railcar, an "Item of Equipment", and such railcars collectively or generally, the "Equipment") described in any lease supplement ("Lease Supplement") to this Agreement, which Lease Supplement shall be in the form attached hereto as Exhibit A. Each such Lease Supplement shall be governed by the terms and conditions of this Agreement, as well as by the terms and conditions set forth in such Lease Supplement.

2. **DELIVERY; ACCEPTANCE.** Lessee, by executing and delivering to Lessor a Lease Supplement with respect to any Items of Equipment, shall be deemed to have: (i) represented and warranted to Lessor that it has selected such Items of Equipment from the Seller of such Items of Equipment specified in the applicable Lease Supplement; (ii) represented and warranted to Lessor that Lessee has negotiated, reviewed, approved and received a copy of the applicable purchase orders, contracts or other documents ("Purchase Documents") relating to the purchase of such Items of Equipment from the Seller; and (iii) irrevocably accepted such Items of Equipment for lease under this Agreement.

3. **PURCHASE AND LEASE OF EQUIPMENT.** (a) Lessor shall be obligated to purchase Items of Equipment from the Seller and to lease such Items of Equipment to Lessee if (and only if) the following conditions are fulfilled to Lessor's reasonable satisfaction (or waived by Lessor) concurrently with or prior to such purchase or lease:

(i) Lessor shall have received the Lease Supplement relating to such Items of Equipment executed by Lessee, together with an executed and complete copy of the Purchase Documents relating to such Items of Equipment;

(ii) Lessee shall have delivered to Lessor a fully executed Assignment and Consent Agreement ("Assignment and Consent Agreement") whereby: (A) Lessor is assigned all of Lessee's right, title and interest, if any, in and to (1) the Items of Equipment described in the applicable Lease Supplement and (2) any Purchase Documents relating thereto that Lessee has entered into with the Seller, including any warranties provided by the Seller under such Purchase Documents; and (B) the Seller acknowledges and consents to

such assignment; which Assignment and Consent Agreement shall be in the form attached hereto as Exhibit B;

(iii) Lessor shall have received a full warranty bill of sale ("Bill of Sale") for such Items of Equipment from the Seller and, if appropriate, any other person, individual, corporation, trust, unincorporated association or other entity (each of the foregoing, a "Person") having claim to title thereto, which Bill of Sale shall be in the form attached hereto as Exhibit C;

(iv) each such Item of Equipment shall have been provided with a reporting mark;

(v) upon the execution and delivery by the Seller to Lessor of the Bill of Sale with respect to such Items of Equipment, Lessor shall have received good and marketable title to such Items of Equipment, free and clear of any lien, claim, charge, security interest, lease or other encumbrance ("Lien") against such Items of Equipment, whether filed under Section 11303 of Title 49 of the United States Code and the regulations promulgated thereunder or under the Uniform Commercial Code or otherwise, and whether such Lien arises for the benefit of or against Lessee or the Seller or any other Person other than the interests created pursuant to this Agreement;

(vi) this Agreement and the applicable Lease Supplement shall have been duly filed with the Interstate Commerce Commission ("ICC") pursuant to Section 11303 of Title 49 of the United States Code;

(vii) precautionary Uniform Commercial Code UCC-1 financing statements with respect to such Items of Equipment shall have been filed against Lessee in the State of California;

(viii) no Loss (as hereinafter defined) or event which, with notice or lapse of time or both, would constitute a Loss shall have occurred and be continuing with respect to any such Item of Equipment proposed to be purchased and leased hereunder and under the applicable Lease Supplement;

(ix) no Event of Default (as hereinafter defined) or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing;

(x) the representations and warranties of Lessee set forth in this Agreement and the applicable Lease Supplement shall be true and correct in all material respects as of the date of such purchase and lease; provided, that the foregoing materiality limitation shall not apply to Lessee's representations and warranties set forth in paragraphs (a)(v), (b) and (c) of Section 16 hereof;

(xi) Lessor shall have received a certificate from the Secretary of Lessee satisfactory to it attaching (a) an incumbency certificate of officers of Lessee who have executed this Agreement and any other related agreement or document to which Lessee is a party or of which Lessee is a signatory and (b) correct and complete copies of the certificate of incorporation and by-laws of Lessee, which certificate shall be in the form attached hereto as Exhibit D;

(xii) Lessor shall have received a certificate of good standing with respect to Lessee issued by the Secretary of State of Lessee's state of incorporation;

(xiii) Lessor shall have received a certificate from a vice president or more senior officer of Lessee satisfactory to it certifying on behalf of Lessee that (a) the representations and warranties of Lessee set forth herein and in any Lease Supplement and each other Fundamental Agreement (as hereinafter defined) to which Lessee is a party are true and correct; (b) no Loss or event which, with notice or lapse of time or both, would constitute a Loss shall have occurred and be continuing with respect to any such Item of Equipment proposed to be purchased and leased hereunder; (c) no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing; (d) the conditions set forth herein have been satisfied; and (e) this Agreement, any Assignment Agreement and Lease Supplement and each other Fundamental Agreement to which Lessee is a party remains in full force and effect with respect to it; which certificate shall be in the form attached hereto as Exhibit E;

(xiv) Lessor shall have received an opinion (or opinions) of counsel addressed to it, which counsel shall be satisfactory to Lessor and which opinion (or opinions) shall, individually or collectively, be in the form attached hereto as Exhibit F;

(xv) Lessor shall have received an insurance certificate of an independent insurance broker satisfactory to Lessor, evidencing the insurance required by Section 7 hereof;

(xvi) Lessee shall not have consolidated or merged with any other corporation or conveyed, transferred or leased all or substantially all of its assets as an entirety to any Person, whether in a single transaction or a series of related transactions; and

(xvii) no change shall have occurred between the date hereof and the applicable date of the proposed purchase and lease hereunder of such Items of Equipment in the applicable

laws, rules, regulations or orders of any federal, state, local or foreign governmental body or tribunal ("Applicable Law") that would make it illegal for Lessor to acquire such Items of Equipment or would cause any transaction contemplated by this Agreement to be in violation of such Applicable Law.

(b) In addition to the foregoing, in connection with the purchase and lease by Lessor of any Items of Equipment, the following additional conditions with respect to the Security Agreement of even date herewith between Lessee and Lessor (as amended from time to time, the "Security Agreement") shall have been fulfilled to Lessor's satisfaction (or waived by Lessor) concurrently with or prior to such purchase or lease:

(i) the Security Agreement shall have been duly executed and delivered by the parties thereto, which Security Agreement shall be in the form attached hereto as Exhibit G;

(ii) each "Item of Mortgaged Equipment" (as defined in the Security Agreement) shall have been provided with a reporting mark;

(iii) the Security Agreement shall have been duly filed with the ICC pursuant to Section 11303 of Title 49 of the United States Code;

(iv) Uniform Commercial Code UCC-1 financing statements with respect to each Item of Mortgaged Equipment shall have been filed against Lessee in the State of California;

(v) the representations and warranties of Lessee set forth in the Security Agreement shall be true and correct in all material respects as of the date hereof;

(vi) Lessor shall have received an insurance certificate of an independent insurance broker, evidencing the insurance required by the Security Agreement; and

(vii) no change shall have occurred between the date hereof and the applicable date of the proposed purchase and lease hereunder of such Items of Equipment in the Applicable Law that would make it illegal for Lessee to mortgage Items of Mortgaged Equipment or would cause any transaction contemplated by the Security Agreement to be in violation of such Applicable Law.

(c) Lessor shall only purchase and lease coil steel cars and hopper cars manufactured by Thrall Car Manufacturing Company and Johnstown America Corporation. Lessor shall not purchase or lease (i) coil steel cars having an aggregate purchase price in excess of $10,000,000 and (ii) hopper cars having an aggregate purchase price in excess of $12,500,000. The commitment of Lessor to effect such purchase and lease hereunder

shall expire on December 31, 1993. In no event shall Lessor purchase any Items of Equipment or portions thereof for a price in excess of the purchase price thereof contracted by Lessee in the applicable Purchase Documents.

(d) If requested by Lessee, Lessor shall, in connection with the purchase and lease hereunder of any Items of Equipment constituting hopper cars, purchase the wheels relating to any such hopper cars manufactured by Griffin Wheel Company directly from such manufacturer; provided that: (i) Lessee (A) enters into an Assignment and Consent Agreement with respect to its right, title and interest in such wheels and in any Purchase Documents relating to the purchase of such wheels from such manufacturer and (B) provides Lessor with a copy of the foregoing Purchase Documents; (ii) such manufacturer enters into an Assignment and Consent Agreement with respect to such purchase documents and provides a Bill of Sale with respect to such wheels; and (iii) all other conditions to the purchase and lease hereunder of the related hopper cars are fulfilled to Lessor's reasonable satisfaction (or waived by Lessor). In the event that Lessor purchases any such wheels: (i) Lessee shall lease such wheels as part of the Lease Supplement relating to the related hopper cars; (ii) such wheels shall constitute part of the related hopper cars; (iii) the Purchase Documents, Assignment and Consent Agreements, and Bills of Sale referred to in the preceding sentence shall constitute Purchase Documents, Assignment and Consent Agreements and Bills of Sale, respectively, and Fundamental Agreements (as hereinafter defined), collectively, for all purposes of this Agreement (including, without limitation, Section 2 hereof); and (iv) the purchase price paid by Lessor for such wheels shall be deemed to satisfy a corresponding amount of Lessor's purchase commitment set forth in paragraph (c) above.

(e) "Fundamental Agreement" shall mean each and any of this Agreement, the Security Agreement and any Lease Supplement, Assignment and Consent Agreement, Bill of Sale, officer's certificate, secretary's certificate or other agreement (including any agreement between Lessee and Lessor) or instrument entered into by the Lessee at any time relating to the Items of Equipment or Items of Mortgaged Equipment with respect to the transactions contemplated hereby, as the same may be amended, modified or supplemented from time to time.

4. TERM. The initial term ("Initial Term") of the lease of the Items of Equipment leased hereunder and under any Lease Supplement shall begin on the date specified as the Commencement Date ("Commencement Date") in the applicable Lease Supplement and shall continue for the period specified in such Lease Supplement. Any renewal term of the lease of any such Items of Equipment leased hereunder and under such Lease Supplement ("Renewal Term") shall begin on the expiration of, as applicable, the Initial Term or any immediately preceding Renewal Term (the Initial Term and any Renewal Terms, collectively, "Term").

5. RENT; ARREARS RENT; LATE CHARGES. (a) Lessee shall pay Lessor the first rental payment specified in the applicable Lease Supplement (each rental payment is referred to herein as a "Rental Payment") for any Item of Equipment on or before the initial payment date (each payment date is referred to herein as a "Payment Date") specified in the applicable Lease Supplement and shall pay Lessor the remaining periodic Rental Payments on or before the periodic Payment Dates specified in the applicable Lease Supplement. Additionally, if pursuant to this Agreement a renewal option is exercised with respect to any Item of Equipment, Lessee shall also pay all Rental Payments required with respect thereto on or before the periodic Payment Dates specified in the applicable Lease Supplement. All Rental Payments will be wire transferred by Lessee in immediately available funds to Lessor's account specified in this Section 5 or to such other account as specified by Lessor in writing. In the event that more than one Lease Supplement is entered into hereunder, the parties will use their best efforts to implement a common billing date for all Lease Supplements. Lessor shall, solely in order to accommodate Lessee's internal record keeping procedures, send to Lessee, prior to each Payment Date, an invoice setting forth the amount of Rental Payments due and payable by Lessee on such Payment Date; provided, however, it is agreed and acknowledged by Lessee that any failure to provide or delay in providing any such invoice or any inaccuracy in such invoice shall in no event alter, modify, delay or annul Lessee's payment or performance obligations hereunder and under any Lease Supplement or other Fundamental Agreement (including, without limitation, Lessee's obligations to make specified amounts of Rental Payments on specified Payment Dates). Lessor's account is: c/o AT&T Capital Corporation, Account Number 322-021979, ABA #021000128, Chemical Bank, New York, New York.

(b) Lessee agrees to pay Lessor a late charge of 8% per annum, calculated on the basis of a 360-day year of twelve 30-day months (the "Past Due Rate"), on any Rental Payment or other amount due hereunder (including, without limitation, amounts payable upon the exercise of remedies following an Event of Default or amounts constituting Lessor's Return (as hereinafter defined) payable upon a Loss or Event of Default) that is not paid within 10 days of its due date. In the event any such payment is not made within 10 days of its due date, interest shall accrue on such payment pursuant to this clause (b) from the initial due date of such payment.

(c) "Lessor's Return" shall mean, for all purposes of this Agreement, the sum of the following amounts: (i) the Rental Payments under the applicable Lease Supplement or Supplements due and payable with respect to the applicable Item or Items of Equipment through the end of the calendar quarter preceding the quarter in which payment is made; plus (ii) (A) in the case of an Event of Default, Stipulated Loss Value calculated hereunder and under the applicable Lease Supplement or Supplements with respect to the applicable Item or Items of Equipment as of the calendar quarter in which the payment of Lessor's Return is required by

Lessor to be made or (B) in the event of a Loss, Stipulated Loss Value calculated hereunder and under the applicable Lease Supplement or Supplements with respect to the applicable Item or Items of Equipment as of the Succeeding Payment Date (as defined in Section 13 hereof) or, if applicable in accordance with the provisions of Section 13 hereof, the Next Succeeding Payment Date (as defined in Section 13 hereof). Interest shall accrue at the Past Due Rate and be payable by Lessee on Lessor's Return from the date of required payment thereof to and including the date of payment thereof.

6. PURCHASE AND RENEWAL OPTIONS. (a) So long as (at the time of the delivery of notices contemplated herein and at the time of exercise of the applicable purchase or renewal option) no Loss or Event of Default has occurred and is continuing and no event has occurred and is continuing which, with notice or the lapse of time or both, would constitute a Loss or an Event of Default, Lessee shall have the following purchase and renewal options:

(i) Lessee may purchase all (but not less than all) of the Hoppers (as hereinafter defined) at the end of the applicable Initial Terms or Renewal Terms of the Hoppers leased hereunder at Fair Market Value (as defined below);

(ii) Lessee may renew the lease of all (but not less than all) of the Hoppers at the end of the applicable Initial Terms or Renewal Terms of the Hoppers leased hereunder for a Renewal Term or Renewal Terms mutually acceptable to Lessor and Lessee at Fair Rental Value (as defined below); provided that Lessor may, in its discretion, but shall have no obligation to, agree to any Renewal Term or Renewal Terms that, individually or in the aggregate, extends or extend for a period beyond two years after the expiration of the Initial Equipment Term (as hereinafter defined);

(iii) Lessee may purchase all (but not less than all) of the Coil Steel Cars (as hereinafter defined) at the end of the applicable Initial Terms or Renewal Terms of the Coil Steel Cars leased hereunder at Fair Market Value (as defined below); and

(iv) Lessee may renew the lease of all (but not less than all) of the Coil Steel Cars at the end of the applicable Initial Terms or Renewal Terms of the Coil Steel Cars leased hereunder for a Renewal Term or Renewal Terms mutually acceptable to Lessor and Lessee at Fair Rental Value (as defined below); provided that Lessor may, in its discretion, but shall have no obligation to, agree to any Renewal Term or Renewal Terms that, individually or in the aggregate, extends or extend for a period beyond two years after the expiration of the Initial Equipment Term (as hereinafter defined).

"Hoppers" and "Coil Steel Cars" means all the hoppers or coil steel cars, as the case may be, leased by Lessee pursuant to this Agreement (as originally in effect), including, in the event that a portion of Lessor's rights under this Agreement (as originally in effect) are assigned to another Person, the hoppers or coil steel cars, as the case may be, leased to Lessee by such other Person or any subsequent assignee thereof.

(b) In order for Lessee to elect to exercise its option to purchase the Hoppers or Coil Steel Cars or to renew the lease of the Hoppers or Coil Steel Cars, it shall provide to Lessor written notice expressing its interest to effect such election at least 210 days prior to the expiration of the Initial Equipment Term (as hereinafter defined) or any Initial Renewal Term (as hereinafter defined), and in the event Lessee provides such notice in such period Lessor shall provide to Lessee its estimate of Fair Market Value or Fair Rental Value, as the case may be, within 30 days of receipt of such notice. "Initial Equipment Term" and "Initial Renewal Term" shall mean the end of the Initial Term or Renewal Term, as the case may be, of the Items of Equipment which expires prior to (or at any rate not later than) the Initial Term or Renewal Term of any other Item of Equipment leased under this Agreement (as originally in effect).

(c) Fair Rental Value and Fair Market Value for the Equipment shall be determined by agreement of Lessor and Lessee, or by an independent appraiser selected by Lessor and Lessee. If Lessor and Lessee cannot agree on such Fair Rental Value or Fair Market Value or as to an independent appraiser within 20 days of notice by Lessor pursuant to paragraph (b) above of its estimate of Fair Market Value or Fair Rental Value, as the case may be, then each shall select one appraiser, within 30 days after such notice, and such appraisers shall select a third appraiser within 10 days after the selection of such two appraisers, and such third appraiser shall conclusively determine the Fair Rental Value and Fair Market Value for the Equipment within 55 days after such notice. In the event either of Lessee or Lessor fail to select an appraiser within the time period specified above, the appraiser selected by the other of Lessor or Lessee shall conclusively determine the Fair Rental Value or Fair Market Value of the Equipment within 60 days after such notice. The cost of such appraisal shall be shared equally between Lessor and Lessee. Fair Rental Value means the periodic payment amount that would be payable for the Equipment in an arm's length transaction between an informed and willing lessee and an informed and willing lessor, neither under compulsion to lease.

Fair Market Value means the total price that would be paid for the Equipment in an arm's length transaction between an informed and willing buyer (other than a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell. In determining Fair Rental Value or Fair Market Value, the costs of removing the Equipment from the Equipment Location and moving it to a new location shall not be deducted from its value.

(d) Lessee shall, within 60 days of receipt from Lessor of its estimate of Fair Market Value or Fair Rental Value, as the case may be, pursuant to paragraph (b) above, provide notice to Lessor of (A) its election to exercise its purchase or renewal option, delivery of which notice shall irrevocably commit and bind Lessee to effect the purchase or lease renewal specified in such notice at the Fair Market Value or Fair Rental Value determined in accordance with the provisions of paragraph (c) above, or (B) its election not to exercise any such option, which election shall also be irrevocable and binding on Lessee. Failure by Lessee to provide the initial notice required to be provided by Lessee pursuant to paragraph (b) above or subsequent confirmatory notice referred to in this paragraph (d) within the time periods specified herein shall be deemed to constitute an irrevocable election by Lessee not to exercise its purchase or renewal options set forth herein.

(e) In the event that Lessee elects to purchase the Hoppers or Coil Steel Cars, it shall deliver to Lessor, 30 days prior to the expiration of the applicable Initial Term or Renewal Term of each Hopper or Coil Steel Car leased hereunder, an executed commitment letter with respect to the applicable Items of Equipment reasonably acceptable to Lessor evidencing Lessee's unconditional commitment to pay Lessor at the expiration of such Initial Term or Renewal Term an amount equal to the Fair Market Value of the applicable Item of Equipment. In the event that Lessee exercises its purchase option, Lessee shall at the expiration of the applicable Initial Term or Renewal Term of each applicable Item of Equipment make full payment to Lessor of the Fair Market Value of such Item of Equipment, together with any and all other amounts due and payable by Lessee hereunder (including Rental Payments and indemnity payments). In the event that Lessee elects to renew the lease of the Hoppers or Coil Steel Cars, Lessee and Lessor shall enter into a supplement to this Agreement to renew the lease of the Hoppers or Coil Steel Cars leased hereunder, as the case may be, and to confirm the applicable Fair Rental Value amount and the length of the applicable Renewal Term. Throughout the Renewal Term, Lessee shall pay Lessor the Fair Rental Value payable with respect to each such Item of Equipment on the Payment Dates specified in the applicable Lease Supplement.

(f) Should Lessee fail to: (i) provide Lessor with the notices contemplated in paragraph (b) or paragraph (d) above in the time periods specified therein; or (ii) pay Lessor the Fair Market Value amount as specified in paragraph (e) above; or (iii) return the Equipment to Lessor in accordance with Section 11, the applicable Initial Term or Renewal Term of each Item of Equipment shall be extended for a period not to exceed 120 days (unless otherwise agreed by Lessor in its sole discretion) until Lessee returns such Item or Items of Equipment to Lessor in accordance with Section 11, or Lessor terminates this Agreement and any applicable Lease Supplement by providing ten (10) days' written notice to Lessee (which the Lessor may elect to do at any

time after the scheduled return date hereunder for such Items of Equipment). In the event this Agreement and any applicable Lease Supplement is extended pursuant to the preceding sentence, Lessee shall continue to pay Lessor the daily equivalent of the periodic Rental Payments in effect prior to the expiration of the applicable Initial Term or Renewal Term (together with any damages suffered by Lessor that are attributable to such delayed return, such damages to be determined after taking into account any additional rental payments made by Lessee pursuant to the foregoing provisions), and all other provisions of the Agreement and any applicable Lease Supplement (including Lessee's purchase and renewal options) shall continue to apply.

(g) If Lessee elects to purchase the Hoppers and/or Coil Steel Cars and has completely fulfilled the terms and conditions of this Agreement, then on the last day of the applicable Initial Term or Renewal Term with respect to each Item of Equipment so purchased (i) this Agreement and the applicable Lease Supplement shall terminate with respect to such Item of Equipment (except as with respect to Lessee's indemnities provided herein) and (ii) Lessor shall transfer, by a bill of sale, all of its right, title and interest with respect to such Item of Equipment to Lessee "AS IS, WHERE IS," and without any warranty, express or implied from Lessor, other than the absence of any Liens or claims by, through, or under Lessor.

7. INSURANCE. (a) Lessee shall carry or cause to be maintained in effect at its expense (i) comprehensive liability (including, without limitation, contractual, bodily injury and property damage liability) and third party property damage insurance with respect to the Equipment, (A) in an amount not less than the greater of (x) the amounts of comprehensive liability and third party property damage insurance from time to time applicable to railcars owned or operated by Lessee of the same type as the Equipment, and (y) $100,000,000 per occurrence, (B) of the type and covering the same risks as from time to time applicable to railcars owned or operated by Lessee of the same type as the Equipment and (C) which is maintained in effect with insurers rated by A.M. Best (or any successor entity) with a rating of B or better and Class VI or higher (or, alternatively, insurers acceptable to Lessor). Lessee may self insure against the risks required to be insured against pursuant to this paragraph (a) up to a maximum self-insurance retention of $10,000,000 for all such risks for which Lessee may be liable.

(b) Lessee shall maintain or cause to be maintained in effect, at its expense, with insurers rated by A.M. Best (or any successor entity) with a rating of B or better and Class VI or higher (or, alternatively, insurers acceptable to Lessor), all-risk casualty and property damage insurance covering each Item of Equipment for an amount equal to the greater of, for each Item of Equipment, (x) the Stipulated Loss Value of such Item of Equipment and (y) the amount of such casualty and property damage insurance from time to time applicable to railcars owned or operated by Lessee of the same type as the Equipment. Lessee may

maintain, with respect to the risks required to be insured against pursuant to this paragraph (b), a deductible customary for railcar insurance for purposes of reducing handling charges.

(c) Except during a period when an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing, all losses will be adjusted by Lessee (giving due regard to Lessor's interests) with the insurers. As between Lessor and Lessee, it is agreed that all casualty insurance payments received as the result of the occurrence of a Loss with respect to an Item of Equipment shall, unless such property is repaired pursuant to Section 11 hereof, be applied in reduction of Lessee's obligation to pay such Lessor's Return if not already paid by Lessee, or, if already paid by Lessee, shall be applied to reimburse Lessee for its payment of such Lessor's Return and any amounts remaining thereafter will be paid over to, or retained by, Lessee.

(d) Any amount referred to in this Section 7 which is payable to or retainable by Lessee shall not be paid to or retained by Lessee if at the time of such payment or retention an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, but shall be held by or paid over to Lessor as security for the obligations of Lessee under this Lease and, if an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, applied against Lessee's obligations hereunder as and when due. At such time as there shall not be continuing any such Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default, such amount shall be paid to Lessee to the extent not previously applied in accordance with the preceding sentence.

(e) Any policies carried in accordance with Section 7(a) and 7(b) hereof and any policies taken out in substitution or replacement for any such policies, (A) shall name Lessor as an additional insured, and, in the case of insurance maintained pursuant to Section 7(b) hereof, loss payee, as its interests may appear (but without imposing on Lessor liability to pay premiums with respect to such insurance), (B) shall provide that if the insurers cancel such insurance for any reason whatever, or if any material change is made in the insurance which adversely affects the interests of Lessor as additional insured or loss payee, such cancellation or change shall not be effective as to Lessor for thirty days after receipt by Lessor of written notice by such insurers of such cancellation or change, (C) shall provide that the interests of Lessor as additional insured in such policies the insurance shall not be invalidated by any action or inaction of Lessee and shall insure the respective interests of the Lessor as they appear regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee, (D) shall be primary without any right of contribution from any other insurance which is carried by Lessor, (E) shall

waive any right of the insurers of subrogation or to set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Lessor, and (F) shall provide that (i) in the event of a Loss involving Equipment for which proceeds are in excess of $1,500,000, the proceeds of casualty insurance in respect of such Loss up to the amount of Stipulated Loss Value shall be payable to Lessor and held by Lessor until, if the repair provisions of Section 11 are applicable, such Items of Equipment are repaid pursuant to Section 11 hereof and, upon such repair, released to Lessee or, if the repair provisions of Section 11 are not applicable, applied by Lessor against the Lessor's Return and other amounts payable by Lessee in respect of such Loss (provided, that to the extent that prior to receipt of such insurance proceeds, Lessee has paid to Lessor Lessor's Return and other amounts payable by Lessee pursuant to Section 13 hereof in connection with such Loss, such proceeds shall be paid to Lessee) and (ii) the entire amount of any such Loss for which proceeds of casualty insurance are $1,500,000 or less or the amount of any proceeds of any such Loss in excess of Lessor's Return for the Item of Equipment shall be paid to Lessee.

(f) Each of the additional insureds covered or required to be covered under the liability policies required to be maintained by Lessee pursuant to this Section 7 shall have the same protection as would have been available to them had these policies been issued individually to each of them, except that this requirement shall not in any event increase the insurers' total liability beyond the limits set forth in such policies.

8. TAXES. (a) Lessee shall reimburse, protect, save and keep harmless Lessor, its Affiliates (as hereinafter defined) and their directors, officers, employees, agents and representatives, on an After-Tax Basis (as defined below), against (or pay directly, but only if instructed by Lessor) all taxes, fees, duties, governmental charges and assessments, of any nature whatsoever, including interest, fines, additions to tax, and penalties thereon, imposed by any taxing authority with respect to the Equipment, on its purchase, ownership, delivery, possession, transportation, operation, rental, return to Lessor or its purchase by Lessee, transfer of title, registration, or otherwise with respect to or in connection with the transactions contemplated by the Fundamental Agreements (as defined in Section 16 hereof), including, but not limited to, sales and use taxes, property taxes and all license and registration fees (collectively, "Taxes"). Lessee shall reimburse Lessor for (or, with Lessor's consent, directly pay) these Taxes pursuant to this Section 8 whether they are imposed upon Lessor, any other indemnified person, Lessee, the Equipment, this Agreement, the applicable Lease Supplement or any other Fundamental Agreement. Lessee shall not be required to reimburse Lessor pursuant to this Section 8 for the following: (i) taxes based upon, measured by, or with respect to net or gross income, receipts, minimum tax, capital, franchise or net worth imposed by the United States or by any state, local or foreign jurisdiction (other than sales,

use, property, rental, lease, ad valorem or value-added taxes); (ii) taxes on items of tax preference or any minimum tax; (iii) taxes resulting from Lessor's disposition (whether voluntary or involuntary) of the Equipment or of any interest therein (other than taxes resulting from a transfer or disposition after an Event of Default has occurred and while such Event of Default is continuing, or in connection with a Loss, or from Lessee's exercise of a purchase option under this Agreement, or from any replacement of the Equipment by Lessee, or from any voluntary termination of this Agreement by Lessee); (iv) taxes resulting from either the willful misconduct or negligence of Lessor or from the breach of Lessor's representations, warranties or obligations under the Fundamental Agreements; (v) taxes which arise out of or are caused by any act or omission of Lessor where such act or omission is prohibited by the Fundamental Agreements; (vi) taxes related to the Equipment in respect of any period after the expiration or early termination of the Term and return of the Equipment in accordance with Section 11 hereof; and (vii) taxes imposed against a transferee or assignee, if any, of Lessor to the extent of the excess of such taxes over the amount of taxes which would have been imposed had there not been such an assignment or transfer.

(b) Notwithstanding Section 8(a) above, Lessee's obligation to pay, reimburse or hold harmless the Lessor for Taxes in the nature of or in lieu of sales, use, transfer or similar types of Taxes, including interest, fines, additions to tax and penalties, if any, thereon (collectively, "Sales Tax"), arising out of the Lessor's acquisition and leasing of the Equipment, or any replacement of the Equipment by the Lessee, shall be conditioned upon the Lessor's delivering to the Seller (in the case of the Lessor's acquisition of the Equipment) and to the Lessee (in the case of any replacement by the Lessee) such properly completed and validly executed resale certificates or similar documents as may timely be reasonably requested in writing by Lessee, within 10 business days of such request. Lessor shall register for Sales Tax purposes with the taxing authorities in all applicable jurisdictions as necessary to permit Lessor to perform its obligations under this Section 8(b).

(c) Where required by an applicable jurisdiction, Lessee shall pay to Lessor Sales Tax on that portion of the total amount of each Rental Payment allocable to each Item of Equipment calculated at the tax rate applicable to the jurisdiction in which each respective Item of Equipment is located on the Commencement Date. Lessor shall report and remit such Sales Tax as required by the applicable jurisdiction. In the event that Sales Tax is imposed by any state taxing authority attributable to the Rental Payments, in excess of that paid by Lessee to Lessor pursuant to this Section 8(c), Lessee shall reimburse Lessor (or pay directly, but only if instructed by Lessor), on an After-Tax Basis, for all such additional taxes, including, interest, fines, additions to tax and penalties thereon.

(d) Unless otherwise required by law, upon commencement of the Term, Lessee shall be responsible for reporting the Equipment for ad valorem property tax purposes where applicable and Lessor shall not include the Equipment in any ad valorem or other similar tax returns filed by Lessor.

(e) If any claim is made against Lessor, by commencement of proceedings against Lessor or otherwise, for Taxes, including interest, fines, additions to tax, and penalties thereon for which Lessee would have a reimbursement or payment obligation pursuant to this Section 8, Lessor shall as soon as reasonably practical notify Lessee of such claim in writing; provided, however, that Lessor's failure to provide such notice shall not reduce Lessee's obligations under this Section 8 except to the extent that such failure materially prejudices Lessee's ability to pursue its contest rights hereunder. Lessee may, at its expense, in good faith and by appropriate administrative or legal proceedings, contest or defend an asserted claim or liability for which it is indemnifying Lessor under this Section 8, so long as (i) no Event of Default shall have occurred and be continuing, and (ii) in the reasonable opinion of Lessor, such contest or defense is being diligently conducted by persons reasonably satisfactory to Lessor. To the extent permitted by law, any contest or defense conducted pursuant to this Section 8(e) may be conducted by Lessee either in its own name or, if required by the applicable jurisdiction, in Lessor's name. Lessee shall reimburse Lessor, on an After-Tax Basis, for all costs and expenses, including (without limitation) reasonable legal fees and expenses, which Lessor may incur in connection with such contest or defense. Lessor agrees to offer its good faith cooperation and assistance, at no cost or expense to Lessor, in Lessee's conduct of such contest or defense.

(f) "After-Tax Basis" shall mean an amount which, after deduction of all Taxes (without respect to any exclusion provided in Section 8(a) hereof) imposed by any and all jurisdictions that are required to be paid by the recipient in respect of the receipt or accrual of such amount, and after consideration of any current deduction, credit or other tax benefit realized by the recipient and attributable to the indemnified Tax, cost or expense, is equal to the amount required to be indemnified against on an After-Tax Basis.

(g) If, by reason of any indemnity payment made by the Lessee to the Lessor pursuant to this Section 8, the Lessor subsequently realizes a tax benefit not previously taken into account in computing the amount of such indemnity payment (and provided that no Event of Default shall have occurred and be continuing and that the Lessee shall have made all payments then due and owing to the Lessor under the Fundamental Agreements), the Lessor shall pay to the Lessee an amount equal to the sum of (i) the actual reduction in Taxes realized by the Lessor and attributable to such tax benefit, and (ii) the actual reduction in Taxes realized by the Lessor as a result of its payment pursuant to this Section 8(g); provided, however, that the Lessor

shall not be obligated to make any payment pursuant to this Section 8(g) in excess of the amount of all prior indemnity payments from the Lessee to the Lessor pursuant to this Section 8, less all prior payments from the Lessor to the Lessee pursuant to this Section 8(g); provided, further, however, that if at the time that the Lessor realizes a tax benefit not previously taken into account and an Event of Default shall have occurred and be continuing or Lessee shall not have made all payments due and owing to the Lessor under the Fundamental Agreements, Lessor shall nonetheless pay to Lessee the amount determined under Section 8(g)(i) and (ii) at such time as Lessee has cured the Event of Default and made any payments then due and owing to Lessor. Any Taxes subsequently imposed on the Lessor as a result of the disallowance or reduction of any tax benefit referred to in this Section 8(g) as to which the Lessor has paid to the Lessee the full amount required hereunder shall be treated as a Tax for which the Lessee is obligated to indemnify the Lessor pursuant to this Section 8, without regard to any exclusion provided in Section 8(a) hereof.

8A. TAX INDEMNITY. (a) This Agreement shall be entered into on the basis of the following Tax Assumptions:

(i) the Federal rate of income tax on Lessor's taxable income will be 35% and the composite rate of Federal, state and local income tax imposed on taxable income will be 39.225%;

(ii) Lessor has sufficient taxable income to utilize all deductions arising hereunder;

(iii) during the Term of this Agreement, Lessor will be entitled, for Federal income tax purposes, to accelerated cost recovery deductions under sections 167(a) and 168(b)(1) of the Internal Revenue Code of 1986, as amended and in effect on the date hereof (the "Code") ("Recovery Deductions") and, for state and local income tax purposes, to accelerated depreciation deductions to the extent available under applicable state and local income tax laws for property similar to the Equipment that would qualify for Recovery Deductions under section 168 of the Code ("Depreciation Deductions"); and

(iv) Lessor will not at any time during the Term be required to include any amount in gross income for Federal, state or local income tax purposes with respect to the Equipment or the transactions contemplated by the Fundamental Agreements other than: (a) Rental Payments, accrued in the amounts and for the periods indicated in the Lease Supplement, (b) any amount payable to Lessor and specifically identified as interest or late charges, (c) Stipulated Loss Value, (d) any amount paid on an After-Tax Basis, and (e) any amount received by Lessor in connection with its sale or other disposition (including, but not limited to, Lessee's exercise of its purchase option) of an

Item of Equipment or of its interest in the Fundamental Agreements.

(b) The Lessee represents and warrants that during the Term of this Agreement:

(i) assuming that Lessor is and will remain the owner of, and is and will remain in a trade or business with respect to, the Equipment, the Equipment in the hands of Lessor, after delivery and acceptance under Section 3 of the Agreement, will have been "placed in service" within the meaning of sections 167 and 168 of the Code and will not require additions or modifications to make it suitable for its intended use other than ancillary modifications or additions normally made by lessees of similar assets;

(ii) the aggregate purchase price paid by Lessor for the Items of Equipment purchased and leased pursuant to this Agreement shall qualify for Recovery Deductions and, less any salvage value or adjustment for taxes or other items for which depreciation is not allowed under applicable state or local income tax laws, for Depreciation Deductions, and such Recovery Deductions and Depreciation Deductions shall not be disallowed or recaptured with respect to any Item of Equipment so long as such Item of Equipment remains subject to this Agreement;

(iii) the Lessee has not and will not cause, permit or suffer any Item of Equipment to constitute "tax-exempt use property" within the meaning of section 168(h) of the Code so long as such Item of Equipment remains subject to this Agreement; and

(iv) neither the Lessee nor any corporation controlled by it, in control of it or under common control with it (any such corporation, an "Affiliate"), directly or indirectly at any time, will file any returns or other documents inconsistent with the Tax Assumptions set forth in Section 8A(a) with regard to any Item of Equipment so long as such Item of Equipment remains subject to this Agreement, except that the Lessee may take such action as may be expressly required or permitted by the terms of the Agreement or any other Fundamental Agreement or any law or regulation or any mandatory accounting requirements applicable to the Lessee, or deemed by the Lessee to be necessary in consequences thereof, and the Lessee and any Affiliate thereof will file such returns, take such actions and execute such documents as may be deemed by the Lessor to be reasonable and necessary to facilitate accomplishment of the Tax Assumptions.

(c) (i) If as a direct result of any act of commission or omission (other than an act of commission or omission which is expressly required by the terms of the Agreement or by any other Fundamental Agreement), breach of any

agreement, representation, covenant or warranty contained herein or in any other Fundamental Agreement on the part of the Lessee, the Lessor shall lose the right to claim or shall not claim (as the result of advice by independent tax counsel, selected by Lessor and reasonably acceptable to Lessee, to the effect that there is no substantial authority (as defined in Treasury Regulation Section 1.6662-4(d)) for such claim), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Recovery Deductions or the Depreciation Deductions with respect to any Item of Equipment, or shall be required to include in gross income for periods before the expiration of the Term for Federal, state or local income tax purposes any amount not described in Section 8A(a)(iv) hereof (any such event hereinafter referred to as a "Tax Loss"), then the Lessee shall indemnify Lessor for such Loss as provided in Sections 8A(c)(ii) and (iii) hereof.

(ii) In the event Lessor shall suffer a Tax Loss as described in Section 8A(c)(i), Lessee shall pay to Lessor as an indemnity, on the next succeeding Payment Date after written notice to the Lessee by the Lessor of such Tax Loss, and on each Payment Date thereafter during the remaining Term, such amount or amounts as, in the reasonable opinion of Lessor, shall cause the Lessor's net after-tax cash flows, net after-tax book earnings and net after-tax yield (the "Net Economic Return") to equal the Net Economic Return that would have been realized by the Lessor if such Tax Loss had not occurred, and shall be based upon the same assumptions, specifically including the assumptions set forth in Section 8A(a) hereof (except as such assumptions should be modified as a result of such Tax Loss) and pricing analysis used by Lessor in determining the amount of the periodic Rental Payment, and such amount or amounts shall take into account any subsequent or offsetting tax benefits realized or to be realized by Lessor as a result of such Tax Loss; provided, however, that if the Term shall have expired prior to the time any such payment would be due, all such payments shall be payable by the Lessee in a lump sum not later than 30 days after written demand by the Lessor.

(iii) The accuracy of the calculation set forth in Section 8A(c)(ii) shall be subject to verification, upon the request of the Lessee, by the accounting firm of Coopers & Lybrand or by such other independent public accountants selected by Lessor and approved by Lessee, which approval shall not be unreasonably withheld. In order to enable such accountants to verify such calculations, the Lessor shall provide to such accountants (for their own confidential use and not to be disclosed to the Lessee or any other person and subject to the execution of a satisfactory confidentiality agreement) all information reasonably necessary for such verification, including any computer analyses used by the Lessor to calculate such amount or amounts. Such accountants' determination shall be binding upon Lessor and Lessee. The cost of such verification shall be borne by the Lessee unless it is determined that the actual amount payable deviates by more than 10% from the amount

originally determined by the Lessor, in which case such costs will be borne by the Lessor.

(d) Notwithstanding anything to the contrary set forth in Section 8A(c), the Lessor shall not be entitled to any payment under Section 8A(c) in respect of any Tax Loss arising as a direct result of one or more of the following events:

(i) an amendment to, or change in, the Code, any Regulation thereunder, any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service, any applicable state statutes, regulations, or similar documents, or the rate of tax under the laws of the United States or of any state on the taxable income of corporations, which is promulgated or enacted after the Commencement Date;

(ii) the imposition of the provisions of the alternative minimum tax pursuant to section 55 of the Code or any other minimum tax or alternative minimum tax under applicable state or local income tax laws;

(iii) the application of the mid-quarter convention pursuant to sections 168(d)(3) and 168(d)(4) of the Code;

(iv) the taxable year of the Lessor being less than 12 months;

(v) a claim or determination that the lease is not a "True Lease" for tax purposes or that the Lessor is not the owner or lessor of any Item of Equipment, other than as a direct result of a breach of any of Lessee's representations, covenants or warranties under this Agreement or any Fundamental Agreement, or as a direct result of any act of commission or omission of the Lessee (other than an act of commission or omission which is expressly required or permitted by the terms of this Agreement or any other Fundamental Agreement);

(vi) the failure of the Lessor to claim in a timely or proper manner any Recovery Deductions or Depreciation Deductions (unless the Lessor obtains an opinion of independent tax counsel, selected by Lessor and reasonably acceptable to Lessee, to the effect that substantial authority, as defined in Treas. Reg. Section 1.6662-4(d), to so claim does not exist);

(vii) any event for which Lessor's Return is paid to the extent the Tax Loss is reflected therein;

(viii) a failure of the Lessor to have sufficient taxable income to utilize the Recovery Deductions or Depreciation Deductions or the inability of the Lessor to utilize such deductions;

(ix) a sale, transfer or other disposition by the Lessor of any interest in any item of Equipment (unless an Event of Default shall have occurred and be continuing), including but not limited to a disposition resulting from Lessee's exercise of its purchase option;

(x) any other act at any time by the Lessor which is inconsistent with the obligations of the Lessor pursuant to the terms of any Fundamental Agreement, unless an Event of Default shall have occurred and be continuing;

(xi) any claim or assessment of the Lessor for the environmental tax imposed by section 59A of the Code to which the Lessor is subject from time to time;

(xii) the application of section 465, 467 or 469 of the Code;

(xiii) any tax election made by the Lessor or any status of the Lessor that is inconsistent with the Tax Assumptions; or

(xiv) a claim or determination that the Lessor is not holding the Equipment in the ordinary course of a trade or business or that the Lessor did not enter into the transaction for profit.

(e) If, by reason of any indemnity payment made by the Lessee to the Lessor pursuant to this Section 8A, the Lessor subsequently realizes a federal, state or local income tax benefit not previously taken into account in computing the amount of such indemnity payment (and provided that no Event of Default shall have occurred and be continuing and that the Lessee shall have made all payments then due and owing to the Lessor under the Fundamental Agreements), the Lessor shall pay to the Lessee an amount equal to the sum of (i) the actual reduction in federal, state and local income taxes realized by the Lessor and attributable to such tax benefit, and (ii) the actual reduction in federal, state and local income taxes realized by the Lessor as a result of its payment pursuant to this Section 8A(e); provided, however, that the Lessor shall not be obligated to make any payment pursuant to this Section 8A(e) in excess of the amount of all prior indemnity payments from the Lessee to the Lessor pursuant to this Section 8A, less all prior payments from the Lessor to the Lessee pursuant to this Section 8A(e). Any federal, state or local income taxes subsequently imposed on the Lessor as a result of the disallowance or reduction of any tax benefit referred to in this Section 8A(e) as to which the Lessor has paid to the Lessee the full amount required hereunder shall be treated as a Tax Loss for which the Lessee is obligated to indemnify the Lessor pursuant to Section 8A(c) hereof, without regard to the provisions of Section 8A(d) hereof.

(f) In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a Tax Loss

under circumstances which would require Lessee to indemnify Lessor for such Tax Loss, Lessor hereby agrees to notify Lessee promptly in writing of such claim, to forebear payment of the tax claimed for at least 30 days after such notice, to give to Lessee any relevant information requested by it relating to such claim which may be particularly within the knowledge of Lessor, other than the Lessor's tax returns, and, if Lessee shall request, within 30 days after such notice, that such claim be contested, to take such action in connection with contesting such claim as Lessee shall reasonably request in writing from time to time, but only if Lessee shall, contemporaneously with such initial request, have (1) acknowledged its obligation to indemnify Lessor for such claim pursuant to this Section 8A in the event that the contest is unsuccessful, (2) made provision for Lessor's indemnification in a manner reasonably satisfactory to Lessor for any liability or loss which Lessor may from time to time incur as a result of contesting such claim, and reimbursement, on an After-Tax Basis, for all costs and expenses including (without limitation) reasonable legal fees and expenses, which Lessor may incur in connection with contesting such claim, and (3) furnished Lessor with an opinion of independent tax counsel, reasonably satisfactory to Lessor, to the effect that there is substantial authority within the meaning of Treas. Reg. §1.6662-4(d) in favor of the allowance of the item proposed to be adjusted. Lessor shall make reasonable efforts to advise Lessee of all action taken or proposed to be taken by the Internal Revenue Service and of all action proposed to be taken by Lessor, and shall consider in good faith any suggestions of Lessor relating to the conduct of any contest hereunder and shall use its best efforts to permit Lessee upon request reasonable opportunity to review the content of documentation, protests, memoranda of fact and law, briefs, and stipulations of fact, each relating exclusively to a proposed adjustment in the income taxes of Lessor for which Lessee would be required to indemnify the Lessor pursuant to this Section 8A. In no event shall Lessor be required to contest any claim if an Event of Default shall have occurred and be continuing, nor shall Lessor be required, whether or not an Event of Default has occurred and is continuing, to continue any contest of any claim beyond the level of administrative proceedings with the Internal Revenue Service unless the amount of the indemnity payment Lessee would be obligated to make hereunder with respect to the claim being contested shall exceed $100,000, in which case Lessor shall not be required to continue such contest beyond a federal court of primary jurisdiction. Lessor shall not be required to contest any claim if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely in a contest conducted pursuant to this Agreement. Notwithstanding anything to the contrary in this Section 8A(f), Lessor need not initiate or continue any contest of a claim with respect to which it has waived in writing its right to any indemnity under Section 8A(c) of this Agreement. In the event that Lessor is obligated hereunder to proceed to a federal court of primary jurisdiction and a decision is made to pay the tax and sue for a refund, Lessee shall make Lessor an interest-free loan in the amount of such tax and, to the extent attributable to a disallowance for

which Lessee is obligated to indemnify Lessor under this Section 8A, related interest, fines, penalties and additions to tax.

9. MAINTENANCE; INSPECTION; ALTERATIONS.

(a) Maintenance. Lessee, at its own expense and risk, shall at all times during the Term retain one or more nationally recognized maintenance and service providers for railcars (each such Person, a "Third Party Servicer") and such Third Party Service Provider shall maintain and repair the Equipment so as to keep it in good repair, condition and working order, ordinary wear and tear excepted, at least (x) in accordance with the standards of maintenance, if any, for similar rail equipment operating on the lines of Class I Railroads (as defined in 49 C.F.R. Part 1201, or any successor provision, "Class I Railroad"), (y) in accordance with the engineering and maintenance standards recommended by the manufacturer or manufacturers of the Equipment and (z) in the manner and in the same condition as the Lessee, in the prudent management of its own business, maintains and repairs similar equipment owned or leased by it or any Affiliate. In any event, Lessee shall ensure that the Equipment shall remain at all times (i) in as good operating condition as when delivered hereunder and under the applicable Lease Supplements (ordinary wear and tear excepted), (ii) in material compliance with any and all Applicable Law, (iii) eligible under all warranties provided for the Equipment by its manufacturer or manufacturers, (iv) in compliance with the then prevailing rules of the American Association of Railroads and the Federal Railroad Administration which are applicable to Class I Railroads, (v) suitable for interchange generally by a Class I Railroad, and (vi) in compliance with the applicable requirements of any insurance being maintained pursuant to the terms of this Agreement. Lessee agrees that it will not discriminate against any Equipment (as compared to other similar equipment owned or leased by Lessee) with respect to its use, operation or maintenance at any time or in contemplation of the expiration or termination of this Agreement (this covenant is not intended to constitute a general prohibition on use of any Item of Equipment for its intended purposes). Lessee's obligation to maintain, repair and use the Equipment in accordance with the standards and terms set forth herein shall be absolute and unconditional and shall apply irrespective of any negligence or non-performance by any Third Party Servicer or the existence of any claim by Lessee against such Third Party Servicer.

(b) Alterations. Lessee shall (i) at its own expense and risk, make all improvements, alterations or additions to the Equipment that may be required by the Seller of the Equipment as a condition to maintaining any warranty or indemnity provided by the Seller or that may be required under Applicable Law in connection with the use and operation of the Equipment or otherwise; and (ii) make no other improvements, alterations or additions to the Equipment (except for improvements, alterations or additions that will not impair the value utility, condition or performance of the Equipment and that are readily removable without damage to the Equipment). Any improvements, alterations

or additions that Lessee makes to the Equipment (except as permitted by clause (ii) above) shall become Lessor's property and shall also be deemed to be Equipment. Lessee shall not remove any parts from any Item of Equipment without replacing such parts with parts of a similar design and purpose and with a value, utility, condition and remaining useful life at least equal to that of the part so replaced (assuming it was maintained in accordance with the provisions of this Section 9).

(c) Inspection and Records. Lessor, or its authorized representatives, may at any time, upon reasonable notice and at its own risk and expense, inspect the Equipment or any Items of Equipment and applicable maintenance and use records relating thereto (including those required to be maintained pursuant to Section 11(c) hereof), and Lessee shall cooperate with Lessor, but Lessor shall not have any duty to do so; provided, however, that any such inspection shall in no way unreasonably interfere with any repairs or maintenance or the use or operation of the Equipment.

10. OPERATION AND LOCATION; ASSIGNMENT AND POSSESSION; REPORTING MARKS. (a) Operation and Location. Each Item of Equipment will be used in the general operation of Lessee's or any permitted sublessee's freight rail business on Lessee's railroad system, on railroad lines over which Lessee or any permitted sublessee has trackage rights and on railroad lines of other railroads, in each case in the 48 contiguous states of the continental United States and, in the usual interchange of traffic or in through or run-through service, in the Republic of Mexico; provided, however, that Lessee or any permitted sublessee (i) shall use each Item of Equipment only in the manner materially for which it was designed and intended and (ii) shall not use or operate any such Item of Equipment in any manner materially contrary to Applicable Law. Neither Lessee nor any permitted sublessee shall at any time locate or transfer any Item of Equipment outside the 48 contiguous states of the United States or the Republic of Mexico; provided that in no event shall Lessee or any permitted sublessee at any time locate in or transfer to the Republic of Mexico any Items of Equipment in excess of a number of Items of Equipment equal to 10% of the aggregate number of Items of Equipment being leased at such time by Lessor hereunder; and, provided, further, the Lessee shall not remove or relocate any Item of Equipment from the United States, or suffer any other Person to remove or relocate any Item of Equipment from the United States, at any time for a period which, when taken together with all periods for such use, will cause such Item of Equipment to be subject to the alternative depreciation system of section 168(g) of the Code.

(b) Assignment and Possession. **EXCEPT AS PERMITTED UNDER SECTION 13 OR SECTION 16(e) HEREOF, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, TO BE PROVIDED IN LESSOR'S SOLE DISCRETION, LESSEE SHALL NOT ASSIGN THIS AGREEMENT OR ANY LEASE SUPPLEMENT OR ASSIGN ITS RIGHTS IN OR SUBLET OR DELIVER, TRANSFER OR RELINQUISH POSSESSION OF ANY ITEM OF EQUIPMENT OR ANY INTEREST THEREIN.**

Notwithstanding the foregoing, so long as no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default has occurred and is continuing, Lessee may, without the prior written consent of Lessor, sublease any Item of Equipment to any railroad company which is incorporated in the United States of America (or any State thereof or the District of Columbia); provided that such (i) sublessee shall (A) at the time of inception of such sublease not be subject to any bankruptcy, receivership, insolvency or similar proceedings and (B) constitute a "railroad" within the meaning of Chapter 11 of Title 11 of the United States Code (or any successor provision) and (ii) sublease shall be subject and subordinate to all the terms and conditions of this Agreement and any applicable Lease Supplement and shall have a term which shall not extend beyond the Term of this Agreement and any applicable Lease Supplement and shall contain the terms set forth on Exhibit H; and provided, further, that Lessor's consent, which shall not be unreasonably withheld, must be obtained for any sublease that has a term longer than 12 months. No such sublease shall relieve Lessee of its obligations under this Agreement and any applicable Lease Supplement, which obligations shall be and remain those of a principal and not a surety.

(c) Reporting Marks. Lessee will cause each Item of Equipment to be numbered with the reporting marks set forth in the Lease Supplement relating thereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Equipment, in letters not less than one inch in height, the words "Ownership Subject to Documents Filed with the Interstate Commerce Commission", with appropriate changes thereof or additions thereto as from time to time may be required by Applicable Law in order to protect Lessor's interest in such Item of Equipment and the rights of Lessor under this Lease. Lessee will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. Lessee will not place any Item of Equipment in operation until the required legend shall have been so marked on both sides thereof. Lessee will not change the reporting marks of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and duly filed by Lessee in all public offices where a memorandum of this Agreement or any Lease Supplement or a financing statement referring to the prior reporting marks shall have been filed and (ii) Lessee shall have furnished Lessor an opinion of counsel, in form and substance reasonably satisfactory to Lessor, to the effect no other filing or giving of notice with or to any federal, state, or local government or agency of any thereof is necessary to protect the rights of Lessor in such Item of Equipment.

11. RETURN CONDITIONS. (a) Return. Subject to the right of Lessee set forth herein to purchase the Equipment upon expiration of the applicable Initial Terms or Renewal Terms, Lessee shall on the date of expiration of the Term of each Item or Items of Equipment, assemble and deliver possession of such

Item or Items Equipment to Lessor in accordance with the terms of this Agreement, at Lessee's own expense and risk, in such numbers and to such location or locations on Lessee's lines reasonably accessible to Lessor, its agents and assigns, or to such interconnection point or points on Lessee's lines (up to a maximum of 3 locations in the aggregate and, collectively, the "Redelivery Locations") as the Lessee shall in good faith designate in writing to Lessor not less than 90 days prior to the expiration of the Initial Term or any applicable Renewal Term. Any Items of Equipment delivered to such Redelivery Location (or placed in storage, as Lessor may have requested as provided below) shall be deemed to be redelivered hereunder (and, subject to the next succeeding paragraph, Rental Payments with respect to such redelivered Items of Equipment shall cease to accrue with respect thereto, but shall continue to accrue with respect to any Item of Equipment which has not been redelivered hereunder) on the later to occur of (i) the expiration of the Initial Term or any applicable Renewal Term and (ii) the date on which at least 5% of the number of Items of Equipment then subject to lease hereunder shall have been delivered to any one such Redelivery Location or into storage.

(b) Storage. Lessee shall, at the written request of Lessor provided at least 60 days (but no more than 180 days) prior to the expiration of the Initial Term or any applicable Renewal Term, store any Items of Equipment at Lessor's expense (other than storage fees) and risk on storage tracks selected and owned by the Lessee for a 45-day period commencing as to each Item of Equipment on the later to occur of (i) the expiration or earlier termination of the Initial Term or any applicable Renewal Term, (ii) the date of the delivery of such Item of Equipment to such storage tracks, and (iii) the placing in storage at any one location, which need not be a Redelivery Location, of an aggregate of at least 5% of the number of Items of Equipment then subject to this Agreement pursuant to any one such request of Lessor. In addition, upon written notice given to Lessee at least 30 days prior to the expiration of the free storage period referred to in the preceding sentence, Lessor shall have the right to store such Items of Equipment redelivered to it on storage tracks owned by Lessee for an additional period of 45 days after the expiration of such free storage period; provided, that Lessee may charge Lessor an amount based on the then normal rates charged by Lessee to third parties for storage of rail equipment of the same or similar type on its tracks, and such additional storage shall continue to be at Lessor's expense and risk.

Lessee shall, in connection with the return of each Item of Equipment, notify Lessor at the expiration of the Initial Term or any applicable Renewal Term and thereafter from time to time as may be necessary to provide additional information to Lessor as may reasonably be requested by Lessor as to the location of such Item of Equipment and, if such Item of Equipment has not been redelivered to a Redelivery Location (or placed in storage in accordance with a request therefor by Lessor) or is

being repaired as contemplated in paragraph (e) below, the status of such Item of Equipment. Lessee shall be responsible for all costs and expenses of gathering and storing any Items of Equipment not redelivered pursuant to the terms of this Section 11, and the Lessee shall continue to insure (to the extent required under this Agreement) and bear the risk of loss of any such Items of Equipment in accordance with this Agreement until so redelivered.

(c) Maintenance Records. In addition, Lessee shall (and shall cause any Third Party Servicer to) upon redelivery of Items of Equipment also furnish to Lessor copies of any then available maintenance and use records pertaining specifically to the Items of Equipment being redelivered. Lessor may also, not more frequently than once in each calendar year of the Term, request Lessee to provide, and upon such request shall (and shall cause any Third Party Servicer to), provide to Lessor a copy of all then available maintenance and use records pertaining to the Items of Equipment then being leased hereunder (other than those records previously delivered to Lessor). Lessee shall (and shall ensure that each Third Party Servicer shall) be consistent in its record keeping practices for rail equipment owned or leased by Lessee which is substantially similar in type, service and use to the Equipment, subject to the phasing in or modification of such practices from time to time in the ordinary course of business.

(d) Return Conditions. At the time of any return, the Items of Equipment so being returned shall be free and clear of all Liens and shall be in the condition required by this paragraph (d) and Section 9 hereof. Without limiting the foregoing, each Item of Equipment redelivered hereunder shall be (i) in a condition suitable for the general purpose and use for which it was originally intended, (ii) in a condition comparable to that of rail equipment of Lessee of a similar type and age and in compliance with the then prevailing rules of the Association of American Railroads and the Federal Railroad Administration or any successor entities which are applicable to Class I Railroads (but without regard to any change in ownership or changes in reporting marks), and (iii) materially in compliance with the requirements of Applicable Law.

Lessor or its agent may inspect any Items of Equipment redelivered hereunder to determine whether such Items of Equipment are in the condition required by this paragraph (d) above and Section 9 hereof. At such inspection, independent inspectors representing both Lessee and Lessor, or an independent inspector satisfactory to both sides, shall be present and shall determine and state the agreed repairs or work necessary to place such Items of Equipment on the date of return in the condition required by this paragraph (d) and Section 9 hereof. Lessee and Lessor shall bear the cost of their respective independent inspectors.

(e) Repairs. If Lessor or its agent shall inspect any Items of Equipment pursuant to paragraph (d) above and shall

conclude in good faith that such Items of Equipment are not in the condition required by paragraph (d) above, Lessee, at its expense and risk, shall within 30 days thereafter make such repairs and perform such work as shall be necessary to place such Items of Equipment in the condition required by paragraph (d) above. If, pursuant to the immediately preceding sentence, Lessor shall have made such conclusion in good faith with respect to more than 10% of the Items of Equipment so inspected, Lessee shall reimburse Lessor for the reasonable costs and expenses of Lessor's independent inspectors related to such inspection of the redelivered Items of Equipment. Lessee shall provide Lessor with written notice when such Items of Equipment have been repaired so as to be in the condition required by paragraph (d) above and are ready to be reinspected by Lessor or its agent, and Lessor or its agent shall have 10 days from date of receipt of such notice to inspect such Items of Equipment and inform Lessee if such Items of Equipment are still not in the condition required by paragraph (d) above (in which case the provisions of this paragraph shall continue to control). Lessee shall reimburse Lessor for 50% of the reasonable costs and expenses of Lessor's independent inspectors related to any reinspection of Items of Equipment pursuant to the immediately preceding sentence. Lessee agrees to pay the daily equivalent of Rental Payments (calculated on the basis of the average of the actual Rental Payments payable in respect of each Item of Equipment on each Rental Payment Date during the Initial Term or the applicable Renewal Term, as the case may be) on any Items of Equipment not redelivered in the condition required by paragraph (d) above, from and including the last day on which the Lessee made Rental Payments with respect to such Items of Equipment to but excluding the date of actual redelivery of such Items of Equipment to a Redelivery Location (together with any damages suffered by Lessor that are attributable to any such delayed return, such damages to be determined after taking into account any additional rental payments made by Lessee pursuant to the foregoing provision).

(f) Insurance. Lessor may, by written notice to Lessee given at least 60 days prior to the date of the expiration of the Initial Term or any applicable Renewal Term, request Lessee to, and if and to the extent that Lessee is then maintaining insurance pursuant to this Agreement with respect to any Items of Equipment, Lessee shall use its best efforts to maintain such insurance in effect during any storage period required hereunder, provided that it is practicable for Lessee (in its reasonable opinion) to do so without undue administrative burden or additional cost or premium with respect to such Items of Equipment or any other aspect of its insurance program. Lessor shall reimburse Lessee for the cost of such insurance.

12. PERSONAL PROPERTY; LIENS AND ENCUMBRANCES; TITLE. Except for the interest of Lessor, or Lessor's creditors, Lessee shall keep the Equipment free and clear of all Liens of any nature whatsoever other than (i) the leasehold interests in the Equipment created hereunder and under the applicable Lease Supplements, (ii) materialmen's, mechanic's, workmen's and other

like Liens arising in the ordinary course of Lessee's or any permitted sublessee's business securing obligations that are not overdue and (iii) Liens for Taxes of Lessee that are not overdue (it being understood that the foregoing exceptions shall not limit or qualify Lessee's obligations hereunder to return the Equipment to Lessor free and clear of all Liens). Except as expressly set forth in this Agreement herein and in the applicable Lease Supplement, the Equipment shall at all times remain the property of Lessor. It is the intent of the parties hereto that the lease of the Items of Equipment by Lessee from Lessor pursuant to this Agreement and any applicable Lease Supplement is intended as a true lease, conveying to Lessee rights as a lessee only and that for all other purposes (including tax purposes) Lessor shall be the full and beneficial owner of the Items of Equipment.

13. RISK OF LOSS. Lessee shall bear the entire risk of loss, theft, destruction or damage to the Equipment from any cause whatsoever or requisition of the Equipment by any governmental entity or the taking of title to any Item of Equipment by eminent domain or otherwise (individually and collectively, "Loss"). Lessee shall advise Lessor in writing within 30 days of any officer of Lessee or any Affiliate or any other employee of Lessee having responsibility for administering this Agreement or the Equipment obtaining knowledge of a Loss with respect to any Item of Equipment. Except as provided below, no such Loss with respect to any Item of Equipment shall relieve Lessee of the obligation to pay Lessor Rental Payments and all other amounts owed hereunder, either with respect to such Item of Equipment or any other Equipment. In the event of any such Loss with respect to any Item of Equipment, Lessee, at its option, may: (a) if the Loss has not materially impaired the Item of Equipment (in Lessee's reasonable judgment) promptly (and in no event later than forty-five (45) days after the occurrence of said Loss) place the Equipment in good condition and repair in accordance with the terms hereby; or (b) if the Loss has materially impaired the Equipment (in Lessee's reasonable judgment) pay to Lessor (on the Payment Date occurring immediately after the date of the Loss (such Payment Date, the "Succeeding Payment Date") or in the event that the Loss occurs within 30 days prior to the Succeeding Payment Date, at the election of Lessee, either on the Succeeding Payment Date or the Payment Date, if any, occurring immediately after the Succeeding Payment Date (such Payment Date, the "Next Succeeding Payment Date")) Lessor's Return with respect to such Item of Equipment (together with all other amounts then due and payable by Lessee to Lessor under the Fundamental Agreements); <u>provided</u> that if an Event of Default shall have occurred and is continuing, Lessor may, but shall not be required to, instead of Lessee, make either of the elections specified in clauses (a) and (b) above (in the event that Lessor makes the election specified in clause (b) above, the Lessor may also elect for Lessee to pay, and Lessee shall pay, on a payment date specified by Lessor, in lieu of the payment required to be made under clause (ii) of the definition of Lessor's Return, Stipulated Loss Value for the Item of

Equipment that has been suffered a Loss calculated as of the Succeeding Payment Date, together with the daily equivalent of Rental Payments (calculated on the basis of the average of the actual Rental Payments payable in respect of such Item of Equipment on each Payment Date during the Initial Term or the applicable Renewal Term, as the case may be) on such Item of Equipment, from and including the Succeeding Payment Date to but excluding the date of payment). Upon Lessor's full receipt of such Lessor's Return with respect to any Item of Equipment that has suffered a Loss (and such other amounts referred to above): (x) the lease hereunder and under the applicable Lease Supplement of such Item of Equipment shall terminate, and Lessee shall be relieved of all obligations under the lease hereunder and under the applicable Lease Supplement with respect to such Item of Equipment (other than with respect to indemnity payments); and (y) Lessor shall transfer, by a bill of sale, all of its right, title and interest in the Item of Equipment to Lessee "AS IS, WHERE IS," and without any warranty, express or implied from Lessor, other than the absence of any Liens by, through, or under Lessor, as evidenced by Lessor's Bill of Sale to Lessee.

14. NON-CANCELABLE NET LEASE. THIS AGREEMENT, TOGETHER WITH EACH LEASE SUPPLEMENT, SHALL BE A NON-CANCELABLE NET LEASE, AND LESSEE AGREES THAT IT HAS AN UNCONDITIONAL OBLIGATION TO PAY ALL RENTAL PAYMENTS AND OTHER AMOUNTS WHEN DUE. LESSEE IS NOT ENTITLED TO ABATE OR REDUCE RENTAL PAYMENTS OR ANY OTHER AMOUNTS DUE, OR TO SET OFF ANY CHARGES AGAINST THOSE AMOUNTS. LESSEE IS NOT ENTITLED TO RECOUPMENT, CROSS-CLAIMS, COUNTERCLAIMS OR ANY OTHER DEFENSES TO ANY RENTAL PAYMENTS OR OTHER AMOUNTS DUE, WHETHER THOSE DEFENSES ARISE OUT OF CLAIMS BY LESSEE AGAINST LESSOR, SELLER, THIS AGREEMENT, ANY LEASE SUPPLEMENT OR OTHERWISE. NEITHER DEFECTS IN EQUIPMENT, DAMAGE TO IT, NOR ITS LOSS, DESTRUCTION OR LATE DELIVERY SHALL, EXCEPT AS PROVIDED IN SECTION 13, TERMINATE THIS AGREEMENT OR ANY LEASE SUPPLEMENT, OR AFFECT LESSEE'S OBLIGATIONS HEREUNDER OR UNDER ANY LEASE SUPPLEMENT. UNLESS LESSEE'S OBLIGATION TO PAY RENTAL PAYMENTS AND OTHER AMOUNTS HAS BEEN TERMINATED PURSUANT TO THE EXPRESS TERMS OF THIS AGREEMENT, ALL RENTAL PAYMENTS AND OTHER AMOUNTS SHALL CONTINUE TO BE DUE AND PAYABLE HEREUNDER.

15. LESSOR DISCLAIMERS; LIMITATION OF REMEDIES. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT: (A) LESSOR SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR PROMISE MADE BY SELLER, NEITHER SELLER NOR LESSOR SHALL ACT AS, OR BE DEEMED TO BE, AN AGENT OF THE OTHER, AND LESSOR SHALL NOT BE BOUND BY, OR LIABLE FOR, ANY REPRESENTATION OR PROMISE MADE BY ANY SELLER; (B) LESSOR SHALL NOT BE LIABLE FOR ANY FAILURE OF ANY EQUIPMENT OR ANY DELAY IN ITS DELIVERY OR INSTALLATION; (C) LESSOR SHALL NOT BE LIABLE FOR ANY BREACH OF ANY WARRANTY THAT ANY SELLER MAY HAVE MADE; (D) LESSEE HAS SELECTED ALL EQUIPMENT WITHOUT LESSOR'S ASSISTANCE; (E) LESSOR IS NOT A MANUFACTURER OF ANY EQUIPMENT; AND (F) LESSOR HAS NOT MADE AND DOES NOT NOW MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION, OR CONDITION OF ANY EQUIPMENT (OR ANY PART THEREOF), THE

MERCHANTABILITY OR FITNESS OF EQUIPMENT FOR A PARTICULAR PURPOSE, OR ISSUES REGARDING PATENT INFRINGEMENT, TITLE AND THE LIKE. IT IS FURTHER AGREED THAT LESSOR SHALL HAVE NO LIABILITY TO LESSEE, LESSEE'S CUSTOMERS, OR ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY LEASE SUPPLEMENT OR CONCERNING ANY EQUIPMENT, OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL DEPRIVE LESSEE OF ANY RIGHTS IT MAY HAVE AGAINST ANY PERSON OTHER THAN LESSOR. LESSEE SHALL LOOK SOLELY TO THE APPLICABLE SELLER FOR ANY AND ALL CLAIMS AND WARRANTIES RELATING TO THE EQUIPMENT. LESSOR HEREBY GRANTS TO LESSEE FOR THE TERM OF THE APPLICABLE LEASE SUPPLEMENT THE RIGHT TO ENFORCE, PROVIDED NO EVENT OF DEFAULT THEN EXISTS UNDER THIS AGREEMENT AND SUCH ENFORCEMENT IS PURSUED IN LESSEE'S NAME, ANY REPRESENTATIONS, WARRANTIES AND AGREEMENTS MADE BY ANY SELLER PURSUANT TO THE APPLICABLE PURCHASE DOCUMENTS, AND LESSEE MAY RETAIN ANY RECOVERY RESULTING FROM ANY SUCH ENFORCEMENT EFFORTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC AND ANY RIGHTS NOW OR HEREINAFTER CONFERRED BY STATUTE OR OTHERWISE THAT MAY LIMIT OR MODIFY LESSOR'S RIGHTS AS DESCRIBED IN THIS SECTION OR OTHER SECTIONS OF THIS AGREEMENT OR ANY LEASE SUPPLEMENT.

16. LESSEE REPRESENTATIONS, WARRANTIES AND COVENANTS. (a) General. Lessee represents, warrants and covenants to Lessor that: (i) Lessee is duly organized, validly existing, and in good standing under the laws of the State of Delaware and is duly qualified to do business and is in good standing or, in the case of Texas, able to do business, in each jurisdiction in which Lessee conducts any material portion of its business; (ii) Lessee is a Class I Railroad operating under the jurisdiction of ICC pursuant to Title 49 of the United States Code; (iii) Lessee has the power and authority to enter into this Agreement and the other Fundamental Agreements to which it is a party; (iv) such Fundamental Agreements are enforceable against Lessee in accordance with their terms except as such enforceability may be limited by bankruptcy or other laws affecting the enforcement of creditors' rights generally or by general equity principles and do not violate or create a default under any instrument or a agreement binding on Lessee; (v) there are no pending or threatened actions or proceedings before any court or administrative agency that could have a material adverse effect on Lessee's ability to perform its obligations under any Fundamental Agreement, unless such actions are disclosed to Lessor and consented to in writing by Lessor; (vi) Lessee shall comply in all material respects with all Applicable Laws the violation of which could have a material adverse effect upon the Equipment or the Mortgaged Equipment or Lessee's performance of its obligations under any Fundamental Agreement; (vii) Lessee shall obtain all governmental approvals necessary for it to enter into and perform each Fundamental Agreement; (viii) each Fundamental Agreement shall be effective against all creditors of Lessee under applicable law, including fraudulent conveyance and bulk transfer laws, and shall raise no presumption of fraud;

(ix) all Equipment and the Mortgaged Equipment are tangible personal property and shall not become a fixture or real property under Lessee's use thereof; (x) the execution, delivery and performance by Lessee of this Agreement and each other Fundamental Agreement to which it is a party, and the transaction contemplated by the Fundamental Agreements, do not conflict with any material provision of Applicable Law by which Lessee or its properties is bound or conflict with or create a default under Lessee's articles of incorporation or by-laws or any material provision of any indenture, note, bond, security agreement, or other agreement of Lessee under which Lessee or any of its properties is bound; and (xi) Lessor, as lessor under this Agreement and each Lease Supplement, is entitled to the benefits and protections of Section 1168 of Chapter 11 of Title 11 of the United States Code with respect to the Items of Equipment. Lessee shall be deemed to have reaffirmed the foregoing warranties each time it executes any Fundamental Agreement.

(b) Financial Statements. Lessee represents and warrants to Lessor that the audited consolidated balance sheet of Lessee and its subsidiaries as of the end of each of its last two fiscal years (up to and including December 31, 1992), and the related consolidated statements of income and consolidated statements of cash flows of Lessee and its subsidiaries as of the end of each of its last two fiscal years (up to and including December 31, 1992), each prepared in accordance with generally accepted accounting principles consistently applied, fairly present the consolidated financial position of Lessee and its subsidiaries as of the dates thereof and the consolidated results of operations and consolidated cash flows for the periods covered thereby. During the period from December 31, 1992 to the date hereof there has been no material adverse change in the consolidated financial condition, business or operations of Lessee and its subsidiaries or the ability of Lessee to perform its obligations under any of the Fundamental Agreements between Lessor and Lessee.

(c) Perfection of Title and Security Interest. Lessee represents and warrants to Lessor that except for the filings with the ICC referred to in Section 3 hereof and Section 2 of the Security Agreement, no further action, including any filing, registration or recording of any documents or instruments was or is necessary in order to establish, preserve and perfect Lessor's rights and interest in, and the legal title to (in the case of the Equipment), each Item of Equipment and the Mortgaged Equipment, this Agreement and each Fundamental Agreement.

(d) Filings. Lessee agrees that it shall take, or cause to be taken, at Lessee's cost and expense, such action with respect to the recording, filing, re-recording and refiling of a memorandum or copy of this Agreement, the Security Agreement any Lease Supplement and any financing statements or other instruments as are necessary or reasonably requested by Lessor to maintain and record the ownership interest of Lessor in each Item of Equipment and Lessor's security interest in the Mortgaged

Equipment, or will furnish to Lessor timely notice of the necessity of such action, together with such instruments, in execution form, and such other information as may be required to enable them to take such action.

(e) Merger, Consolidation. Lessee shall not consolidate with or merge into any Person or convey, transfer or lease all or substantially all of its assets as an entirety to any Person, whether in a single transaction or a series of related transactions, unless:

(i) (A) the successor (1) shall be a Class I Railroad or (2) if the successor is not a Class I Railroad, such successor shall have an Affiliate which is a Class I Railroad and (B) such Class I Railroad shall have executed and delivered to Lessor an agreement in form and substance reasonably satisfactory to Lessor containing an assumption by such Class I Railroad of the due and punctual performance and observance of each agreement of Lessee under this Agreement, each Lease Supplement and every other Fundamental Agreement to which Lessee is a party;

(ii) immediately after giving effect to such consolidation, merger, conveyance, transfer or lease, no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred or be continuing;

(iii) such successor shall have delivered to Lessor an officer's certificate of such corporation and an opinion of counsel, each in form and substance satisfactory to Lessor, each stating that such consolidation, merger, conveyance, transfer or lease has been duly authorized and does not require any further shareholder approval or the approval or consent of any trustee or holders of any indebtedness or obligations of successor other than as have been obtained; and

(iv) such Class I Railroad shall have delivered to Lessor, in the event such Class I Railroad shall not be the successor to Lessee, an officer's certificate of such corporation and an opinion of counsel, each in form and substance satisfactory to Lessor, each stating that such consolidation, merger, conveyance, transfer or lease and the assumption agreement mentioned in clause (i) above has been duly authorized, executed and delivered by such Class I Railroad and constitutes the legal, valid and binding obligation of such Class I Railroad enforceable against it in accordance with its terms (subject to customary qualifications as to the rights of creditors) and does not require any further shareholder approval or the approval or consent of any trustee or holders of any indebtedness or obligations of such Class I Railroad other than as have been obtained.

Upon any consolidation or merger, or any conveyance, transfer or lease of all or substantially all of the assets of Lessee as an entirety in accordance with this paragraph (e), the Class I Railroad referred to in subclause (B) of clause (i) of this paragraph (e) which is the successor corporation formed by such consolidation or into which Lessee is merged or to which such conveyance, transfer or lease is made, or which is the Affiliate of such successor corporation, shall succeed to, and be substituted for, and may exercise every right and power of, Lessee, under this Agreement, each Lease Supplement and the other Fundamental Agreements to which Lessee is a party, with the same effect as if such Class I Railroad had been named as Lessee herein and therein.

(f) Financial and Other Information. Lessee shall, as long as any Items of Equipment are leased hereunder, furnish to Lessor:

(i) within 60 days after the end of each of the first three quarters in each fiscal year of Lessee, unaudited balance sheets (on a consolidated basis, if applicable) of Lessee as of the end of such quarter and related statements of income, shareholder's equity and cash flows (consolidated, if applicable) of Lessee for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, in each case prepared in accordance with generally accepted accounting principles consistently applied; provided that so long as Lessee is subject to the reporting provisions of the Securities Exchange Act of 1934, as amended, a copy of Lessee's quarterly report on Form 10-Q will satisfy this requirement if delivered to Lessor within 10 days of filing the same with the Securities and Exchange Commission;

(ii) within 120 days after the end of each fiscal year of Lessee, a copy of the annual report for such year for Lessee (on a consolidated basis, if applicable) and a balance sheet (consolidated, if applicable) of Lessee as of the end of such fiscal year and related statements of income, shareholder's equity and cash flows (consolidated, if applicable) of Lessee for such fiscal year, in comparative form with the preceding fiscal year, in each case certified by independent accountants of national standing as having been prepared in accordance with generally accepted accounting principles and on a consistent basis with the preceding fiscal year except as noted therein; provided, that such accountants have concurred with any changes in accounting principles or practices; and provided, further, that so long as Lessee is subject to the reporting provisions of the Securities Exchange Act of 1934, as amended, a copy of Lessee's annual report on Form 10-K will satisfy this requirement if delivered to Lessor within 10 days of filing the same with the Securities and Exchange Commission;

(iii) promptly upon the sending or filing thereof, copies of all registration statements (except for registration statements on Form S-8) under the Securities Act of 1933, as amended, or current reports under the Securities Exchange Act of 1934, as amended, which Lessee files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange;

(iv) by June 30 of each year beginning 1994, an officer's certificate of Lessee to the effect that the signer is familiar with or has reviewed the relevant terms of this Agreement and each other Fundamental Agreement and has made, or caused to be made under his supervision, a review of the transactions and conditions of Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence as of the date of such certificate, of any condition or event which constituted or constitutes a Loss (as defined hereunder and under the Security Agreement) or an Event of Default (as defined hereunder and under the Security Agreement), or event which with notice or lapse of time or both, would constitute a Loss (as defined hereunder and under the Security Agreement) or an Event of Default (as defined hereunder and under the Security Agreement), or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Lessee has taken or is taking or proposes to take with respect thereto;

(v) promptly upon the occurrence thereof, notice and information as to the nature and status of any Event of Default (as defined hereunder and under the Security Agreement) or Loss (as defined hereunder and under the Security Agreement) or event which, with notice or lapse of time or both, would constitute a Loss (as defined hereunder and under the Security Agreement) or an Event of Default (as defined hereunder and under the Security Agreement); and

(vi) on or prior to the date of expiration of any insurance policy referenced in a previously delivered certificate of insurance, a new certificate of insurance of an independent firm of insurance brokers reasonably acceptable to Lessor (the "Insurance Brokers"), substantially in the same form as delivered by Lessee to such parties on the purchase and leased hereunder of the Items of Equipment initially purchased and leased and the pledge of the Mortgaged Equipment under the Security Agreement, a report, signed by the Insurance Brokers, describing in reasonable detail the liability insurance then carried and maintained with respect to the Equipment pursuant to Section 7 hereof and with respect to the Mortgaged Equipment pursuant to the terms of the Security Agreement and stating that in the opinion of such firm that such insurance complies with the terms hereof or thereof;

(vii) 30 days prior to the cancellation (but not scheduled expiration) or material adverse change of any insurance maintained pursuant to Section 7 hereof or pursuant to the terms of the Security Agreement, notice thereof by the Insurance Broker;

(viii) promptly on the occurrence thereof, notice and information by the Insurance Broker as to the nature of any default in the payment of any premium and of any other act or omission on the part of Lessee of which such Insurance Broker has knowledge and which might or would invalidate or render unenforceable, in whole or in part, any insurance maintained pursuant to Section 7 hereof or pursuant to the terms of the Security Agreement;

(ix) on or prior to each June 30, beginning June 30, 1994, an opinion of counsel reasonably satisfactory to Lessor stating collectively either:

(A) that in the opinion of such counsel such action has been taken (or specifying any action that must be taken) with respect to the recording, filing, re-recording and refiling of this Agreement, the Lease Supplement and the Security Agreement as is necessary to maintain for the 15-month period succeeding the date of such opinion the perfection of the security interests created thereby and reciting the details of such action; or

(B) that in the opinion of such counsel no such action is reasonably necessary to maintain for the 15-month period succeeding the date of such opinion the perfection of such security interests; and

(x) from time to time, such other information as Lessee may reasonably request.

17. GENERAL INDEMNITY. Lessee shall indemnify, hold harmless, and, if so requested by Lessor, defend Lessor, its Affiliates and their directors, officers, employees and agents, on an After-Tax Basis, against all Claims (as hereinafter defined) directly or indirectly arising out of or connected with the Equipment, any Mortgaged Equipment or any Fundamental Agreement. "Claims" refers to all losses, liabilities, damages, penalties, expenses (including reasonable legal fees and reasonable costs), claims, actions, and suits (including with respect to any environmental liability), whether in contract or in tort, whether caused by Lessee's breach of its representations, warranties or covenants contained in any Fundamental Agreement or otherwise, and whether based on a theory of strict liability of Lessor or otherwise, and includes, but is not limited to, matters regarding: (a) the selection, manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, maintenance, use,

condition, return or operation of the Equipment or the Mortgaged Equipment; (b) any latent defects or other defects in any Equipment or the Mortgaged Equipment, whether or not discoverable by Lessor or by Lessee; (c) any patent, trademark, or copyright infringement; and (d) the condition of any Equipment or the Mortgaged Equipment arising or existing during Lessee's use; provided, however, Lessee shall not indemnify Lessor for defects in title or Liens on the Equipment arising after the Commencement Date solely from Lessor's willful conduct, gross negligence or breach of its representations, warranties or covenants contained in any Fundamental Agreement; and provided further, however, Lessee shall not be required to indemnify or reimburse Lessor for any taxes, fees, assessments, including interest, fines, additions to tax or penalties except as provided in Section 8 and 8A of this Agreement and except for Lessee's obligation herein to provide the indemnity contained in this Section 17 on an After-Tax Basis.

18. EVENTS OF DEFAULT. Each and any of the following shall constitute an Event of Default under this Agreement and each and every Lease Supplement (whether or not such default arises under, or relates to, Items of Equipment specified in any such Lease Supplement): (a) Lessee fails to pay any Rental Payment or any other amount payable to Lessor hereunder within 10 days after its due date; or (b) Lessee fails to perform or observe any other material covenant, condition or agreement to be performed or observed by Lessee hereunder, under any Lease Supplement or in any other Fundamental Agreement, and Lessee fails to cure any such breach within 10 days after notice thereof; or (c) any material representation or warranty made by Lessee hereunder, under any Lease Supplement or in any other Fundamental Agreement proves to be incorrect in any material respect when made; or (d) Lessee makes an assignment for the benefit of creditors, whether voluntary or involuntary; or (e) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law (1) is filed against Lessee and is not dismissed within 60 days after its filing or (2) is filed by Lessee or with respect to which Lessee takes any action to authorize any of the foregoing matters; or (f) Lessee becomes insolvent or fails generally to pay its debts as they become due, the Equipment is levied against, seized or attached, or Lessee seeks to effectuate a bulk sale of Lessee's inventory or assets, or (g) an "Event of Default" (as defined in the Security Agreement) shall have occurred and be continuing.

19. REMEDIES. If an Event of Default occurs, Lessor may, in its sole discretion, exercise one or more of the following remedies:

(a) terminate this Agreement or any or all Lease Supplements or any portion thereof;

(b) take possession of, or render unusable, any and all Items of Equipment wherever the Items of Equipment may be located, without demand or notice, without any court order or

other process of law and without liability to Lessee for any damages occasioned by such action, and no such action shall, unless otherwise elected by Lessor, constitute a termination of any Lease Supplement;

(c) sell any and all Items of Equipment at public or private sale, as Lessor, in its sole discretion, may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle any and all Items of Equipment as Lessor, in its sole discretion, may determine, all free and clear of any rights of Lessee, except as hereafter set forth in this Section 19;

(d) require Lessee to deliver the Equipment at a location designated by Lessor (such location to be a railroad within the continental United States and not more than one of three locations specified by Lessor);

(e) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b) or (c) above, Lessor, by written notice to Lessee specifying a payment date not earlier than 5 days from the date of such notice, may, with respect to any and all Items of Equipment, demand that the Lessee pay to Lessor, and Lessee shall pay Lessor, on the payment date so specified, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the installments of Rental Payments for the applicable Items of Equipment due for Payment Dates occurring after the payment date in such notice), any unpaid Rental Payments due on or prior to the payment date so specified to the extent such amount is not included in Lessor's Return (together with any other amounts then due and payable by Lessee under the Fundamental Agreements) plus Lessor's Return (in the event of selection by Lessor of the remedy specified in this paragraph (e) with respect to any Item of Equipment, Lessor shall upon final and indefeasible payment to Lessor of the amounts payable under this paragraph (e) with respect to such Item of Equipment and any other amounts then due and payable by Lessee thereunder, transfer its right, title and interest in and to such Item of Equipment to Lessee);

(f) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b) or (c) above, Lessor, by written notice to Lessee specifying a payment date not earlier than 5 days from the date of such notice, may, with respect to any and all Items of Equipment, demand that the Lessee pay to Lessor, and Lessee shall pay Lessor, on the payment date so specified, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the installments of Rental Payments for the applicable Items of Equipment due for Payment Dates occurring after the payment date in such notice), any unpaid Rental Payments due on or prior to the payment date so specified to the extent such amount is not included in Lessor's Return (together with any other amounts then due and payable by Lessee under the Fundamental Agreements) plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to

the excess, if any, of the Lessor's Return for the applicable Items of Equipment, computed as of the payment date specified in such notice, over the aggregate fair market rental value (computed as hereinafter provided) of such Items of Equipment for the remainder of the Term, after discounting such aggregate fair market rental value to present value as of the payment date in such notice at an annual rate equal to 8%, discounted quarterly, and taking into account the estimated residual value of the applicable Items of Equipment at the end of the applicable Term (which shall not exceed the residual value implicit in the Stipulated Loss Value for the last calendar quarter for such Term as set forth in the applicable Lease Supplement); or (ii) an amount equal to the excess, if any, of the Lessor's Return for the applicable Items of Equipment, computed as of the payment date in such notice, over the fair market sales value (computed as hereinafter provided) of such Items of Equipment as of the payment date in such notice;

(g) in the event Lessor pursuant to paragraph (c) above, shall have sold any or all Items of Equipment, Lessor, in lieu of exercising its rights under paragraph (f) above with respect to any or all Items of Equipment, may, if it shall so elect, demand that Lessee pay Lessor, and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rental Payments with respect to any such Items of Equipment due prior to such date (together with any other amounts then due and payable by Lessee under the Fundamental Agreements) plus the amount of any deficiency between the net proceeds of such sale (after deduction of all reasonable costs of sale) and the Lessor's Return for the applicable Items of Equipment, computed as of the date of such sale;

(h) proceed by court action to enforce performance by Lessee of this Agreement, and/or any Lease Supplement and/or the Security Agreement and/or any other Fundamental Agreement and/or to recover all damages and expenses incurred by Lessor by reason of any Event of Default;

(i) exercise any right or remedy available to Lessor under the Security Agreement and apply the proceeds obtained thereby in satisfaction or partial satisfaction of any amounts payable hereunder and under any Lease Supplement and/or any other Fundamental Agreement or of any amounts payable by Lessee in connection with any exercise of remedies hereunder; or

(j) exercise any other right or remedy available to Lessor at law or in equity, whether in its capacity as a lessor hereunder or as a secured party under the Security Agreement.

The amount of Lessor's Return (in the event Lessor elects its remedy under paragraph (e) above) or the difference between Lessor's Return and fair market rental value or fair market sales value (in the event that Lessor exercises its remedy under paragraph (f) above) or the difference between Lessor's

Return and net sales proceeds (in the event that Lessor exercises its remedy under paragraph (g) above), in each case determined pursuant to this Section 19, shall, with respect to any Item of Equipment, constitute the Deficiency Amount.

Lessor may, in connection with any Event of Default, elect to exercise remedies with respect to any or all Items of Equipment without waiving (unless Lessor specifically elects to effect such waiver in writing) or prejudicing the rights or remedies with respect to any Items of Equipment with respect to which Lessor has not exercised such remedies. Lessee agrees that with respect to any notice of a sale required by law to be given, 10 days' notice shall constitute reasonable notice. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

For the purposes of paragraph (f) above, the "fair market rental value" or the "fair market sales value" of any Item of Equipment shall be the rental value or sales value, as the case may be, which would be obtained in an arm's-length transaction between an informed and willing lessee or purchaser, as the case may be, under no compulsion to lease or purchase, as the case may be, and an informed and willing lessor or seller in possession, as the case may be, in each case based upon the actual condition and location of such Item of Equipment and taking into account any encumbrances (including, if applicable, this Agreement and any Lease Supplement) thereon, which value shall be determined as set forth herein. Lessor shall in the notice specified in paragraph (f) above, estimate fair market rental value or fair market sales value for the applicable Item of Equipment and in the event Lessee has not objected in writing to Lessor to such estimated fair market rental value or fair market sales value on or prior to the payment date specified in such notice, Lessee shall be deemed to have irrevocably agreed to such estimated value as the actual fair market or fair market sales value of such Item of Equipment for purposes of paragraph (f) above. In the event Lessee shall have objected in writing to Lessor as to Lessor's estimated fair market rental value or fair market sales value on or prior to the payment date specified in such notice, fair market rental value or fair market sales value, as the case may be, shall be determined by mutual agreement of Lessee and Lessor or, in the absence of mutual written agreement within 15 days of such notice, pursuant to an appraisal prepared and delivered by a recognized firm of independent railcar appraisers nominated by Lessor, and Lessor shall promptly notify Lessee of such nomination. Unless Lessee shall have objected in writing within 10 days after its receipt of Lessor's notice, Lessor's nomination shall be conclusive and binding. If Lessee shall object, however, Lessor and Lessee shall endeavor, within 10 days after such objection is made, to select a mutually acceptable appraiser; provided, that if Lessee shall not so endeavor to make such selection, Lessor's nomination referred to in the preceding sentence hereof shall be conclusive and binding.

If Lessor and Lessee fail to reach agreement (except for the reason referred to in the proviso in the preceding sentence), or if any appraiser selected fails to act for any reason, the question shall be determined by an appraisal (applying the definitions of "fair market rental value" and "fair market sales value" as set forth above) mutually agreed to by two recognized independent railcar appraisers, one of which appraisers shall be chosen by Lessor and one by Lessee within 5 days after Lessor or Lessee shall have received written notice from the other party of a demand that such an appraisal be made, which notice shall specify the appraiser chosen by the party giving the notice or, if such appraisers cannot agree on the amount of such appraisal within 15 days after the end of such 5 day period, each shall render its own appraisal and shall by mutual consent choose another appraiser within 5 days after the end of such 15 day period. If, within such 5 day period, such two appraisers fail to appoint a third appraiser, then either Lessor or Lessee, on behalf of both, may apply to the American Arbitration Association (or any successor organization thereto) for the appointment of such third appraiser. The decision of the third appraiser so appointed shall be given within 15 days after the appointment of such third appraiser determinations shall be final and binding upon the parties thereto. The cost of such appraisal or appraisals and appointment or appointments shall be borne by Lessee.

In addition, Lessee shall be liable, without duplication of amounts payable hereunder, for any and all unpaid Rental Payments due hereunder before, after or during the exercise of any of the foregoing remedies and any other amounts payable by Lessee under any Fundamental Agreement (including indemnification payments under Sections 8, 8A, 17, 19 and 24 hereof) and for all reasonable and actual legal fees and other costs and expenses incurred by Lessor in connection with the enforcement by Lessor of its remedies hereunder or the return of any Items of Equipment in accordance with the terms of Section 11 hereof. Interest shall accrue at the Past Due Rate and shall be payable by Lessee on all amounts due and payable hereunder (including, without limitation, any Deficiency Amount) from the date of required payment to and including the date of actual payment.

20. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS. If Lessee fails to perform any of its obligations hereunder, Lessor may perform any act or make any payment that Lessor deems reasonably necessary for the maintenance and preservation of the Equipment and Lessor's interests therein; provided, however, that the performance of any act or payment by Lessor shall not be deemed a waiver of, or release Lessee from, the obligation at issue. All sums so paid by Lessor, together with expenses (including reasonable legal fees and reasonable costs) incurred by Lessor in connection therewith, shall be paid to Lessor by Lessee ten days following written demand.

21. ASSIGNMENT BY LESSOR. Lessor shall have the unqualified right to assign, pledge, transfer, mortgage or otherwise convey any of its right, title and interest hereunder or in any Lease Supplement or other Fundamental Agreement and any or all Items of Equipment, in whole or in part, without prior notice to, or consent of, Lessee. If any Fundamental Agreement or portion thereof is assigned and Lessee receives notice of such assignment, Lessee shall: (a) unless otherwise specified in writing by Lessor and the assignee ("Assignee") specified by Lessor, pay all amounts due under the applicable Fundamental Agreement or portion thereof net of any withholding taxes imposed pursuant to Section 1441 or 1442 of the Code to such Assignee, notwithstanding any defense, setoff or counterclaim whatsoever that Lessee may have against Lessor or Assignee; (b) not permit the applicable Fundamental Agreement or portion thereof to be amended or the terms thereof waived without the prior written consent of the Assignee; (c) not require the Assignee to perform any obligations of Lessor, other than those that are expressly assumed in writing by such Assignee; and (d) execute such acknowledgments thereto as may be requested by Lessor. Lessee agrees that it shall, if requested by Lessor, in connection with any complete or partial assignment by Lessor of its right, title and interest hereunder, under any Lease Supplement or other Fundamental Agreement and with respect to any or all Items of Equipment: (i) amend and restate this Agreement and any applicable Lease Supplement or other Fundamental Agreement (or otherwise enter into such other agreements and documents as may be desirable by Lessor) solely in order to reflect such assignment and indicate the identity of the Assignee, as Lessor, its address, payment instructions and related matters and to indicate the continuing interests, if any, of Lessor hereunder, under any applicable Lease Supplements or other Fundamental Agreement and with respect to any applicable Item of Equipment; and (ii) execute and file such amended and restated Agreements, Lease Supplements and other documents with the ICC and other appropriate statutory authorities or filing offices in order to record the ownership and other interests of such assignee with respect to the applicable Items of Equipment and, if applicable, the continuing ownership and other interests of Lessor with respect to the any other applicable Items of Equipment. It is further agreed that: (x) each Assignee shall be entitled to all of Lessor's rights, powers and privileges under the applicable Fundamental Agreement, to the extent assigned; (y) any Assignee may reassign its right, title and interest under the applicable Fundamental Agreement and any Items of Equipment with the same force and effect as the assignment described herein; and (z) any payments received by the Assignee from Lessee with respect to the assigned portion of the applicable Fundamental Agreement shall, to the extent thereof, discharge the obligations of Lessee to Lessor with respect to the assigned portion of the applicable Fundamental Agreement. Lessee shall, in connection with any such assignment, use its best efforts to deliver to the Assignee, if requested by the Assignee, (A) a reliance letter from the appropriate counsel permitting the Assignee to rely on any opinion of counsel delivered by such counsel pursuant hereto and

(B) acknowledgements from the appropriate Sellers of any assignment of any Assignment and Consent Agreements entered into by such Sellers. For purposes of Section 8A(c)(iii) hereof, the Assignee may specify any of the major six accounting firms in connection with an amendment to this Agreement. Lessee shall also cooperate with Lessor in connection with any assignment contemplated hereby in identifying the location of the Equipment for purposes of eliminating any Sales Tax otherwise payable upon such assignment. Notwithstanding anything to the contrary set forth above, the foregoing assignment provisions shall not apply to the Security Agreement, which contains separate provisions relating to assignments of interests therein.

22. SURVIVAL; QUIET ENJOYMENT. All of Lessor's rights, privileges, and indemnities, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the termination of this Agreement, shall survive such termination and be enforceable by Lessor and any successors and assigns. So long as no Event of Default exists, and no event has occurred and is continuing which, with notice or the lapse of time or both, would constitute an Event of Default, neither Lessor nor any Assignee will interfere with Lessee's quiet enjoyment of the Equipment.

23. CAPITAL LEASE MODIFICATIONS. It is understood by Lessor and Lessee that in the future Lessee may desire to change the terms of this Agreement in a manner that would allow Lessee to treat this Agreement as a capital lease for financial reporting purposes under generally accepted accounting principles ("Capital Lease Modifications"). Lessor and Lessee therefore agree that Lessee may request Capital Lease Modifications to be effective as of the beginning of either the third year or the sixth year of the Initial Term. Any such Lessee request shall be made by written notice provided to Lessor no earlier than 180 and no later than 90 days prior to the time that the Capital Lease Modifications are proposed to be effective. Lessor and Lessee further agree that in the event of such a Lessee request, they shall negotiate in good faith and adopt such Capital Lease Modifications to this Agreement as would allow Lessee to achieve its desired financial reporting treatment of the Agreement and would maintain the same Net Economic Return that Lessor would have derived from Fundamental Agreements without the Capital Lease Modifications (and, without limiting the foregoing, preserve Lessor's anticipated economic benefits at the time of such Capital Lease Modifications with respect to the Equipment, including anticipated economic benefits attributable to the anticipated residual value of the Equipment at the time of such Capital Lease Modifications).

Notwithstanding the foregoing, Lessor shall have no obligation to agree to any Capital Lease Modifications in the event that: (i) there exists, or effectuation of such Capital Lease Modifications would result in, an Event of Default or event which, with notice or lapse of time or both, would result in an Event of Default; (ii) there has been a material adverse change

since December 31, 1992 in the financial condition, business prospects or operations of Lessee or the ability of Lessee to perform its obligations under any Fundamental Agreement to which it is a party; or (iii) effectuation of such proposed Capital Lease Modifications, would, or could reasonably be expected to, increase the risks (including, without limitation, any risks with respect to the realization of intended tax or accounting treatment) or diminish the benefits (including, without limitation, tax benefits, benefits under Section 1168 of Title 11 of the United States Code (or any successor provision), the protective terms of the Fundamental Agreements, and the provision of any security or guaranty to the Lessor) of the leases provided under this Agreement. Lessee shall bear all of Lessor's reasonable out-of-pocket costs in connection with the entertainment and, if applicable, negotiation and effectuation of any such Capital Lease Modifications.

24. FILING FEES; FURTHER ASSURANCES; NOTICES. Upon demand, Lessee will promptly reimburse Lessor for any filing or recordation fees or expenses (including actual lien search fees, reasonable legal fees and reasonable costs but not including the expenses incurred by Lessor in connection with the initial preparation of the original Fundamental Agreements) incurred by Lessor in perfecting or protecting or enforcing its right, title and interest in or with respect to the Equipment or the Collateral (as defined in the Security Agreement) and under this Agreement, the Security Agreement and any Lease Supplement and effecting any amendments to the Fundamental Agreements other than amendments effected pursuant to Section 21 hereof (it being understood that no such amounts are payable by Lessee in connection with the original purchase and lease of Equipment hereunder pursuant to the terms hereof except to the extent caused by a Loss or Event of Default). Lessee shall promptly execute and deliver to Lessor such documents and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and the Security Agreement and to protect the rights and remedies of Lessor created or intended to be created hereunder and the Security Agreement (including, without limitation, the filing of any Fundamental Agreements or other documents or agreements in the United States of America (and in Mexico to the extent any applicable filing regime is established therein) as may be reasonably requested by Lessor to establish or maintain Lessor's ownership interests in the Equipment and perfected first priority security interest in the Mortgaged Equipment). All notices under this Agreement and the Security Agreement shall be sent to the respective party at its address set forth below or at such other address as the parties may provide to each other in writing from time to time. Any such notice to said address shall be effective when deposited in the United States mail, duly addressed and with first class postage prepaid or when delivered by overnight courier or facsimile.

Lessee: Southern Pacific Transportation Company
One Market Plaza, Room 666
San Francisco, CA 94105
Attention: Vice President - Finance
Telecopy: (415) 451-2098
If regarding tax matters to:
Attention: William E. Saul, Esq.
Assistant Vice President
and Counsel-Taxes
Room 250
Telecopy: (415) 541-1075

Lessor: AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, NJ 07962-1983
Attention: Senior Vice President - Risk Management, Capital Markets Division
Telecopy: (201) 397-4368
With copy to:
Attention: Chief Counsel - Capital Markets Division
Telecopy: (201) 397-3165

25. WAIVER OF JURY TRIAL; SUCCESSORS. LESSEE AND LESSOR EACH IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION OR PROCEEDING UPON, ARISING OUT OF, OR RELATED TO This Agreement, ANY OTHER FUNDAMENTAL AGREEMENTS, OR THE PURCHASE DOCUMENTS. This Agreement and all Lease Supplements inure to the benefit of and are binding upon the permitted successors or assigns of Lessor and Lessee.

26. NO WAIVER; LESSOR APPROVAL. Any failure of Lessor to require strict performance by Lessee, or any written waiver by Lessor of any provision hereof, shall not constitute consent or waiver of any other breach of the same or any other provision hereof. Neither this Agreement nor any other Fundamental Agreement shall be binding upon Lessor unless and until executed by Lessor.

27. CAPTIONS; COUNTERPARTS; INTEGRATION; ENTIRE AGREEMENT. The captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. Only one counterpart of the Lease Supplement shall be marked "Original" (Original), and all other counterparts thereof shall be marked as, and shall be, duplicates. To the extent that any Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in any applicable jurisdiction), no security interest in such Lease Supplement may be created through the transfer or possession of any counterpart other than the Original. Lessee understands and agrees that any Affiliate or subsidiary of AT&T Commercial Finance Corporation may, as lessor, execute Lease Supplements under this Agreement, in which event the terms and conditions of

the applicable Lease Supplement and this Agreement as it relates to Lessor under such Lease Supplement shall be binding upon and shall inure to the benefit of such entity executing such Lease Supplement as lessor, as well as any successors or assigns of such entity. This Agreement and all other Fundamental Agreements executed by both Lessor and Lessee constitute the entire agreement between Lessor and Lessee relating to the leasing of the Equipment, and supersede all prior agreements relating thereto, whether written or oral, and may not be amended or modified except in a writing signed by the parties hereto or their respective successors or permitted assigns, as applicable.

28. **CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) OF THE STATE OF NEW JERSEY.** If any provision of this Agreement or such Lease Supplement shall be prohibited by or invalid under that 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 such Lease Supplement. Lessor and Lessee consent to the jurisdiction of any local, state or Federal court located within the State, and waive any objection relating to improper venue or forum non conveniens to the conduct of any proceeding in any such court.

IN WITNESS WHEREOF, this Equipment Lease Agreement has been executed by the parties hereto all as of the day and year first above written.

AT&T COMMERCIAL FINANCE CORPORATION

By:_____
Name:
Title:

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:_____
Name: L.C. YARBERRY
Title: Vice President - Finance

State of California)
)
County of San Francisco)

On November 12, 1993, before me, Lenona Rusconi, Notary Public, personally appeared L. C. Yarberry, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Lenona Rusconi

PC01 LENONA RUSCONI
COMM. #1001077
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Aug. 20, 1997 PC01

IN WITNESS WHEREOF, this Equipment Lease Agreement has been executed by the parties hereto all as of the day and year first above written.

AT&T COMMERCIAL FINANCE CORPORATION

By: _____

Name: Edward W. Andrews, Jr.
Title: Senior Vice President

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____

Name:
Title:

State of New Jersey)
)
County of Morris)

On this 12th day of November, 1993, before me personally appeared, Edward W. Andrews, Jr., to me personally known, who being by me duly sworn, says that (s)he is the Senior Vice President of AT&T COMMERCIAL FINANCE CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on November 9, 1993 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Ann V. Gross
Notary Public

[Notarial Seal]

MARY ANN V. GROSS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 2, 1997

My commission expires _____.

EXHIBIT A

NOTE: Appropriate changes would need to be made to this form of Lease Supplement to reflect any assignment by AT&T Commercial Finance Corporation (or any successor or assign) of its Lessor's interest in any Equipment or to reflect renewal terms.

LEASE SUPPLEMENT NO. __

LEASE SUPPLEMENT No. ___, dated _____, ____ (this "Lease Supplement"), between AT&T Commercial Finance Corporation, a Delaware corporation ("Lessor"), and Southern Pacific Transportation Company, a Delaware corporation ("Lessee").

Lessor and Lessee have heretofore entered into that certain Equipment Lease Agreement, dated as of November 12, 1993 (as amended and supplemented from time to time, the "Lease Agreement") relating to the lease of certain railcars by Lessor to Lessee. Capitalized terms used herein without definition shall have the respective meanings set forth in the Lease Agreement. The Lease Agreement provides for the execution and delivery from time to time of Lease Supplements for the purpose of leasing the Equipment under the Lease Agreement as and when delivered in accordance with the terms thereof.

1. This Lease Supplement relates to the Items of Equipment described below and the Lease Agreement is made a part hereof.

2. This Lease Supplement [is being filed for recordation with the Interstate Commerce Commission] [has been recorded by the Interstate Commerce Commission on _____, and assigned Conveyance No. _____].

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Lessor hereby delivers and leases to Lessee under the Lease Agreement and hereunder and Lessee hereby accepts and leases from Lessor under the Lease Agreement and hereunder [describe type of railcars] manufactured by [identify manufacturer] ("Seller") and identified on Schedule A hereto. Lessee acknowledges that Lessor has full right, title and interest of ownership in the Items of Equipment leased hereby, free and clear of any lien, claim, charge or other encumbrance created by Lessee or any Person claiming through Lessee other than the leasehold interest created in favor of Lessee pursuant to the Lease Agreement and hereunder.

2. The Commencement Date of the lease for the Items of Equipment leased hereby is the date of this Lease Supplement set forth in the opening paragraph hereof. The Initial Term for the Items of Equipment leased hereby shall commence on the Commencement Date and end on _____.

3. Lessee shall pay to Lessor, in accordance with the terms of the Lease Agreement, as basic rent, Rental Payments with respect to the Initial Term of the lease for the Items of Equipment leased hereby in an amount set forth in Schedule B hereto on the Payment Dates set forth on Schedule B hereto.

4. Lessor's aggregate purchase price for all Items of Equipment leased hereby is $_____ and Lessor's purchase price for each Item of Equipment ("Per Item Purchase Price") is $_____. Lessee hereby represents and warrants to the Lessor that the aggregate purchase price and Per Item Purchase Price set forth above is the aggregate purchase price for the Items of Equipment and the purchase price for each Item of Equipment, respectively, payable by Lessee to Seller under the Purchase Documents. For purposes of the Lease Agreement and this Lease Supplement, the Stipulated Loss Value of each Item of Equipment shall be determined by multiplying the Stipulated Loss Value Percentage (as specified in Schedule C hereto) applicable to the applicable Succeeding Payment Date or Next Succeeding Payment Date, as defined in Section 13 of the Lease Agreement (in the event of a Loss), or in which payments upon an Event of Default are required by Lessor to be made (in the event of an Event of Default), by the Per Item Purchase Price.

5. Lessee hereby confirms to Lessor that Lessee has accepted the Items of Equipment leased hereby for all purposes hereof and of the Lease Agreement as being in good working order and repair and without defect or inherent vice in title, condition, design, operation or fitness for use; provided, however, that nothing contained herein or in the Lease Agreement shall in any way diminish or otherwise affect any right Lessee or Lessor may have with respect to the Equipment leased hereby against Seller or any subcontractor or supplier of Seller, under the Purchase Documents or otherwise.

6. In the event that the financing of the Items of Equipment hereunder and/or any other Lease Supplement and under the Lease Agreement is deemed by a court of competent jurisdiction to be a lease intended for security, to secure payment and performance of Lessee's obligations under the Lease Agreement and this Lease Supplement and all other Fundamental Agreements, Lessee grants Lessor and its assigns and their successors a first priority security interest in the Items of Equipment identified herein and in all attachments, accessories, additions, substitutions,

products, replacements, rentals and proceeds (including insurance proceeds) therefrom (collectively, "Collateral"). Lessee shall execute and timely deliver to Lessor financing statements or any other documents Lessor deems necessary to perfect or protect Lessor's security interest in the Collateral. Lessor or Lessor's agent may file as a financing statement the Lease Agreement and/or this Lease Supplement (or copy thereof, where permitted by law) as Lessor deems necessary to perfect or protect Lessor's security interest in the Collateral. If Lessee fails to execute any such document, Lessor or Lessor's agent is hereby authorized to file any of the foregoing signed only by Lessor or Lessor's agent.

7. All of the terms and provisions of the Lease Agreement are hereby incorporated by reference in this Lease Supplement to the same extent as if fully set forth herein.

8. This Lease Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. This Lease Supplement shall be governed by the internal laws (as opposed to conflicts of laws provisions) laws of the State of New Jersey.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement to be duly executed on the day and year first above written.

AT&T COMMERCIAL FINANCE CORPORATION

By: _____
Name:
Title:

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Name:
Title:

EXHIBIT B

ASSIGNMENT AND CONSENT AGREEMENT

ASSIGNMENT AND CONSENT AGREEMENT dated as of November __, 1993 (this "Assignment and Agreement") among Southern Pacific Transportation Company, a Delaware corporation (the "Assignor"), AT&T Commercial Finance Corporation, a Delaware corporation ("Assignee"), and _____, a _____ corporation ("Manufacturer").

WHEREAS, the Assignor has entered into a Purchase Agreement dated as of _____ with [identify Manufacturer] ("Manufacturer") [identify other purchase documents] (collectively, the "Purchase Documents") whereunder Manufacturer has agreed to manufacture to the order of and sell to Assignor, and Assignor has agreed to purchase from Manufacturer, the railcars described on Annex A hereto (the "Railcars"); and

WHEREAS, the Assignor and the Assignee have entered into an Equipment Lease Agreement dated as of November 12, 1993 ("Lease Agreement") pursuant to which (i) Assignor has agreed to assign to Assignee the Purchase Documents, as they relate to the Railcars, (ii) Assignee has agreed to purchase the Railcars from the Manufacturer, and (iii) Assignee has agreed to lease to Assignee and Assignor has agreed to lease from Assignee the Railcars (capitalized terms used herein without definition to have the meanings set forth in the Lease Agreement); and

WHEREAS, the Manufacturer desires to consent and agree to the transactions specified herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the Assignor:

1. **ASSIGNMENT.** The Assignor hereby irrevocably assigns, grants, conveys, sets over, transfers, sells, and delivers forever to Assignee and its successors and assigns all of the Assignor's right, title and interest in and to the following: (a) the Railcars; (b) the right to purchase the Railcars pursuant to the Purchase Documents, to take title to the Railcars and to be named the purchaser in any bill of sale for the Railcars; (c) the right to assert all claims for damages, to enforce the indemnity provisions contained in the Purchase Documents and to assert all claims arising under the Purchase Documents with respect to the Railcars; and (d) the right to compel Manufacturer to perform in accordance with the Purchase Documents; in each case free and clear of any lien, claim, charge, security interest, lease or other encumbrance except those created pursuant to the Lease Agreement. Provided that no Event of Default (as defined in the Lease Agreement) exists, and no event has occurred and is continuing that with notice or the lapse of time or both would constitute an Event of Default, Lessor hereby permits Lessee during the Term of the Lease

Supplement (as defined in the Lease Agreement) relating to the Railcars the right to enforce, in Lessee's name, any representations, warranties and agreements made by Manufacturer under the Purchase Documents and to retain any recovery resulting from any such enforcement efforts.

2. LESSEE'S CONTINUING OBLIGATIONS. Except for the obligation to pay Manufacturer for the Railcars if (and only if) the Railcars are accepted by Lessee pursuant to the Lease Agreement, Lessee's assignment to Lessor shall not include any of Lessee's obligations under the Purchase Documents, and Lessee shall at all times remain liable to Manufacturer to perform all of the duties and obligations of the purchaser under such Purchase Documents to the same extent as if an assignment had not occurred. The exercise by Lessor of any of the rights assigned hereunder shall not release Lessee from any of its duties or obligations to the Manufacturer under the Purchase Documents. Lessor shall not have any obligation or liability under the Purchase Documents by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or duties of Lessee under the Purchase Documents or to make any payment (except to pay the purchase price of the Railcars in accordance with the Purchase Documents if (and only if) the Railcars is accepted by Lessee pursuant to the Lease and Manufacturer delivers a bill of sale (naming Assignee as the purchaser) to Lessor).

3. CONSENT AND AGREEMENT. (a) The Manufacturer hereby acknowledges and consents to all of the terms of this Assignment and Agreement and for good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, hereby confirms to and agrees with the Assignee that: (i) all representations, warranties, indemnities and agreements of the Manufacturer under the Purchase Documents with respect to the Railcars shall, subject to the terms and conditions thereof, inure to the benefit of the Assignee to the same extent as if originally named the buyer therein; (ii) the Assignee shall not be liable for any of the obligations or duties of the Assignor under the Purchase Documents, nor shall the Assignment give rise to any duties or obligations on the part of the Assignee owing to the Manufacturer except that in exercising any right under the Purchase Documents or in making any claim with respect to the Railcars or other goods and services delivered or to be delivered pursuant to the Purchase Documents, the terms and conditions of such Purchase Documents shall apply to, and be binding upon, the Assignee to the same extent as the Assignor; (iii) the Manufacturer consents to the lease of the Railcars by the Assignee to the Assignor under the Lease Agreement; (iv) the Manufacturer will continue to pay to the Assignor all payments, if any, which the Manufacturer may be required to make (and perform at the instructions of the Assignor all of its performance obligations) in respect of the Railcars under the Purchase Documents unless and until the Manufacturer shall have received written notice that an Event of Default under

the Lease Agreement has occurred and is continuing, whereupon the Manufacturer will make any and all payments which it may be required thereafter to make in respect of the Railcars under the Purchase Documents and the right to receive which has been assigned under the Assignment, directly to the Assignee at its address at 44 Whippany Road, Morristown, New Jersey 07962-1983, Attention: Senior Vice President - Risk Management, Capital Markets Division (with a copy to Chief Counsel - Capital Markets Division) (or such other address as is specified by the Assignee or any successor thereto) and shall perform at the instructions of the Assignee all of its performance obligations in respect of the Railcars under the Purchase Documents, unless and until the Manufacturer shall have received notice in writing from the Assignee that no Event of Default is continuing, whereupon the Manufacturer shall make all payments which the Manufacturer may be required thereafter to make in respect of the Railcars under the Purchase Documents to the Assignor and shall perform at the instructions of the Assignor all of its performance obligations in respect of the Railcars under the Purchase Documents; and (v) the Manufacturer does not retain any security interest, lien or other encumbrance in or upon the Railcars and it shall execute such documents as Assignee may request to evidence the release of any such encumbrance and the conveyance of title to the Railcars to Assignee.

(b) The Manufacturer hereby represents and warrants that (A) the Manufacturer is a corporation duly organized and existing in good standing under the laws of the State of _____, (B) the making and performance in accordance with its terms of the Purchase Documents and this Consent and Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval and do not contravene any law binding on the Manufacturer or contravene the Manufacturer's certificate of incorporation or by-laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, and (C) the Purchase Documents constituted as of the date thereof and at all times thereafter to and including the date of this Consent and Agreement a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms and this Consent and Agreement is the binding obligation of the Manufacturer, enforceable against the Manufacturer in accordance with its terms.

4. SUCCESSORS AND ASSIGNS. This Assignment and Agreement shall inure to the benefit of the parties and their successors and any assignee of Assignee's (or any subsequent assignee's) right, title and interest in and to the Railcars and its successors.

5. COUNTERPARTS. This Assignment and Agreement may be executed in counterparts, and such counterparts shall constitute an executed original.

6. **GOVERNING LAW.** This Assignment and Agreement shall be governed by the internal laws (as opposed to conflicts of laws provisions) of the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed and delivered as of the date hereof.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:_____
Name:
Title:

AT&T COMMERCIAL FINANCE CORPORATION

By:_____
Name:
Title:

[MANUFACTURER]

By:_____
Name:
Title:

EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

THAT _____ ("Seller"), a _____ corporation, is the owner of the full legal and beneficial right, title and interest in and to the railcars described on Annex A hereto, together with all appliances, parts, instruments, appurtenances, accessories, furnishings, or other equipment or property installed on or attached to said railcars.

THAT for and in consideration of the sum of $1.00 and other valuable consideration Seller does this ___ day of November, 1993, grant, convey, transfer, bargain and sell, deliver, assign, and set over all of Seller's right, title and interest in and to the above described railcars, appliances, parts, instruments, appurtenances, accessories, furnishings and/or other equipment to AT&T Commercial Finance Corporation, a Delaware corporation ("Buyer"), and unto its successors and assigns forever.

THAT Seller hereby warrants to Buyer, its successors and assigns, that there is hereby conveyed to Buyer on the date hereof, good, marketable and sufficient legal and beneficial title to the aforesaid railcars, appliances, parts, instruments, appurtenances, accessories, furnishings and/or other equipment or property, free and clear of all liens, encumbrances, claims, charges and rights of others, however designated, and that it will warrant and defend such title forever against all claims and demands whatsoever.

THIS BILL OF SALE IS DELIVERED BY SELLER TO BUYER IN, AND GOVERNED BY THE LAW OF, THE STATE OF NEW JERSEY.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed this ___ day of November, 1993.

[NAME OF SELLER]

By: _____
Name:
Title:

EXHIBIT D

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Secretary's Certificate

I, T.F. O'Donnell, hereby certify that I am Secretary of Southern Pacific Transportation Company, a Delaware corporation (the "Corporation"), and that:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Certificate of Incorporation of the Corporation as in full force and effect on the date hereof;

2. Attached hereto as Exhibit B is a true, correct and complete copy of the By-Laws of the Corporation as in full force and effect on the date hereof;

3. The execution, delivery and performance of the transactions contemplated under the Equipment Lease Agreement dated November 12, 1993 ("Equipment Lease Agreement") between AT&T Commercial Finance Corporation and the Corporation have been duly authorized by the Corporation and such authorization has not been amended, modified or rescinded and is in full force and effect as of the date hereof and no further authorization is required or necessary and attached hereto as Exhibit C is a copy of such authorization; and

4. Each of the persons identified below is a duly elected, qualified and acting officer of the Corporation, holding the office opposite their name, and the signature appearing opposite their name is a copy of their genuine signature, and that such persons have been accorded full power and authority to execute any and all documents in connection with the transactions contemplated under the Equipment Lease Agreement.

Name	Position	
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have hereunto signed my name this 12th day of November, 1993.

_____
T.F. O'Donnell
Secretary

EXHIBIT E

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Officer's Certificate

I, Lawrence C. Yarberry, Vice President of Southern Pacific Transportation Company, a Delaware corporation (the "Corporation"), DO HEREBY CERTIFY pursuant to Section 3(xi) of the Equipment Lease Agreement dated as of November 12, 1993 ("Equipment Lease Agreement") between the Corporation, as Lessee, and AT&T Commercial Finance Corporation, as Lessor (capitalized terms are used as defined in the Equipment Lease Agreement) that:

(a) the representations and warranties of the Corporation set forth in the Equipment Lease Agreement and in any Lease Supplement and the Security Agreement are true and correct as of the date hereof;

(b) no Loss or event which, with notice or lapse of time or both, would constitute a Loss with respect to any Item of Equipment listed on the Lease Supplement as of the date hereof has occurred and is continuing;

(c) no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default has occurred and is continuing;

(d) the conditions set forth in Section 3 of the Equipment Lease Agreement relating to the purchase and lease of the Items of Equipment to be purchased and leased on the date hereof pursuant to the Equipment Lease Agreement and the Lease Supplement as of the date hereof have been satisfied; and

(e) the Equipment Lease Agreement, any Assignment Agreement and Lease Supplement and the Security Agreement and each other related agreement to which the Corporation is a party are in full force and effect with respect to it.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of November, 1993.

_____

Lawrence C. Yarberry
Vice President

EXHIBIT F

November __, 1993

AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, New Jersey 07962-1983
Attention: Chief Counsel - Capital Markets Division

Gentlemen:

I am associate general counsel for Southern Pacific Transportation Company, a Delaware corporation (the "Lessee"), and have acted in such capacity in connection with the transactions contemplated by that certain Equipment Lease Agreement dated as of November ___, 1993 (the "Equipment Lease Agreement") between AT&T Commercial Finance Corporation, a Delaware corporation (the "Lessor"), and Lessee. Except as otherwise noted herein, all capitalized terms used herein shall have the respective defined meanings set forth in the Equipment Lease Agreement.

In connection with the opinion herein, I have examined executed counterparts of the Equipment Lease Agreement, Lease Supplement No. 1, Lease Supplement No. 2, the Security Agreement, the three Assignment and Consent Agreements, each among Lessee, Lessor and the manufacturer identified therein, and the letter agreements between Lessee and Lessor, and the officer's certificate of the Lessee, each dated as of the date hereof, and the Purchase Documents (all of the foregoing, the "Lessee Documents") and the Bills of Sale executed by the three manufacturers identified therein dated as of the date hereof, and have examined and relied upon the representations and warranties as to factual matters contained therein or made pursuant thereto and upon the originals or copies, certified or otherwise identified to my satisfaction, of such other documents as I have deemed relevant to the rendering of this opinion. In all such examinations I have assumed the genuineness of signatures (other than those on behalf of Lessee) on original documents, the authenticity of all documents submitted to me as originals, and the conformity to original documents of all copies submitted to me as copies, and I have assumed certificates and telephonic

confirmations by public officials to have been properly given and accurate. I also have assumed that all documents and instruments executed by parties to this transaction (other than Lessee) have been properly and validly executed and delivered by such parties; that the agreements entered into as part of this transaction are the legal, valid and binding obligations of such parties, enforceable against such parties in accordance with their terms, and that such parties have obtained all required consents, permits and approvals required to enter into and perform such documents and instruments.

Based upon the foregoing, I am of the opinion that:

1. Lessee is a duly incorporated and validly existing corporation in good standing under the laws of the State of Delaware is a "Class I Railroad" within the meaning of 49 code of Federal Regulations Part 1201, is subject to applicable regulations of the Interstate Commerce Commission ("ICC") pursuant to Title 49 of the United States Code and has the requisite corporate power and authority to carry on its business as presently conducted and to enter into and perform its obligations under the Lessee Documents. Lessee is duly qualified to do business as a foreign corporation in good standing in each jurisdiction where the activities of Lessee require such qualification except where the failure to so qualify would not have a material adverse effect on Lessee or on its ability to perform each of its obligations under each of the Lessee Documents.

2. Each of the Lessee Documents and the UCC-1 financing statement referred to in paragraph below have been duly authorized, executed and delivered by Lessee and constitute the legal, valid and binding obligations of Lessee, and, assuming such Lessee Documents or financing statements were governed by the laws of the State of California, are enforceable against the Lessee in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization or other similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

3. Neither the execution, delivery and performance by Lessee of the Lessee Documents and the UCC-1 financing statement referred to in paragraph 6 below nor the consummation of any of the transactions by Lessee contemplated thereby, nor the fulfillment of or compliance by Lessee with the terms and provisions of any of the Lessee Documents that are required to be

fulfilled or complied with by Lessee (a) requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action with respect to, any governmental authority or agency of the Federal government of the United States or the State of California or State of Delaware under its General Corporation Law; or (b) violates any law, governmental rule or regulation of the United States or the State of California, or of the General Corporation Law of Delaware; or (c) results in the breach of any of the terms, conditions or provisions of the Certificate of Incorporation or By-Laws of Lessee; or (d) is in violation of any judgment or order applicable to Lessee or will violate (or to the best of my knowledge will subject any property of Lessee to any liens (other than as permitted under the Equipment Lease Agreement or the Security Agreement) under) any material provision of any material indenture, mortgage, bank credit agreement, note or bond purchase agreement, lease, license or contract or any other agreement or instrument to which Lessee is a party or by which Lessee or any of its properties is bound or will require the consent or approval of any trustee or holders of any material indebtedness or obligations of the Lessee.

4. There are not actions, suits or proceedings pending or, to the best of my knowledge, threatened against or affecting Lessee in any court or before any administrative agency or arbitrator, which, if adversely determined, would materially and adversely affecting the ability of Lessee to perform its obligations under the Lessee Documents.

5. Each of the Equipment Lease Agreement, Lease Supplement No. 1, Lease Supplement No. 2 (Lease Supplement No. 1 and Lease Supplement No. 2 collectively, the "Lease Supplements") and the Security Agreement has been duly filed with the ICC pursuant to Section 11303 of Title 49 of the United States Code and no further filing is required to (i) establish a valid lessor's interest and ownership interest in favor of Lessor pursuant to the Equipment Lease Agreement and the Lease Supplements in and to the Equipment covered by the Lease Supplements or (ii) establish, perfect and create a first priority security interest in the Collateral (as defined in the Security Agreement) in favor of Lessor as against Lessee or any third parties. The Lease Agreement and Lease Supplements establish a valid lessor's interest and ownership interest in favor of Lessor pursuant to the Equipment Lease Agreement and the Lease Supplements in and to the Equipment covered by the Lease Supplements. The Security Agreement upon its filing with the ICC creates a valid perfected, first priority security interest in the Collateral in favor of Lessor as security for the payment of the Obligations (as defined in the Security Agreement).

6. Assuming the UCC-1 financing statement referred to in Section 3(b)(iv) of the Equipment Lease Agreement has been properly filed in the office of the Secretary of State of California and the Security Agreement has have been properly filed and recorded with the ICC, which are the only offices in which filing are required to perfect the security interest of Lessor in the Collateral in such states as to which perfection under the Uniform Commercial Code ("UCC") may be effected by filing under the UCC, then the security interest of the Lessor in all of Lessee's right, title and interest in such property has been perfected to the extent that filing a financing statement with the Secretary of State of California is effective to perfect a security interest under the UCC with respect to such property, and no further filing or recording of any documents or instrument or other action will be required to perfect such security interest therein under the UCC, except that (i) perfection of the security interest in proceeds will be limited to the extent provided in Section 9-306 of the UCC and, as to any proceeds or as to certain special types of personalty which may be included in the Collateral and not subject to perfection under the UCC or with the ICC, to the requirements that the Lessor's interest be perfected in the appropriate manner under the statutes governing perfection of liens or security interests on that type of property; (ii) continuation statements with respect to the UCC-1 financing statement must be filed within the applicable time periods; (iii) the security interest will cease to be perfected (a) as to any Collateral acquired by the Lessee more than four months after the Lessee changes its name, identity or corporate structure so as to make the then filed UCC financing statements seriously misleading, unless a new appropriate UCC financing statement is filed before the expiration of such four-month period and (b) as to Collateral otherwise disposed of by Lessee if such disposition is authorized by the Security Agreement; and (iv) I express no opinion as to the perfection of any other assignments subsequently entered into by Lessee covering any Collateral other than the Collateral described in the Security Agreement.

7. The Lessor, as lessor under the Equipment Lease Agreement and the Lease Supplements, is entitled to the benefits and protections of Section 1168 of the Chapter 11 of Title 11 of the United States Code with respect to all Equipment covered under the Lease Supplements.

I do not purport to be an expert in, or to render any opinion concerning the laws of any jurisdiction other than the Federal laws of the United States of America, the laws of the State of California and the General Corporation Laws of Delaware.

This opinion letter is based upon and is limited to applicable laws as now in effect, and I assume no obligation to revise or supplement this opinion letter should such law be changed by legislative action, judicial action or otherwise.

I am delivering this opinion to you pursuant to the Equipment Lease Agreement and no persons other than you and your counsel and assignees of your interests in the Lessee Documents and their counsel are entitled to rely on this opinion without my prior written consent.

Very truly yours,

EXHIBIT G

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made as of the 12th day of November, 1993 (the "Security Agreement") by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Lessee"), and AT&T COMMERCIAL FINANCE CORPORATION, a Delaware corporation, as collateral agent (in such capacity, the "Collateral Agent") for the holders of the "Obligations" (as defined below). Unless otherwise defined herein, capitalized terms are used herein as defined in the "Equipment Lease" (as defined below).

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

WHEREAS, pursuant to the terms and conditions of that certain Equipment Lease Agreement of even date herewith between Lessee and AT&T Commercial Finance Corporation (as amended from time to time, the "Lease"), AT&T Commercial Finance Corporation has agreed to lease to the Lessee certain "Equipment" (as defined in the Lease) (the Lease, together with all "Lease Supplements" (as defined therein), being the "Equipment Lease"); and

WHEREAS, in order to secure the Lessee's obligations under the Equipment Lease and certain related agreements, the Lessee has agreed to mortgage and pledge and grant to the Collateral Agent, for its own benefit and for the benefit of each Lessor under the Equipment Lease and each holder of the Obligations (collectively, the "Holders"), a perfected, first priority security interest in all of the Lessee's rights, title and interests in and with respect to certain locomotives as more fully and precisely described in Exhibit A hereto (each such locomotive, an "Item of Mortgaged Equipment", and such locomotives collectively or generally, the "Mortgaged Equipment");

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. The Security Interests.

In order to secure (i) the due, punctual and full payment of the Rental Payments, Lessor's Return and any other payment obligations of the Lessee under the Equipment Lease and any other Fundamental Agreement and any arrearages payable by Lessee in respect thereof; (ii) the due and punctual payment and performance of all other obligations of the Lessee under the Equipment Lease and any other Fundamental Agreement; and (iii) the due and punctual payment and performance of all obligations of the Lessee hereunder and under all other agreements executed

or delivered by the Lessee in connection herewith or with the Equipment Lease (all of the foregoing are hereinafter collectively called the "Obligations"), the Lessee hereby conveys, assigns, mortgages, transfers, delivers and sets over and pledges to the Collateral Agent and grants to the Collateral Agent, for its own benefit and the benefit of each Holder, a first priority, continuing security interest in all the Lessee's right, title, interest, estate, claims and demands which it now has or may hereafter acquire in, to and under the following properties (hereinafter collectively called the "Collateral"):

> (a) all Mortgaged Equipment and all related engines, parts, appliances and components of any kind and whether or not affixed thereto; (b) all rentals of, replacements and substitutions for, and all accessions, attachments, additions or improvements to, and all proceeds and products of, all of the foregoing, including proceeds of insurance and claims of the Lessee against third parties for loss or damages to, or destruction of, any of the foregoing; (c) all warranties and indemnities payable at any time to, or performable at any time for the benefit of, the Lessee by any servicer, manufacturer or vendor with respect to the foregoing; and (d) all books, records, documents, logs, computer tapes and discs to the extent relating to any of the foregoing; and (e) all proceeds of the foregoing.

The security interests granted pursuant to this Section 1 (the "Security Interests") are granted as security only and shall not subject the Collateral Agent or any Holder to, or transfer to the Collateral Agent or any Holder, or in any way affect or modify, any obligation or liability of the Lessee under or relating to any of the Collateral or any transaction which give rise thereto.

The Collateral Agent acknowledges and agrees that, as more fully set forth in Section 9(c) hereof and subject to the terms thereof, the Collateral Agent shall be entitled hereunder, in the event of occurrence of an Event of Default hereunder that is attributable solely to an Event of Default under the Lease Agreement, to sell, lease or foreclose on the Collateral only after the applicable Deficiency Amount has been established pursuant to Section 19 of the Lease.

The Collateral Agent and each Holder shall have the unqualified right to assign, transfer or otherwise convey any of its right and interest (including Security Interest) hereunder and to the Collateral (collectively, "Collateral Interests"), in whole or in part, without prior notice to, or consent of, Lessee. The Collateral Agent and Holders may, in connection with any such assignment, transfer or conveyance (i) divide the Collateral to cover discrete portions of the Obligations (or to provide security for discrete portions of the Obligations on a senior and subordinated basis as between such Obligations) and (ii) choose to hold the Collateral Interests directly as Holders, through the Collateral Agent or through one or more collateral agents or in any combination thereof. Lessee agrees that it shall, if requested by the Collateral Agent or any Holder, in connection with any complete or partial assignment by the Collateral Agent or any Holder of its Collateral Interests (i) amend and restate this Security Agreement (or otherwise enter into such other agreements and documents as may be reasonably required by the Collateral Agent or any Holder) solely in order to reflect such assignment or change in or elimination of collateral agents and indicate the identity of the assignees and related matters and to indicate the continuing interests, if any, of the Collateral Agent or other Collateral Agents and any Holder hereunder and with respect to any applicable Collateral Interests; and (ii) execute and file such amended and restated Security Agreements and other documents with the ICC and other appropriate statutory authorities or filing offices in order to record the Security Interests in effect after giving effect to such assignments and amendments. It is further agreed that: (x) each assignee shall be entitled to all of the Collateral Agent's or each Holder's, as the case may be, Collateral Interests to the extent assigned; and (y) any assignee shall have the same rights of assignment provided hereunder as do the original Collateral Agent and Holder. The parties acknowledge that the sole Holder as of November 9, 1993 is AT&T Commercial Finance Corporation, a Delaware corporation.

Section 2. Filing; Further Assurances.

The Lessee will, at its expense, execute, deliver, file and record (in such manner and form as the Collateral Agent may require), or permit the Collateral Agent to file and record (i) this Security Agreement with ICC pursuant to Section 11303 of Title 49 of the United States Code and (ii) any financing statements, any carbon, photographic or other reproduction of a

financing statement or of this Security Agreement (which the parties hereto agree shall be sufficient as a financing statement hereunder), any specific assignments or other paper that may be reasonably necessary or desirable, or that the Collateral Agent may request, in each case in order to create, confirm, preserve, perfect or validate any Security Interest or to enable the Collateral Agent to exercise and enforce its rights hereunder, under the Equipment Lease or under Applicable Law with respect to any of the Collateral. The Lessee hereby appoints the Collateral Agent as the Lessee's attorney-in-fact to execute in the name and on behalf of the Lessee such additional filings with ICC or financing statements with applicable offices, in each case as the Collateral Agent may at any time request or require in respect of the Collateral.

Section 3. Representations and Warranties of the Lessee.

The Lessee hereby represents and warrants to the Collateral Agent as follows:

(a) The Lessee is, or to the extent that certain of the Collateral is to be acquired after the date hereof, will be, the owner of the Collateral, with full legal right, title and interest thereto free from any Lien (other than the Liens created hereunder in favor of the Collateral Agent).

(b) There is no financing statement or other evidence or recording of a Lien covering the Collateral on file in any public office, other than the financing statements filed pursuant to this Security Agreement; there is no filing covering the Collateral with the ICC or equivalent Canadian authority evidencing a Lien thereon in favor of any Person other than the filing hereof made pursuant to this Security Agreement.

(c) "Southern Pacific Transportation Company" is the exact corporate name and title of Lessee. Lessee has not used any other corporate name or title within the previous ten years. The only trade name used by Lessee in its business on a regular basis is "Southern Pacific Lines". Lessee's chief executive office is One Market Plaza, San Francisco, California.

(d) There is no Loss or Event of Default or event which, with the passage of time or provision of notice or both, would constitute a Loss or an Event of Default, in existence.

Section 4. Covenants of the Lessee.

The Lessee hereby covenants and agrees as follows:

(a) The Lessee will defend the Collateral against all claims and demands of all Persons (other than the Collateral Agent and Holders) at any time claiming any interest therein.

(b) The Lessee will provide the Collateral Agent, at least thirty (30) business days prior to occurrence, with written notice of any change in the chief executive office of the Lessee, and immediate notice (within one business day) of any suspension or termination of material operations by the Lessee or any notice given thereof or any corporate action taken in respect thereof.

(c) The Lessee shall promptly pay any and all taxes, assessments and governmental charges upon the Collateral prior to the date penalties are attached thereto, except to the extent that such taxes, assessments and charges shall be contested in good faith by the Lessee by appropriate proceedings (provided no Lien or assessment attaches to or is claimed against any of the Collateral during the pendency of such proceedings) and adequate reserves have been set aside therefor. Notwithstanding any other provision of this Security Agreement, Lessee's obligation to pay any Sales Tax in the context of an Event of Default shall be conditioned upon delivery by the Collateral Agent of such properly completed and validly executed resale certificates or similar documents as may timely be reasonably requested in writing by Lessee, within 10 days of such request.

(d) The Lessee shall immediately notify the Collateral Agent of any event causing a substantial loss in the value of all or any material part of the Collateral at any location and the amount or an estimate of the amount of such loss.

(e) The Lessee shall not sell or offer to sell or otherwise assign, transfer or dispose of the Collateral or any interest therein, without the prior written consent of the Collateral Agent.

(f) The Lessee shall keep all of the Collateral free from any and all Liens and in good repair, working order and condition, reasonable wear and tear excepted, other than (i) the Security Interests in the Collateral created hereunder, (ii)

materialmen's, mechanic's, workmen's and other like Liens arising in the ordinary course of Lessee's or any permitted lessee's business securing obligations that are not overdue and (iii) Liens for Taxes of Lessee that are not overdue (it being understood that the exceptions contained in clauses (ii) and (iii) above shall not limit or qualify Lessee's obligations hereunder to transfer the Collateral upon the occurrence of an Event of Default or otherwise as specified herein free and clear of all Liens).

(g) The Lessee shall not use any of the Collateral in material violation of any statute or ordinance or other Applicable Law or otherwise than for its originally intended purposes.

(h) The Lessee shall not change its corporate name without prior notice thereof to the Collateral Agent. The Lessee shall not consolidate with or merge into any corporation or other entity or person or convey, transfer or lease all or substantially all of its assets to any corporation or other entity or person except in compliance with Section 16(e) of the Lease, the terms of which are hereby incorporated as if set forth herein.

(i) Lessee shall mark its books and records relating to the Collateral to evidence this Security Agreement and the Security Interests, and post such notices as the Collateral Agent may designate on each Item of Mortgaged Equipment as the Collateral Agent may require.

(j) A. Lessee shall carry or cause to be maintained in effect at its expense (i) comprehensive liability (including, without limitation, contractual, bodily injury and property damage liability) and third party property damage insurance with respect to the Mortgaged Equipment, (A) in an amount not less than the greater of (x) the amounts of comprehensive liability and third party property damage insurance from time to time applicable to locomotives owned or operated by Lessee of the same type as the Mortgaged Equipment, and (y) $100,000,000 per occurrence, (B) of the type and covering the same risks as from time to time applicable to locomotives owned or operated by Lessee of the same type as the Mortgaged Equipment and (C) which is maintained in effect with insurers rated by A.M. Best (or any successor entity) with a rating of B or better and Class VI or higher (or, alternatively, insurers acceptable to the Collateral

Agent). Lessee may self insure against the risks required to be insured against pursuant to this paragraph A up to a maximum self-insurance retention of $10,000,000 for all such risks for which Lessee may be liable.

B. Lessee shall maintain or cause to be maintained in effect, at its expense, with insurers rated by A.M. Best (or any successor entity) with a rating of B or better and Class VI or higher (or, alternatively, insurers acceptable to the Collateral Agent), all-risk casualty and property damage insurance covering each Item of Mortgaged Equipment for an amount equal to the greater of, for each Item of Mortgaged Equipment, (x) the replacement value of such Item of Mortgaged Equipment and (y) the amount of such casualty and property damage insurance from time to time applicable to locomotives owned or operated by Lessee of the same type as the Item of Mortgaged Equipment. Lessee may maintain, with respect to the risks required to be insured against pursuant to this paragraph B, a deductible customary for locomotive insurance for purposes of reducing handling charges.

C. Except during a period when an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing, all losses will be adjusted by Lessee (giving due regard to the Collateral Agent's and Holders' interests) with the insurers. As between the Collateral Agent and Lessee, it is agreed that all casualty insurance payments received as the result of the occurrence of a Loss (as hereinafter defined) with respect to any Mortgaged Equipment shall, unless such property is repaired or substituted pursuant to Section 4(q) hereof, be applied in satisfaction of Lessee's obligation to provide cash collateral pursuant to Section 4(q) hereof.

D. Any amount referred to in this Section 4(j) which is payable to or retainable by Lessee shall not be paid to or retained by Lessee if at the time of such payment or retention an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, but shall be held by or paid over to the Collateral Agent as security under this Security Agreement and, if an Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, applied pursuant to the terms hereof and Section 4(q) hereof. Unless otherwise provided in Section

4(q) hereof, at such time as there shall not be continuing any such Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default, such amount shall be paid to Lessee to the extent not previously applied in accordance with the preceding sentence.

E. Any policies carried in accordance with paragraphs A and B of this Section 4(j) and any policies taken out in substitution or replacement for any such policies, (A) shall name the Collateral Agent and each Holder as an additional insured, and, in the case of insurance required to be maintained pursuant to paragraph (B) of this Section 4(j), loss payee, as its interests may appear (but without imposing on the Collateral Agent or any Holder liability to pay premiums with respect to such insurance), (B) shall provide that if the insurers cancel such insurance for any reason whatever, or if any material change is made in the insurance which adversely affects the interests of the Collateral Agent or any Holder as additional insured or loss payee, such cancellation or change shall not be effective as to the Collateral Agent or such Holder for thirty days after receipt by the Collateral Agent or such Holder of written notice by such insurers of such cancellation or change, (C) shall provide that in respect of the respective interests of the Collateral Agent and each Holder as additional insured in such policies the insurance shall not be invalidated by any action or inaction of Lessee and shall insure the respective interests of the Collateral Agent and such Holder as they appear regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee, (D) shall be primary without any right of contribution from any other insurance which is carried by the Collateral Agent or any Holder, (E) shall waive any right of the insurers of subrogation or to set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Collateral Agent or any Holder, and (F) shall provide that (i) in the event of a Loss involving any Mortgaged Equipment for which proceeds are in excess of $1,500,000, the proceeds of casualty insurance in respect of such Loss up to the amount of replacement value of the Mortgaged Equipment shall be payable to the Collateral Agent and held as security hereunder by the Collateral Agent until, if the repair or substitution provisions of Section 4(q) are applicable, such Mortgaged Equipment is repaired or substituted pursuant to Section 4(q) hereof and, upon such repair, released to Lessee or, if the repair or substitution provisions of Section 4(q) hereof are not applicable, applied by the Collateral Agent as provided

therein and (ii) the entire amount of any such Loss for which proceeds of casualty insurance are $1,500,000 or less shall be paid to Lessee or applied pursuant to Section 4(q) hereof.

F. Each of the additional insureds covered or required to be covered under the liability policies required to be maintained by Lessee pursuant to this Section 4(j) shall have the same protection as would have been available to them had these policies been issued individually to each of them, except that this requirement shall not in any event increase the insurers' total liability beyond the limits set forth in such policies.

(k) Lessee, at its own expense and risk, shall maintain and repair the Mortgaged Equipment so as to keep it in good repair, condition and working order, ordinary wear and tear excepted, at least (x) in accordance with the standards of maintenance, if any, for similar rail equipment operating on the lines of Class I Railroads, (y) in accordance with the engineering and maintenance standards recommended by the manufacturer or manufacturers of the Mortgaged Equipment and (z) in the manner and in the same condition as the Lessee, in the prudent management of its own business, maintains and repairs similar equipment owned or leased by it and any Affiliate thereof. In any event, Lessee shall ensure that the Mortgaged Equipment shall remain at all times (i) in good operating condition (ordinary wear and tear excepted), (ii) in compliance with any and all Applicable Law, (iii) eligible under all warranties provided for the Mortgaged Equipment by its manufacturer or manufacturers, (iv) in compliance with the then prevailing rules of the American Association of Railroads and the Federal Railroad Administration which are applicable to Class I Railroads, (v) suitable for interchange generally by a Class I Railroad, and (vi) in compliance with the applicable requirements of any insurance being maintained pursuant to the terms of this Security Agreement.

(l) Lessee shall (i) at its own expense and risk, make all improvements, alterations or additions to the Mortgaged Equipment or any portion thereof that may be required or supplied by the Manufacturer of the Mortgaged Equipment or that may be required under Applicable Law in connection with the use and operation of the Mortgaged Equipment or any portion thereof or otherwise; and (ii) make no other improvements, alterations or additions to the Mortgaged Equipment (except for improvements,

alterations or additions that will not impair the value, utility, condition or performance of the Mortgaged Equipment and that are readily removable without damage to the Mortgaged Equipment).

(m) Each Item of Mortgaged Equipment will be used in the general operation of Lessee's or any permitted lessee's freight rail business on Lessee's railroad system, on railroad lines over which Lessee or any permitted lessee has trackage rights and on railroad lines of other railroads in the 48 contiguous states of the continental United States and, solely in the usual interchange of traffic or in through or run-through service, in Canada and Mexico; provided, however, that Lessee (i) shall use each Item of Mortgaged Equipment only in the manner for which it was designed and intended and (ii) shall not use or operate any such Item of Mortgaged Equipment in any manner contrary to Applicable Law. Neither Lessee nor any permitted lessee shall at any time locate or transfer any Item of Mortgaged Equipment outside the 48 contiguous states of the United States, Canada or Mexico.

(n) **EXCEPT AS PROVIDED IN SECTION 4(H) OR 4(Q) HEREOF, WITHOUT THE COLLATERAL AGENT'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS SECURITY AGREEMENT OR ASSIGN ITS RIGHTS IN OR LEASE OR DELIVER, TRANSFER OR RELINQUISH POSSESSION OF ANY ITEM OF MORTGAGED EQUIPMENT OR ANY INTEREST THEREIN.** Notwithstanding the foregoing, so long as no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default has occurred and is continuing, Lessee may, without the prior written consent of the Collateral Agent, lease any Item of Mortgaged Equipment to any railroad company which is incorporated in the United States of America (or any State thereof or the District of Columbia); provided that (A) such lessee shall (i) at the time of inception of such lease not be subject to any bankruptcy, receivership, insolvency or similar proceedings and (ii) constitute a "railroad" within the meaning of Chapter 11 of Title 11 of the United States Code (or any successor provision), (B) such lease shall be subject and subordinate to all the terms and conditions of this Security Agreement and shall contain the terms set forth in Exhibit B hereto and (C) no subleasing of the Mortgage Equipment is permitted; and provided, further, that the Collateral Agent's consent, which shall not be unreasonably withheld, must be obtained for any lease that has a term longer than 12 months. No such lease shall relieve Lessee of its obligations under this

Security Agreement, which obligations shall be and remain those of a principal and not a surety.

(o) Lessee will cause each Item of Mortgaged Equipment to be numbered with the reporting marks set forth on Exhibit A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Mortgaged Equipment, in letters not less than one inch in height, the words "Subject to Security Interests Recorded with the Interstate Commerce Commission", with appropriate changes thereof or additions thereto as from time to time may be required by Applicable Law in order to protect the Collateral Agent's interest in such Item of Mortgaged Equipment. Lessee will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. Lessee will not place any Item of Mortgaged Equipment in operation until the required legend shall have been so marked on both sides thereof. Lessee will not change the reporting marks of any Item of Mortgaged Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Collateral Agent and duly filed by Lessee in all public offices where a memorandum of or financing statement relating to this Security Agreement shall have been filed and (ii) Lessee shall have furnished the Collateral Agent an Opinion of Counsel to the effect that such statement has been so filed, and that no other filing or giving of notice with or to any federal, state, or local government or agency of any thereof is necessary to protect the rights of the Collateral Agent in such Item of Mortgaged Equipment.

(p) Lessee agrees that Lessee will be consistent in its record keeping practices for rail equipment owned or leased by Lessee which is substantially similar in type, service and use to the Mortgaged Equipment, subject to the phasing in or modification of such practices from time to time in the ordinary course of business and shall ensure that all maintenance and use records and logs with respect to the Mortgaged Equipment are currently accessible without undue administrative burden under its practices as of the date hereof.

(q) Lessee shall advise the Collateral Agent in writing within thirty (30) days of any officer of Lessee or any Affiliate or any other employee of Lessee having responsibility for administering this Agreement or the Mortgaged Equipment obtaining knowledge of a loss, theft, destruction or damage to

the Equipment from any cause whatsoever or requisition of the Equipment by any governmental entity or the taking of title to any Item of Mortgaged Equipment by eminent domain or otherwise (individually and collectively, "Loss") with respect to any Item of Mortgaged Equipment. In the event of any such Loss with respect to any Item of Mortgaged Equipment, Lessee, at its option, may: (a) if the Loss has not materially impaired the Item of Mortgaged Equipment (in Lessee's reasonable judgment) promptly (and in no event later than forty-five (45) days after the occurrence of such Loss) place the Item of Mortgaged Equipment in good condition and repair in accordance with the terms hereof; or (b) if the Loss has materially impaired the Item of Mortgaged Equipment (in Lessee's reasonable judgment), promptly (and in no event later than forty-five (45) days after the occurrence of such Loss (or such longer period during which Lessee has provided to Collateral Agent a perfected, first priority Security Interest hereunder in cash equal to the replacement value of the Item of Mortgaged Equipment (established to Collateral Agent's reasonable satisfaction) that has suffered a Loss (in addition to any other amounts of cash then subject to the Security Interest hereunder)) subject to the Security Interest provided to the Collateral Agent hereunder, for its benefit and the benefit of the Holders, a replacement or substitute locomotive or other collateral of similar type, in each case satisfactory to the Collateral Agent and having a value at least equal to the value of the Item of Mortgaged Equipment immediately prior to the Loss (assuming such Item of Mortgaged Equipment was in the condition required to be maintained by Lessee pursuant to the terms hereof) and in connection therewith Lessee shall execute such documents, effect such filings and take such other actions as may be requested by the Collateral Agent to ensure that the Collateral Agent has a valid, perfected first priority Security Interest hereunder, for its benefit and the benefit of the Holders, in such replacement or substitute collateral, which shall be subject to no other Liens, and until Lessee shall have effected the foregoing, the Collateral Agent shall have a Security Interest hereunder in all proceeds received with respect to the Item of Mortgaged Equipment subject to such Loss (including insurance and requisition proceeds) and Lessee shall deposit such proceeds in an account specified by the Collateral Agent and execute such documents, effect such filings and take such other actions as may be requested by the Collateral Agent to ensure that the Collateral Agent has a valid, perfected first priority Security Interest hereunder, for its benefit and the benefit of the Holders, in such proceeds, which shall be

subject to no other Liens; provided that if an Event of Default shall have occurred and is continuing, the Collateral Agent may, but shall not be required to, cause Lessee to make either of the elections specified in clauses (a) and (b) above. Upon valid and effective substitution pursuant to the terms hereof of an Item of Mortgaged Equipment and the creation in favor of the Collateral Agent of a valid, perfected first priority Security Interest in the substitute Collateral, the substituted Item of Mortgaged Equipment shall be released from the Security Interest hereunder and the Collateral Agent shall, if requested by Lessee, deliver to Lessee, at Lessee's cost and expense, an instrument of release therefor.

(r) Lessee shall provide to the Collateral Agent, promptly upon the occurrence thereof, notice and information as to the nature and status of any Event of Default or event which, with notice or lapse of time or both, would constitute a Loss or an Event of Default.

Section 5. Records Relating to Collateral.

The Lessee will keep its records concerning the Collateral at its chief executive offices located at One Market Plaza, San Francisco, California or at such other place or places of business as the Collateral Agent may approve in advance in writing. The Lessee will hold and preserve such records and will permit representatives of the Collateral Agent at any time during normal business hours to examine and inspect the Collateral and to make abstracts from such records, and will furnish to the Collateral Agent such information and records regarding the Collateral as the Collateral Agent may from time to time reasonably request.

Section 6. General Authority.

The Lessee hereby irrevocably appoints the Collateral Agent the Lessee's true and lawful attorney, with full power of substitution, in the name of the Lessee, the Collateral Agent or otherwise, for the sole use and benefit of the Collateral Agent, but at the Lessee's expense, to the extent permitted by law to exercise, at any time and from time to time after any Event of Default has occurred, all or any of the following powers with respect to all or any of the Collateral (which power shall be in addition and supplemental to any powers, rights and remedies of the Collateral Agent described herein or otherwise available to

the Collateral Agent or Holders under the Equipment Lease or any other document or otherwise under Applicable Law);

(i) to demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due upon or by virtue thereof;

(ii) to receive, take, endorse, assign and deliver any and all checks, notes, drafts, documents and other negotiable and non-negotiable instruments and chattel paper taken or received by the Collateral Agent in connection therewith;

(iii) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto;

(iv) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof, as fully and effectually as if the Collateral Agent were the absolute owner thereof;

(v) to extend the time of payment of any or all thereof and to make any allowance and other adjustments with reference thereto; and

(vi) to discharge any taxes, liens, security interests or other encumbrances at any time placed thereon.

Section 7. Events of Default.

The Lessee shall be in default under this Security Agreement upon the occurrence of any one or more of the following events (each such event is herein referred to as an "Event of Default"):

(a) default by the Lessee in the observance or performance of any material covenant or material agreement herein contained and failure by Lessee to cure any such breach within 10 days after notice thereof; or

(b) any representation or warranty herein contained shall have been untrue or misleading in any material respect at the time it was made; or

(c) the occurrence of any "Event of Default" as defined in the Equipment Lease.

Section 8. Remedies Upon Event of Default.

(a) If any Event of Default shall have occurred, the Collateral Agent may exercise all the rights and remedies of a secured party under the Uniform Commercial Code of New Jersey and under Title 49 of the United States Code (including rules and regulations promulgated by the ICC thereunder or in connection therewith) and, in addition, the Collateral Agent may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, (i) apply the cash, if any, then or thereafter held by it as Collateral in the manner specified in Section 10, and (ii) if there shall be no such cash or if such cash shall be insufficient to pay all the Obligations in full, sell the Collateral, or any part thereof, at public or private sale, for cash, upon credit or for future delivery, and at such price or prices as the Collateral Agent may deem satisfactory. The Collateral Agent may require the Lessee to assemble all or any part of the Collateral and make it available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient. The Collateral Agent or any Holder may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale) and thereafter hold the same absolutely, free from any right or claim of whatsoever kind. Upon any such sale the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the Collateral so sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption of the Lessee. The Collateral Agent and the Lessee agree that ten (10) days' prior written notice by the Collateral Agent of its intention to make any such public or private sale constitutes "reasonable notification" within the meaning of Section 9-504(3) of the Uniform Commercial Code. Such notice, in case of a public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or

times within ordinary business hours and at such place or places as the Collateral Agent may fix in the notice of such sale. At any such sale the Collateral may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may determine. The Collateral Agent shall not be obligated to make such sale pursuant to any such notice. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the selling price is paid by the purchaser thereof, but the Collateral Agent shall not incur any liability in case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice.

(b) The Collateral Agent, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to enforce the Security Interests and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

(c) All rights and remedies contained herein shall be separate and cumulative and in addition to all other rights and remedies available to a secured party under other documents evidencing or securing any of the Obligations or otherwise Applicable Law, and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies.

Section 9. Right of the Collateral Agent to Lease, Use and Operate Collateral, Etc.

(a) Upon the occurrence of an Event of Default, to the extent permitted by law, the Collateral Agent shall have the right and power to take possession of all or any part of the Collateral, and to exclude the Lessee and all persons claiming under the Lessee wholly or partly therefrom, and thereafter to lease, hold, store, and/or use, operate, manage and control the same. Upon any such taking of possession, the Collateral Agent may, from time to time, at the expense of the Lessee, make all such replacements, alterations, additions and improvements to and of the Collateral as the Collateral Agent may deem proper. In

such case, the Collateral Agent shall have the right to manage and control the Collateral and to carry on the business and to exercise all rights and powers of the Lessee in respect thereto as the Collateral Agent shall deem best, including the right to enter into any and all such agreements with respect to the leasing and/or operation of the Collateral or any part thereof as the Collateral Agent may deem fit; and the Collateral Agent shall be entitled to collect and receive all rents, issues, profits, fees, revenues and other income of the same and every part thereof. Such rents, issues, profits, fees, revenues and other income shall be applied to pay the expenses of holding and operating the Collateral and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Collateral Agent may be required or may elect to make, if any, for taxes, assessments, insurance and other charges upon the Collateral or any part thereof, and all other payments which the Collateral Agent may be required or authorized to make under any provision of this Security Agreement (including legal costs and attorney's fees). The remainder of such rents, issues, profits, fees, revenues and other income shall be applied to the payment of the Obligations in such order or priority as the Collateral Agent shall determine (subject to the provisions of Section 11 hereof) and, unless otherwise provided by law or by a court of competent jurisdiction, any surplus shall be paid over the Lessee.

(b) In the event that the Collateral Agent shall notify the Lessee of its intention to exercise its rights pursuant to Section 9(a) hereof, Lessee shall (i) promptly notify the Collateral Agent as to the location of each Item of Mortgaged Equipment and (ii) on the date specified by the Collateral Agent, assemble and deliver possession of the Mortgaged Equipment to the Collateral Agent, at Lessee's own expense and risk, in such numbers and to such location or locations on Lessee's lines reasonably accessible to the Collateral Agent, its agents and assigns, or to such interconnection point or points on Lessee's lines, in each case as the Collateral Agent shall designate. In addition, Lessee shall also furnish to the Collateral Agent copies of any then available maintenance and use records and logs pertaining to all Items of Mortgaged Equipment and shall perform, at Lessee's expense, such overhaul services with respect to any Items of Mortgaged Equipment so repossessed as the Collateral Agent may reasonably request.

(c) Notwithstanding any other provision of this Security Agreement, in the event of occurrence of an Event of Default hereunder that is attributable solely to an Event of Default under the Equipment Lease, the Collateral Agent shall be entitled to sell, lease or foreclose on the Collateral only after the Deficiency Amount has been established pursuant to Section 19 of the Lease for all Items of Equipment with respect to which the Collateral Agent shall seek to enforce its Security Interest hereunder with respect to such Deficiency Amount. The foregoing provision shall not be deemed to negate the Collateral Agent's rights under this Security Agreement, immediately upon the occurrence and during the continuation of any Event of Default (including an Event of Default hereunder that is attributable solely to an Event of Default under the Equipment Lease) to possess, collect, marshall, store, maintain, hold, operate, manage and control any Collateral and exclude the Lessee and all persons claiming under the Lessee therefrom, to make replacements, alterations, additions, repairs and improvements and effect maintenance thereof, to effect any filings and execute any documents necessary or appropriate to protect and enforce its Security Interest hereunder, to make expenditures in respect of the Collateral and to collect and receive any proceeds, rents, issues, profits, fees, revenues and other income of or with respect to the Collateral. In addition, the foregoing provision shall not be construed to limit the scope of the Security Interest granted to the Collateral Agent, for its benefit and the benefit of the Holders, to secure payment or enforce performance of any Obligations (including Rental Payments, Lessor's Return, indemnity payments and interest at the Past Due Rate on any overdue payment Obligations).

Section 10. Application of Collateral and Proceeds.

The proceeds of any sale or lease of, or other realization upon, all or any part of the Collateral shall be applied in the following order of priorities:

(a) first, to pay the expenses of such sale, lease or other realization, including reasonable commission to any agents or brokers, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection therewith, and any other unreimbursed expenses for which the Collateral Agent is to be reimbursed pursuant to Section 11;

(b) second, to the payment of the Obligations in such order and manner as the Collateral Agent, in its sole discretion, shall determine; and

(c) finally, unless Applicable Law otherwise provides, to pay to the Lessee, or its successors or assigns, or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds.

Section 11. Taxes; Expenses; Further Assurances.

(a) The Lessee will forthwith upon demand pay to the Collateral Agent the amount of any Taxes (excluding those Taxes excluded in Section 8(a) of the Lease) which the Collateral Agent may at any time be required to pay by reason of the Security Interests (including any applicable transfer Taxes) or to free any of the Collateral from any Lien thereon.

(b) Upon demand, Lessee will promptly reimburse Lessor for any filing or recordation fees or expenses (including actual lien search fees, reasonable legal fees and reasonable costs but not including the expenses incurred by the Collateral Agent in connection with the initial preparation of this Security Agreement) incurred by the Collateral Agent or any Holder in perfecting or protecting or enforcing its Security Interest in the Collateral and under this Security Agreement and effecting any amendments to this Security Agreement (other than amendments effected solely in connection with an assignment of security interests hereunder pursuant to Section 1 hereof unless an Event of Default shall have occurred and be continuing).

(c) Lessee shall promptly execute and deliver to the Collateral Agent such documents and take such further action as the Collateral Agent may from time to time reasonably request in order to carry out the intent and purpose of this Security Agreement and to protect the Security Interests, rights and remedies of the Collateral Agent created or intended to be created under this Security Agreement (including, without limitation, filing this Security Agreement or any other appropriate agreement or instrument to create or continue a first perfected Security Interest in favor of the Collateral Agent in the United States and Canada).

Section 12. Termination of Security Interests; Release of Collateral.

(a) Upon the earlier to occur of (i) the payment and performance in full of all the Obligations and (ii) occurrence of a "Termination Event" (as defined in paragraph (b) below), the Security Interests and all of Lessee's other obligations under this Security Agreement shall terminate (in whole or, in the case of a partial release of Collateral in the context of a Termination Event, in relevant part) and all rights to the Collateral (or the relevant portions thereof, in the event of a partial release of Collateral in the context of a Termination Event) shall revert to the Lessee. Upon any such termination of the Security Interests or release of Collateral, the Collateral Agent will, at the Lessee's expense to the extent permitted by law, execute and deliver to the Lessee such documents as the Lessee shall reasonably request to evidence the termination of the Security Interests or the release of such Collateral, as the case may be.

(b) The Lessee shall have the right to request the Collateral Agent, in June of each calendar year of the Term beginning June 1997, to release all or a portion of the Collateral. In the event Lessee delivers such request to the Collateral Agent during June of any such year beginning 1997, the Collateral Agent shall consider such request in good faith and may, in its sole discretion, decide not to agree to release any of the Collateral from the Security Interest granted hereunder or to release the Collateral or any portion thereof from the Security Interest granted hereunder. In the event the Collateral Agent decides, in writing to Lessee, to release any such Collateral from the Security Interest granted hereunder a "Termination Event" shall be deemed to have occurred solely with respect to the Collateral specified in such writing.

Section 13. Notices.

All notices, requests, demands and other communications provided for hereunder shall be made in accordance with Section 24 of the Lease.

Section 14. Waivers; Non-Exclusive Remedies.

(a) No failure on the part of the Collateral Agent to exercise, and no delay in exercising, and no course of dealing

with respect to, any right, power or remedy under this Security Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Collateral Agent of any right, power or remedy under this Security Agreement preclude any other right, power or remedy. Neither this Security Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by a statement in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

(b) The remedies in this Security Agreement are cumulative and are not exclusive of any other remedies provided by law or otherwise available to the Collateral Agent. The Lessee, to the extent it may lawfully do so, hereby consents to the jurisdiction of the courts of the State of New Jersey and the United States District Court for the District of New Jersey for the purpose of any suit or proceeding brought in connection with or respect to this Security Agreement.

Section 15. Consent and Waiver.

(A) THE LESSEE HEREBY WAIVES TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS SECURITY AGREEMENT. NEITHER THE LESSEE NOR ANY ASSIGNEE OF OR SUCCESSOR TO THE LESSEE, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION OR PROCEDURE BASED UPON, OR ARISING OUT OF, THIS SECURITY AGREEMENT OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

(B) THE LESSEE CONSENTS TO THE JURISDICTION AND VENUE OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF NEW JERSEY AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON THE LESSEE, AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE LESSEE AT THE ADDRESS STATED BELOW AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED THREE (3) DAYS AFTER THE SAME SHALL HAVE BEEN POSTED AS AFORESAID. THE LESSEE WAIVES ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER

AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. **THE LESSEE WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE COLLATERAL AGENT.** NOTHING CONTAINED IN THIS PARAGRAPH SHALL AFFECT THE RIGHT OF THE COLLATERAL AGENT TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF THE COLLATERAL AGENT TO BRING ANY ACTION OR PROCEEDING AGAINST THE LESSEE IN THE COURTS OF ANY OTHER JURISDICTION.

Section 16. Assignment by the Holders.

The parties hereto acknowledge and agree that, as more fully set forth in Section 1 hereof, (i) the Security Interests have been granted by Lessee to the Collateral Agent for its own benefit and for the benefit of the Holders and (ii) each Holder is entitled under the Equipment Lease to sell, assign and transfer its rights and interests thereunder without Lessee's consent and that any assignee or transferee thereof shall be entitled to the benefit of this Security Agreement as a secured party to the extent of such assignment or transfer.

Section 17. Choice of Law; Meaning of Terms.

This Security Agreement shall be construed in accordance with and governed by the internal laws (as opposed to conflict of law provisions) and decisions of the State of New Jersey applicable to contracts made and performed in said state, except to the extent that remedies provided by the laws of any State other than New Jersey are governed by the laws of said State.

Section 18. Marshalling; Payments Set Aside.

The Collateral Agent shall be under no obligation to marshall any assets in favor of the Lessee or any other party or against or in payment of any or all of the Obligations. To the extent that the Lessee makes a payment or payments to the Collateral Agent or the Collateral Agent enforces its security interests or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable

cause, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 19. Severability.

Any provision of this Security Agreement 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 or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 20. Headings.

The headings in this Security Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 21. Counterparts.

This Security Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, this Security Agreement has been executed by the parties hereto all as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Name:
Title:

AT&T COMMERCIAL FINANCE CORPORATION

By: _____
Name:
Title:

Exhibit H

Each sublease shall contain the following language (with appropriate definitional changes): "Lessee hereby acknowledges, accepts and agrees: (i) that Lessee has received and reviewed the Equipment Lease Agreement dated as of November 12, 1993 between Southern Pacific Transportation Company, as Lessee thereunder ("Sublessor"), and AT&T Commercial Finance Corporation, as Lessor thereunder ("Head Lessor"), with respect to the railcars constituting [coil steel cars] [and/or] [hopper cars] (the "Equipment") together with any Lease Supplements and amendments thereto (collectively, "Head Lease") being subleased by Lessee hereunder; (ii) to observe the terms of the Head Lease; (iii) that Head Lessor is the owner of the Equipment; (iv) that the provisions of this Sublease and Lessee's rights hereunder (including Lessee's right to quiet enjoyment of the Equipment) are subject and subordinate to the terms of the Head Lease and Head Lessor's rights thereunder; (v) that in the event that there is an event of default (as defined in the Head Lease) under the Head Lease, Head Lessor shall be entitled to exercise all of Head Lessor's rights hereunder, under the Head Lease and under applicable law with respect to the Equipment (including repossession of the Equipment free and clear of any rights of Lessee under this Sublease or otherwise), which rights may be exercised notwithstanding (x) compliance by Subessee with the terms of this Sublease or the Head Lease and whether or not an event of default or default under the Sublease has occurred or is continuing, or (y) any covenant of quiet enjoyment for the benefit of Sublessee contained in this Sublease or the Head Lease; and (vi) that in the event Lessee suffers any damages or loss (including consequential damages or loss of the benefit of a bargain) in connection with the exercise by Head Lessor of any of Head Lessor's rights specified in the foregoing clauses or in the Head Lease or under applicable law, Lessee shall not have any claim with respect to any such damage or loss against the Equipment, the Head Lessor or any affiliate thereof."