

RECORDATION NO. **10211** ^B
FILED 1979

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ASSIGNMENT OF LEASE AND AGREEMENT

between

THE BANK OF NEW YORK,
Owner,

and

LA SALLE NATIONAL BANK,
as Agent

Dated as of March 1, 1979

LESSEE'S CONSENT AND AGREEMENT

by

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Lessee

Dated as of March 1, 1979

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 1, 1979 by and between THE BANK OF NEW YORK, a New York banking corporation (the "Owner"), and LA SALLE NATIONAL BANK, not in its individual capacity but solely as Agent (the "Agent") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Owner, the Agent, St. Louis-San Francisco Railway Company ("Frisco") and the Lender referred to therein.

RECITALS

A. The Owner, the Agent and Frisco (in its capacity as the Builder) have entered into a Conditional Sale and Reconstruction Agreement dated as of the date hereof (the "Conditional Sale Agreement") providing for (a) the sale of the New Equipment to the Owner by the Builder and the assignment of the Builder's interest therein to the Agent and (b) the reconstruction of the Hulks by the Builder into the Reconstructed Equipment and the sale of the Agent's interest therein to the Owner (the terms "Builder", "New Equipment", "Hulks" and "Reconstructed Equipment" being defined in the Conditional Sale Agreement).

B. The Owner and Frisco have entered into an Equipment Lease dated as of the date hereof (the "Lease"), providing for Frisco to lease from the Owner the New Equipment and the Reconstructed Equipment (collectively, the "Equipment").

C. In order to provide security for the obligations of the Owner under the Conditional Sale Agreement and the Participation Agreement and as an inducement to the Agent to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement), the Owner has agreed to assign for security purposes its rights in, to and under the Lease to the Agent.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Assignment. The Owner hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the obligations of the

Owner under the Conditional Sale Agreement and the Participation Agreement, all of the Owner's right, title and interest, powers, privileges, and other benefits in, to and under the Lease, including, without limitation, the immediate right, to the exclusion of the Owner, to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from Frisco or others under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being collectively referred to herein as the "Payments"), and the right, to the exclusion of the Owner if a Default or Event of Default (as defined in the Conditional Sale Agreement) shall have occurred and be continuing, to make all waivers and agreements, to give all notices, consents, approvals and releases, to take all action upon the happening of an Event of Default (as defined in the Lease) and to do any and all other things whatsoever which the Owner is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Owner is or may become entitled under the Lease, and to enforce compliance by Frisco with all the terms and provisions thereof.

2. Application of Payments. The Agent agrees to accept any Payments made by Frisco or others pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner under the Conditional Sale Agreement, and to provide for the payments required to be made to the Agent and the Lenders (as defined in the Lease) pursuant to the Lease or the Participation Agreement (including, without limitation, payments under sections 9.4 and 11.2 of the Participation Agreement), and so long as no Default or Event of Default (as defined in the Conditional Sale Agreement) shall have occurred and be continuing, any balance shall be paid to the Owner, or to such other party as the Owner may direct in writing, in federal funds not later than the first Business Day (as defined in the Lease) following receipt of such balance. If the Agent shall not receive any payment under the Lease when due, the Agent shall notify the Owner at the address set forth in the Lease, provided that the failure of the Agent to so notify the Owner shall not affect the obligations of the Owner hereunder or under the Conditional Sale Agreement. If a Default or Event of Default (as defined in the Conditional Sale Agreement) shall

have occurred and be continuing, the Agent shall retain any Payments received by it until either such Default or Event of Default shall have been cured or waived pursuant to the terms of the Conditional Sale Agreement or a Declaration of Default (as defined in the Conditional Sale Agreement) is made, and shall thereafter apply such Payments as set forth in the second sentence of this section 2 or in section 7.

3. Owner's Lease Obligations Unaffected. This Assignment is executed only as security, and the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Owner under the Lease, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner to Frisco under the Lease shall be and remain enforceable by Frisco and its successors and assigns against, and only against, the Owner or persons other than the Agent and any of the Lenders (as defined in the Lease).

4. No Waiver or Modification of Lease. To protect the security afforded by this Assignment the Owner agrees that, without the written consent of the Agent, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge Frisco of or from the obligations, covenants, conditions and agreements to be performed by Frisco under the Lease, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein, or enter into any agreement amending, modifying or terminating the Lease, and the Owner agrees that any amendment, modification or termination of the Lease without such consent shall be void, provided that the Owner may amend or supplement the Lease, pursuant to the provisions of sections 3.4 and 8.2 of the Lease, to provide for an increase or decrease of amounts due as rentals under section 3 thereof and/or Casualty Values under section 9.2 thereof provided that no such decrease shall reduce such amounts below those necessary to satisfy the obligations of the Owner under the Conditional Sale Agreement, notwithstanding any limitation of liability of the Owner contained therein.

5. Agent Constituted as Owner's Attorney. The Owner does hereby constitute the Agent the Owner's true and lawful attorney, irrevocably, with full power (in the name of the Owner, or otherwise), to ask, require, demand, and receive, any and all Payments due and to become due under or arising out of the Lease to which the Owner is or may

become entitled, to enforce compliance by Frisco with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable in the premises.

6. Termination of Assignment. When and only when the Agent shall have received the full Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement), together with interest and all other indebtedness and payments as provided in the Conditional Sale Agreement and the Participation Agreement, and all the Owner's obligations contained in the Conditional Sale Agreement and the Participation Agreement shall have been performed, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in, to and under the Lease shall revert to the Owner.

7. Action on Event of Default. If an Event of Default as defined in the Conditional Sale Agreement shall have occurred and be continuing, the Agent may declare all sums secured hereby immediately due and payable and may apply all amounts received hereunder to the payment of the amounts due and payable by the Owner under the Conditional Sale Agreement and the Participation Agreement as provided in section 19(g) of the Conditional Sale Agreement.

8. Further Assurances. The Owner will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will re-file, re-register, re-record or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Agent in order to confirm, or further assure, the interests of the Agent hereunder.

9. Further Assignment by Agent. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder, provided the Owner and Frisco shall not be bound to honor such assignment until they have received written notice thereof. The Owner and Frisco may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

10. Prohibition Against Liens. The Owner will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns (other than the Agent) and not arising out of the transactions contemplated by the Conditional Sale Agreement or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), which, if unpaid, might become, a Lien (as defined in the Lease) on the Lease or the rentals and other payments due and to become due thereunder, and will promptly discharge any such Lien which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent in or to the Lease and the rentals and other payments due or to become due thereunder.

11. Governing Law. This Assignment is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York.

12. Notices. The Owner shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in section 24 of the Conditional Sale Agreement, or at such other address as the Agent shall designate.

13. Concerning the Rights and Obligations of the Owner. The terms of this Assignment (a) shall not impose any obligations on the Owner under the Lease or under the Conditional Sale Agreement in addition to the obligations imposed on the Owner by the Lease and by the Conditional Sale Agreement or in any way limit the effect of sections 20.2 and 25 of the Conditional Sale Agreement or limit the Owner's rights under section 18 of the Conditional Sale Agreement and (b) notwithstanding any other provision of this Assignment (including, but not limited to, any provision of section 1 and section 4), shall not (i) empower the Agent in any way to waive or release Frisco's obligation to pay amounts under the Lease in excess of the amounts required to discharge the obligations of the Owner under the Conditional Sale Agreement or (ii) limit the effect of section 12.2 of the Participation Agreement.

14. Miscellaneous. The captions in this Assignment are for convenience of reference only and shall

not define or limit any of the terms or provisions hereof. References herein to sections without reference to the document in which they are contained are references to this Assignment. This Assignment may be executed in any number of counterparts, all of which together shall constitute but one and the same instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart.

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

THE BANK OF NEW YORK

[Seal]

By *Wm. D. Foy*
(Title)
Vice President

Attest:

Frank M. Murphy
Deputy Secretary

LA SALLE NATIONAL BANK,
not in its individual capacity
but solely as Agent

[Seal]

By *Arthur J. ...*
(Title)
VICE PRESIDENT

Attest:

Wm. ...
ASSISTANT SECRETARY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ^{16th} day of March, in the year 1979, before me personally came Roland K. Weber, to me known, who being by me duly sworn, did depose and say that he resides at 1201 Jordan Dr. York, Pa. that he is Vice President of the Bank of New York, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Debra A. McIntosh
Notary Public

[NOTARIAL SEAL]

DEBRA A. McINTOSH
Notary Public, State of New York
No. 41-4654099
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this ^{14TH} day of March 1979, before me personally appeared Roland K. Weber, to me personally known, who, being by me duly sworn, says that he is a Vice President of La Salle National Bank, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was on March 13, 1979 signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

John F. Hartman
Notary Public

[NOTARIAL SEAL]

LESSEE'S CONSENT AND AGREEMENT

The undersigned, ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Missouri corporation ("Frisco"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) Frisco will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease in immediately available funds by 11:00 a.m., New York time, on the date due to La Salle National Bank, not in its individual capacity but solely as agent (the "Agent"), the assignee named in the Assignment, at 135 South La Salle Street, Chicago, Illinois 60690 (or at such other address as may be furnished in writing to the undersigned by the Agent);

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the representations, warranties, indemnities, agreements and covenants of Frisco under the Lease as though the Agent were originally named therein as the Lessor;

(3) Frisco will not assert against the Agent any claim or defense which Frisco may now or hereafter have against the Lessor;

(4) the Agent shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Agent, be amended, terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in

accordance with the laws of the State of New York.

Dated as of March 1, 1979

[Seal]

ST. LOUIS-SAN FRANCISCO RAILWAY
COMPANY

Attest:

J. M. Butler
(Title)
Asst. Secretary

By *Ronald E. Ely*
(Title)
Vice President

The foregoing Consent and Agreement is hereby
accepted as of the date set forth above.

[Seal]

LA SALLE NATIONAL BANK,
not in its individual capacity
but solely as Agent

Attest:

M. Minkovic
(Title)
ASSISTANT SECRETARY

By *Paul J. ...*
(Title)
VICE PRESIDENT

STATE OF MISSOURI)
) ss.:
CITY OF ST. LOUIS)

On this *19th* day of March 1979, before me personally appeared **DONALD E. ENGLE**, to me personally known, who, being by me duly sworn, says that he is Vice President of St. Louis-San Francisco Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires August 2, 1981

Mary L. Allhoff
Notary Public **Mary L. Allhoff**

[NOTARIAL SEAL]

Commissioned within and for the County of St. Louis, Missouri which adjoins City of St. Louis, Missouri, where this act was performed.

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this *14th* day of March 1979, before me personally appeared Roland K. Weber, to me personally known, who, being by me duly sworn, says that he is a Vice President of La Salle National Bank, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was on March 13, 1979 signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

John F. ...
Notary Public

[NOTARIAL SEAL]

My Commission Expires

My Commission Expires August 24, 1982