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INTERSTATE COMMERCE COMMISSION

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EXECUTED IN 12 COUNTERPARTS OF  
WHICH THIS IS COUNTERPART No. 2

LEASE OF RAILROAD EQUIPMENT

Dated as of January 23, 1973

between

THEODORE L. DALEIDEN, Trustee

and

C. PERRY BASCOM, Trustee,

Lessor

and

MANUFACTURERS RAILWAY COMPANY,

Lessee

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## LEASE

THIS LEASE, dated as of January 23, 1973 between MANUFACTURERS RAILWAY COMPANY, a Missouri corporation (herein called "Lessee"), and THEODORE L. DALEIDEN and C. PERRY BASCOM, as Trustees under the Trust Agreement dated as of January 23, 1973 between said Trustees and INDUSTRIAL LEASING CORPORATION, as Beneficiary (said Trustees herein called "Lessor");

WHEREAS, Lessor has agreed to purchase certain used railroad equipment stock from St. Louis Refrigerator Car Company, an unincorporated common law Trust (herein called "Seller"), under a Purchase Agreement dated as of the date hereof (herein called "Purchase Agreement") and has entered into a Reconstruction Agreement dated as of the date hereof (herein "Reconstruction Agreement") with Seller for the reconstruction of said equipment in the manner described therein.

WHEREAS, pursuant to a Finance Agreement dated as of the date hereof (herein called "Finance Agreement"), among Seller, Lessor, Lessee and Northwestern National Life Insurance Company (herein called "Vendor"), Lessor has transferred to Vendor the security title in and to the property described on Schedule A attached hereto (herein called the "Leased Property"), and Vendor has entered into a Conditional Sale Agreement with Lessor providing for the sale of such security title to the Leased Property to the Lessor;

WHEREAS, Lessee desires to lease all of the units of the Leased Property or such lesser number of units of the Leased Property as are delivered by Seller under the Purchase Agreement and accepted by Lessee under this Lease on or prior to June 30, 1973 at the rentals and upon the terms and conditions hereinafter provided.

SECTION 1. LEASE OF PROPERTY; TERM. Lessor agrees to deliver and lease to Lessee, the Leased Property to be purchased by Lessor under the Purchase and Reconstruction Agreements and described in Schedule A hereto; provided, however, that no unit

of Leased Property may be delivered and leased hereunder later than June 30, 1973. Lessor will cause each unit of Leased Property to be delivered to Lessee at Lessee's tracks in St. Louis, Missouri. Upon such delivery, Lessee will cause one or more employees of Lessee, as the authorized representative or representatives of Lessee, to inspect and accept delivery of each unit of Leased Property pursuant to this Lease, and Lessee will deliver to Lessor a Certificate of Acceptance in the form of Exhibit A to this Lease, whereupon the Leased Property shall be deemed to have been delivered to and accepted by Lessee and will be subject thereafter to all the terms and conditions of this Lease. Lessee hereby agrees that the execution of the Certificate of Acceptance for any unit of Leased Property by such employee or employees on behalf of Lessee shall, without further act, irrevocably constitute acceptance by Lessee of the Leased Property for all purposes of this Lease. The lease term for any unit of Leased Property shall commence on the date of the Certificate of Acceptance for such unit and shall end on the date ten (10) years after the commencement date of the base term, both dates inclusive, unless this Lease is earlier terminated as provided herein.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Leased Property, upon default by Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lease is not so in default under this Lease.

SECTION 2. RENT. Lessee shall pay Lessor base rent for each unit of Leased Property subject to this Lease for the period from and including the date of the acceptance of such unit pursuant to Section 1 hereof to and including the end of the base term for such unit, in forty (40) equal quarterly installments, in arrears, each in an amount of

\$463.56 per car. The base rent shall be due and payable on the first day of the month following the completion of the first quarter of the base term and on the same day of each of the next succeeding thirty-nine (39) quarters all as set forth more fully in Schedule B hereto. The commencement date of the base term of this Lease shall be the first day of the month following the month in which Certificates of Acceptance have been received for all units of Leased Property, but in no event later than July 1, 1973.

SECTION 3. PAYMENT OF RENT. All rent shall be paid by Lessee to Lessor at 111 Westminister Street, Providence, Rhode Island 02903, Attention: Leo Chausse. Any rental payment not paid when due shall be subject, to the extent legally enforceable, to a late charge equal to 9-1/2% per annum of the overdue rentals for the period of time during which such rentals are overdue or such lesser amount as may be legally enforceable. This Lease is a net lease and Lessee's obligations to pay all rent payable hereunder shall be absolute and unconditional and all such rent shall be paid notwithstanding any circumstances, including, without limitation (i) any matters of abatement, set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor or Vendor or anyone else for any reason whatsoever, (ii) any defect in the title, compliance with specifications, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, any unit of Leased Property or an interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

SECTION 4. IDENTIFICATION MARKS. Lessee shall keep each unit of the Leased Property numbered with the identifying number indicated in Schedule A hereto and as set forth in the Certificate of Acceptance for such unit and shall keep each side of each such unit plainly, distinctly, permanently and conspicuously marked, in letters not less than one-half inch in height, with the name of Lessor followed by the word "Owner" and the name of Vendor followed by the words "Secured Party" or other appropriate words designated by Lessor or Vendor, and make changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor or Vendor to the Leased Property and its rights under this Lease. Lessee will replace promptly any such name and words which may be removed, defaced or destroyed. Lessee will not change the numbers of any such units except with the consent of Lessor or Vendor and in accordance with a statement of new numbers to be substituted therefor, which statement shall have been previously filed with Lessor and Vendor by Lessee so that Lessor may promptly file and record the same with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in all other public offices where this Lease shall have been filed or recorded. The cost of marking any change in the numbers of any unit of Leased Property shall be borne by Lessee. Except as otherwise provided in this Section, Lessee will not allow the name of any person, association or corporation to be placed on the Leased Property as a designation which might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Leased Property to be lettered with the name, emblem, or initials of Lessee or of a subsidiary or affiliated company controlling or controlled by Lessee (or of any sub-lessee if the sublease shall be permitted under this Lease).

SECTION 5. MAINTENANCE, OPERATION AND REPAIRS. Lessee agrees for the benefit of the Lessor and the Vendor, that Lessee, at its own cost and expense, shall maintain, service and repair each unit of Leased Property to the same extent as Lessee would, in the prudent management of its properties, maintain, service and repair similar equipment owned by Lessee and in any event to the extent required to maintain such equipment in good operating condition (ordinary wear and tear excepted) and in compliance with any applicable requirements of law or of any federal, state or local governmental authority having jurisdiction,

including, but not limited to (i) the interchange rules of the Association of American Railroads and (ii) all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Property. Lessee will not permit any unit to be used or operated in violation of any law or any rule, regulation or order of any such governmental authority having jurisdiction, unless the validity thereof is being contested in good faith and by appropriate proceedings, but only so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any unit or interest therein. In case any additional or other equipment or appliance on any unit of Leased Property shall be required to be installed on any such unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such additions and replacements at its own expense.

Lessee will make and be responsible for any and all replacements, repairs or substitutions of parts of the Leased Property required to keep the Leased Property in such good operating condition. All replacements and repairs shall become the property of Lessor, as shall all additions if not removable without impairing the value of the Leased Property. Without the prior written consent of Lessor, Lessee shall not alter or improve the Leased Property. Lessee will bear all costs incurred in connection with the use and operation of the Leased Property including, but not limited to, labor, material, energy or supplies.

**SECTION 6. INSPECTION AND REPORTS.** At all reasonable times Lessor, Vendor or their authorized representatives may inspect each unit of Leased Property and the books and records of Lessee relative thereto (but such books and records shall not include books and records relating to Lessee's earnings with respect to the Leased Property), and, at such times as Lessor or Vendor may reasonably request, Lessee will furnish Lessor or Vendor accurate statements regarding the condition and state of repair of the units. Lessor or Vendor shall have no duty to make any such inspection or inquiry and shall not incur any liability or obligation by reason of not making any such inspection or inquiry. During any storage period provided in this Lease, Lessee will permit Lessor, Vendor or any person

designated by them, including authorized representatives of any prospective purchaser or lessee of any unit, to inspect the same. Any such inspection made by Lessor or Vendor, their agents, servants or employees shall be at Lessor's or Vendor's risk of loss and damages for injuries to such persons or other persons and to property which may be caused by the negligence of such inspectors. Lessee shall not be liable, except in the case of its negligence or that of its employees or agents, for any injury or death to any person exercising, either on behalf of Lessor, Vendor or any prospective purchaser or lessee, the rights of inspection granted hereunder.

Lessee agrees to furnish to Lessor and Vendor once in each year of this Lease, an accurate inventory of the Leased Property in actual service, and shall indicate therein the road numbers and the description of the units of the Leased Property as may have been destroyed, and of all units then undergoing or then withdrawn from service for general repairs.

Within 10 days after its annual audit has been completed, but in no event later than six months after the close of each fiscal year, Lessee will promptly furnish to Lessor and Vendor a balance sheet as of the end of such year and a profit and loss statement for the year then ended prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and certified by independent certified public accountants satisfactory to Lessor. Lessee shall also furnish such other financial information as Lessor or Vendor may reasonably request from time to time.

The Lessee agrees to prepare and deliver to the Lessor, with a copy to the Vendor, within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports required to be filed by the Lessor, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Leased Property or the leasing of the units of Leased Property to the Lessee.

**SECTION 7. LESSEE'S REPRESENTATIONS AND WARRANTIES.**

Lessee represents and warrants to Lessor that: (1) Lessee is a corporation duly organized and existing in good standing under

the laws of the State of Missouri and is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) Lessee has full power, authority and legal right to enter into and perform this Lease, and the execution, delivery and performance of this Lease has been duly authorized by all necessary corporate action on the part of Lessee, and does not violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's articles of incorporation or by-laws, or result in the breach of, constitute a default under, contravene any provisions of, or result in the creation of any lien, charge, encumbrance or security interest upon any assets (other than Lessee's leasehold interest in the Leased Property) of Lessee under any indenture, agreement or instrument to which Lessee is a party or by which Lessee or its assets may be bound or affected; (iii) this Lease constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with the terms hereof, subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) except as set forth in a schedule furnished to Lessor, there are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other administrative or governmental agency against or affecting Lessee, which, in the reasonable opinion of Lessee, will have a material adverse effect on the financial condition or business of Lessee; (v) all financial statements of Lessee which have been furnished to Lessor, have been prepared in conformity with generally accepted accounting principles, and present fairly the financial condition of Lessee as of the dates thereof and the results of Lessee's operations for the fiscal periods covered thereby, and since such dates there has been no material adverse change in Lessee's financial condition; (vi) except for the recording of this Lease with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no recording or filing of this Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any State thereof in order to fully protect Lessor's title to and interest in each unit as against Lessee and any third parties (other than Vendor) in any applicable jurisdictions within the United States; (vii) neither the execution and delivery by Lessee of this Lease nor any of the transactions by Lessee contemplated hereby require the consent, approval or authorization of the Interstate Commerce Commission or any other federal or state governmental authority; and (viii) \$11,009 of the total

cost to Lessor of each unit of the Leased Property has been properly allocated and attributed to the rebuilding and reconstruction cost of the Leased Property in accordance with generally accepted accounting principles and the accounting rules of the Interstate Commerce Commission.

SECTION 8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. LESSOR SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, MERCHANTABILITY, DESIGN, OPERATION OR FITNESS FOR USE OF ANY UNIT OF LEASED PROPERTY, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OF LEASED PROPERTY, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have, under the provisions of Section 8 of the Reconstruction Agreement. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that all units of Leased Property described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

SECTION 9. TAXES. Lessee shall pay all present and future taxes and other governmental charges and any amounts in lieu of such taxes and charges and any penalties or interest on any of the foregoing, however imposed or levied or based upon the ownership, leasing, rental, sale, purchase, possession or use of the Leased Property (including, but not limited to, sales, use, franchise, excise, personal property and gross rental taxes); provided, however, that Lessee shall not be obligated to pay any taxes levied on, or measured by, Lessor's net income. Lessee shall file all ad valorem tax returns on the Leased Property and forward copies thereof and statements for taxes received to Lessor. If not thereby subjecting the Leased Property to forfeiture or sale, Lessee may at its own expense contest in good faith by appropriate proceedings the validity

or amount of any of the taxes or other governmental charges described above. Prior written notice of any such contest shall be given to Lessor together with security satisfactory to Lessor for the payment of the amount being contested. The obligations of Lessee contained in this Section shall continue notwithstanding the expiration or other termination of this Lease.

If Lessor, in computing its taxable income for any part of the term of this Lease, shall lose in whole or in part, the right to depreciation deductions computed under the double declining balance method or sum of the years-digits method described in Section 167(b)(2) and (3) of the Internal Revenue Code of 1954, as amended, for not less than \$11,009 of the cost to Lessor of each unit of Leased Property or if Lessor shall lose, in whole or in part, the benefits of the investment credit allowable to it pursuant to Section 38 of the Internal Revenue Code of 1954 as in effect on the date hereof for not less than \$11,009 of the cost to Lessor of each unit of Leased Property in any such case for either of the following reasons: (x) the determination by the Internal Revenue Service that the Lessor had not acquired and was not the owner of the Leased Property prior to the period in which the Leased Property was reconstructed by the Seller, or (y) the determination by the Internal Revenue Service that the Leased Property was not reconstructed for the Lessor in accordance with the Lessor's specifications, then, the Lessee shall pay the Lessor, as additional rent hereunder, an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, shall be equal to the additional income taxes paid or payable by the Lessor in consequence of such failure to obtain or have the right to claim, or the disallowance of, such depreciation deduction or such investment credit, together with the amount of any interest (including any additions to tax) and penalties which may be payable by the Lessor in connection with such loss, provided that the obligation of Lessee to indemnify Lessor with respect to the loss of any particular tax credit or deduction shall be terminated if such tax credit or deduction shall be barred by the Lessor's electing any other tax credit or deduction with respect to the Leased Property.

It is agreed that Lessee shall not be required to pay any additional rent as the result of the loss of such depreciation deductions or investment credit for any reasons other

than the determinations as set forth in clauses (x) or (y) above, including but not limited to the occurrence of any of the following events:

(i) an event shall occur whereby the Lessee is required by the terms of Section 12 hereof to pay, and shall pay in full, the Casualty Value for such unit;

(ii) Lessor shall lose all benefits as owner of the Leased Property because this Lease has been finally determined, by agreement with the Internal Revenue Service or a court decision (including a decision of the United States Tax Court) which may not be further appealed, not to be a "true lease";

(iii) Lessor shall fail to claim such depreciation deduction or investment credit in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction; or

(iv) Lessor shall fail to have sufficient income to benefit from the depreciation deduction or investment credit.

Subject to the conditions hereinafter set forth, in the event that the Internal Revenue Service shall at any time take any action denying the right of Lessor to claim such depreciation deductions or investment credit for either of the reasons set forth in clauses (x) or (y) above, Lessor agrees to contest such action by (i) resisting payment of any tax with respect thereto through administrative hearings, conferences, proceedings or appeals within the Internal Revenue Service or by contesting such action in the United States Tax Court or (ii) paying the tax claimed by the Internal Revenue Service and suing for a refund thereof in either the appropriate United States District Court or the United States Court of Claims, and (iii) taking any judicial or administrative appeal from any adverse determination resulting from clause (i) or (ii). In such event, Lessee agrees to pay Lessor amounts, to be held in escrow on terms mutually agreeable to Lessor and Lessee, sufficient to indemnify Lessor against loss arising out of the failure to

receive the tax treatment anticipated by Lessor. Lessee shall pay Lessor on demand the amount of all reasonable costs and expenses (including penalties and interest) incurred in contesting such action, including without limitation, attorneys' and accountants' fees and disbursements. The obligation of Lessor to take any of such steps shall be conditioned on receipt by Lessor of an opinion of independent counsel of Lessee that there is a meritorious defense to the action taken by the Internal Revenue Service with respect to such depreciation deductions or investment credit.

SECTION 10. INDEMNIFICATION. Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor, Vendor and their respective successors, assigns, agents, employees, officers and directors, from and against, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature (for purposes of this Section 10 collectively called "Expenses"), imposed on, asserted against or reasonably incurred by Lessor, Vendor or any of their respective successors, assigns, agents, employees, officers and directors in any way relating to or arising out of this Lease, the Conditional Sale Agreement, the Finance Agreement, the ordering, acquisition, ownership, delivery, lease, possession, use, operation, condition, sale or other disposition of any unit of Leased Property (including, without limitation, latent and other defects, whether or not discoverable by Lessor or Lessee; and any claim for patent, trademark or copyright infringement), except only that Lessee shall not be required to indemnify Lessor, Vendor or their respective successors, assigns, agents, employees, officers and directors for (i) Expenses to be borne pursuant to the express provisions hereof by the party otherwise to be indemnified hereunder, (ii) Expenses resulting from the willful misconduct or gross negligence of the party otherwise to be indemnified hereunder, (iii) Expenses resulting from the failure by the party otherwise to be indemnified hereunder to perform or observe any agreement in this Lease, the Conditional Sale Agreement or the Finance Agreement, or (iv) Expenses incurred by Lessor and Vendor in connection with the preparation, execution and delivery of this Lease, the Purchase Agreement, the Finance Agreement and the Conditional Sale Agreement.

All amounts payable by Lessee pursuant to this Section 10 shall be payable directly to the party entitled to indemnification. All the indemnities contained in this Section 10 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by Lessor and Vendor. Upon payment in full of any indemnity contained in this Section 10 by Lessee, it shall be subrogated to any rights of the individual or corporation indemnified in respect of the matter against which indemnity has been given.

SECTION 11. INSURANCE. Lessee will, without cost to Lessor, maintain or cause to be maintained in effect while this Lease shall be in effect, insurance policies insuring against loss or damage to the Leased Property from such risks and in such amounts as Lessee would, in the prudent management of its properties, maintain or cause to be maintained with respect to similar property owned by it. Notwithstanding the provisions of the foregoing sentence, however, Lessee may self-insure against such risks by deductible provisions if (i) the units are self-insured to no greater extent than any similar equipment owned by Lessee and (ii) in the event of loss or damage affecting both units and property owned by Lessee no more than a pro rata portion of such self-insurance would be applicable to the units.

Lessee will, at Lessee's sole expense, maintain or cause to be maintained in effect while this Lease is in effect, insurance policies with respect to such unit insuring against loss or damage to the person and property of others from such risks and in such amounts as Lessee would, in the prudent management of its business, maintain or cause to be maintained with respect to similar equipment owned by it; provided, however, that such insurance shall provide coverage in the amount of not less than \$2,000,000 per any one occurrence. Notwithstanding the provisions of the foregoing sentence, however, Lessee may self-insure against such risk by a deductible clause not to exceed \$250,000 per occurrence if (i) the units are self-insured to no greater extent than any similar property owned by Lessee and (ii) in the event of loss or damage affecting both the units and property owned by Lessee, no more than a pro rata portion of such self-insurance would be applicable to the units.

Any insurance policies maintained in accordance with this Section shall be in such form and with such companies as shall be satisfactory to Lessor. Certified copies or certificates of such insurance policies shall be delivered to Lessor upon demand with loss payable clauses in form satisfactory to Lessor, naming Lessor, any assignee of Lessor, and Lessee and any other parties designated by Lessor as their interests may appear. Each insurer shall agree by means satisfactory to Lessor that it will give Lessor and any other named insured 10 days written notice before any policy shall be altered or cancelled.

SECTION 12. CASUALTY OCCURRENCES. In the event that any unit of Leased Property shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor and the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. In the event of a Casualty Occurrence to any unit of Leased Property Lessee shall give Lessor written notice thereof as soon as practicable after such occurrence and shall pay the Casualty Value (as hereinafter defined) for such unit in accordance with the schedule set out below, such payment to be made on the quarterly payment date next following the date on which written notice is given; provided that, if such Casualty Occurrence occurs before the commencement date of the base term, such payment shall be made on the commencement date in an amount equal to that percentage of the Lessor's Cost as is set forth opposite Payment No. 1 in the Casualty Value schedule set out below. Upon the making of such payment by the Lessee in respect of any unit, the rental for such unit shall cease to accrue, the term of this Lease as to such unit shall terminate and (except in the case of loss, theft or complete destruction of such unit) the Lessor shall be entitled to recover possession of such unit.

The Casualty Value of each unit as of any quarterly rental payment date shall be that percentage of Lessor's Cost for such unit (Lessor's Cost being \$13,309 per unit) as is set forth in the following schedule opposite the number of such rental payment date (such numbers commencing with the due date of the first payment of base rent):

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 .....	109.1545	21 .....	74.9225
2 .....	108.5934	22 .....	72.8856
3 .....	107.9409	23 .....	70.8017
4 .....	107.1951	24 .....	68.6709
5 .....	106.3543	25 .....	66.4940
6 .....	105.4303	26 .....	64.2814
7 .....	104.4219	27 .....	62.0339
8 .....	103.3275	28 .....	59.7528
9 .....	102.1459	29 .....	53.6955
10 .....	100.8887	30 .....	51.3604
11 .....	99.5551	31 .....	49.0054
12 .....	98.1439	32 .....	46.6324
13 .....	92.9105	33 .....	44.2433
14 .....	91.3541	34 .....	41.8484
15 .....	89.7304	35 .....	39.1520
16 .....	88.0389	36 .....	35.6009
17 .....	86.2790	37 .....	31.4867
18 .....	84.4618	38 .....	26.8094
19 .....	82.5873	39 .....	21.5694
20 .....	80.6554	40 .....	16.0482

Except as hereinabove provided in this Section, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any unit after delivery to and acceptance thereof by the Lessee hereunder. The payment by Lessee of the Casualty Value of any unit shall not release Lessee from its indemnity obligations with respect to such unit of Leased Property.

Any payments received at any time by Lessor or by Lessee from any governmental authority or other party (except Lessee) as a result of a Casualty Occurrence with respect to any unit will be applied as follows:

(i) any such payments received at any time by Lessee shall be promptly paid to Lessor for application pursuant to the following provisions except that Lessee may retain any amounts which Lessor would at the time be obligated to pay to Lessee under said provisions;

(ii) so much of such payments as shall not exceed the Casualty Value required to be paid by Lessee pursuant to Section 12 shall be applied in reduction of Lessee's obligation to pay such Casualty Value, if not already paid by Lessee, or, if already paid by Lessee, shall be applied to reimburse Lessee for its payment of such Casualty Value, unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing; and

(iii) Lessor shall be entitled to the balance, if any, of such payments remaining thereafter, except if such balance is the result of payments made pursuant to the interchange rules of the Association of American Railroads, as such rules now exist or are hereafter amended, in which case Lessee shall be entitled to such balance unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing.

SECTION 13. POSSESSION AND USE BY LESSEE. Lessee will not deliver, transfer or relinquish possession of any unit of Leased Property except that, unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, Lessee shall have the right to:

(a) Possession and use of the units by Lessee upon lines of railroad owned or operated by the Lessee or upon lines of railroad over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the units upon connecting and other carriers in the usual interchange of traffic but only upon and subject to all terms and conditions of this Lease; provided, however, that Lessee shall not assign or permit the possession and use of any

unit to service involving the regular operation and maintenance of such unit outside the United States of America. Lessee may receive and retain any compensation for the use of any unit from other railroads so using any unit; and

(b) Deliver or relinquish possession of any unit to any organization for testing, overhaul, repairs, alterations, or modifications.

SECTION 14. ASSIGNMENT; SUBLEASE. Lessee hereby consents to any assignment by Lessor and any reassignment of this Lease or rents hereunder, with or without notice. Lessee agrees that it shall not assert against any assignee of Lessor, and that the rights of such assignee to the rents and other amounts payable by Lessee hereunder shall not be subject to any claim, set-off, counterclaim, recoupment, abatement or defense of any kind or nature whether by reason of any damage to or loss or destruction of any unit of the Leased Property, or any part thereof, or by reason of any defect in or failure of title of Lessor or interruption from whatsoever cause in the use, operation or possession of the Leased Property or any part thereof, or by reason of any indebtedness or liability howsoever and whenever arising of Lessor to Lessee or to any other person, firm or corporation or to any governmental authority, or for any other cause whatsoever, it being the intent hereof that Lessee shall be absolutely and unconditionally obligated to pay all such sums to such assignee. In the event of any such assignment, Lessee agrees that if directed by Lessor or by any assignee of Lessor in writing, it will (i) pay direct to such assignee any rent or other amount now or hereafter owing under this Lease and (ii) give to such assignee any notice required to be given to Lessor hereunder. Any assignee of Lessor shall have all the rights, powers, privileges and remedies of Lessor hereunder (whether or not the applicable provisions of this Lease contain express reference to any such assignee) but none of Lessor's obligations; provided, however, no such assignment shall in any way relieve Lessor of any obligations hereunder. Lessee shall not enter into any sublease with respect to the Leased Property or any part thereof or make or permit any assignment of this Lease or Lessee's interest thereunder without the prior written consent of Lessor. This Lease shall inure to the benefit of the successors and assigns of Lessor and shall be binding on Lessee's successors.

SECTION 15. EVENTS OF DEFAULT. The following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or otherwise):

(a) Lessee shall fail to make any payment of rent when the same shall become due and such failure shall continue unremedied for a period of ten (10) days; or

(b) Lessee shall fail to maintain insurance with respect to the Leased Property as required by Section 11 hereof, and such failure shall continue unremedied for a period of ten (10) days after written notice thereof by Lessor; or

(c) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any unit of Leased Property or any interest in this Lease or any unit of Leased Property or shall permit, make or suffer any unauthorized transfer of possession of any unit of Leased Property; or

(d) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of fifteen (15) days after written notice thereof by Lessor; or

(e) Any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; or

(f) If any statement furnished by Lessee pursuant to this Lease is untrue in any material respect on the date as of which the facts therein set forth are stated; or

(g) Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Lessee or any property thereof; or, in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for Lessee, or for a substantial part of its property and is not discharged within 30 days; or any bankruptcy, re-organization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee, and if instituted against Lessee is consented to or acquiesced in by Lessee or remains for 30 days undismissed.

SECTION 16. REMEDIES. In the event of Lessee's default Lessor shall, to the extent permitted by law, have the following rights and remedies:

(a) Proceed by appropriate actions at law or equity, to enforce performance by Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to Lessee, terminate this Lease and/or Lessee's rights of possession hereunder as to all or any part of the Leased Property whereupon all right, title and interest of Lessee to or in the use of such Leased Property shall terminate, and Lessor may, directly or by its agent, enter upon any premises where the Leased Property may be located and take possession thereof, any expenses of such taking to be borne by Lessee. For the purpose of delivering possession to Lessor as provided aforesaid, Lessee shall at its own cost and expense forthwith assemble all units of the Leased Property as provided in Section 17 hereof and provide storage for said units as provided in said Section 17. In the event of any such termination Lessor may (i) retain all rents and additional sums theretofore paid by Lessee hereunder, (ii) recover from Lessee all rents and additional sums accrued and unpaid under

any of the terms hereof as of the date of termination, and (iii) recover from Lessee as liquidated damages, but not as penalty, an aggregate sum which at the time of such termination represents the excess, if any, of the then Casualty Value of such Leased Property, as determined pursuant to the provisions of Section 12 hereof, over the amount received by Lessor from any public or private sale of such Leased Property provided that Lessor has given Lessee fifteen (15) business days' notice of such sale.

In addition to the foregoing, Lessor shall be entitled to recover from Lessee any and all costs and expenses which Lessor shall sustain by reason of the occurrence of any such event of default, including, without limitation, legal fees and brokerage fees and other costs and expenses as shall be expended or incurred in the taking possession, storage and sale of the Leased Property or in the enforcement of any right or privilege hereunder or in any action in connection therewith. The remedies herein provided shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law, in equity or in bankruptcy.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any Event of Default shall not constitute a waiver of any such right upon the continuation or recurrence of any such Event of Default or similar Event of Default.

**SECTION 17. RETURN OF LEASED PROPERTY.** Upon the expiration of the base term, or of any renewal term of this Lease or any prior termination of this Lease for any reason, Lessee shall return each unit of the Leased Property to Lessor in good order and repair, excepting only reasonable wear and tear by causing all units of the Leased Property to be moved, at Lessee's expense, onto Lessee's storage tracks in St. Louis, Missouri and keep all such units for a period of 90 days, without charge to Lessor for rent or storage during the first 30 days

and for the remaining 60 days if such storage tracks are available. If during the latter 60 days such storage tracks are not available and Lessee shall deliver invoices of others for such storage and any applicable transportation charges of others, such invoices shall be paid by Lessor provided that such storage was arranged by Lessee on storage tracks nearest to Lessee's lines as may have been reasonably available. Any units not delivered in accordance with this Section shall continue to be subject to all of the rights and duties of the parties set forth in this Lease.

SECTION 18. LIENS. Lessee will not directly or indirectly create, incur, assume or suffer to exist any liens, mortgages, encumbrances, pledges, charges and security interests of any kind (hereinafter called "Liens") on or with respect to any unit of Leased Property, title thereto or any interest therein, except (i) the respective rights of Lessor and Vendor as provided in this Lease and the Conditional Sale Agreement, (ii) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings do not involve, in the opinion of Lessor, any danger of the sale, forfeiture or loss of any unit of Leased Property or interest therein, (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business, which are not delinquent or the enforcement of which has been suspended, but then only for the duration of such suspension, (iv) Liens arising out of judgments or awards against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review, and (v) Liens to which Lessee's leasehold interest in the Leased Property is now or may hereafter become subject under indentures pursuant to which securities issued or assumed by Lessee are now or may hereafter be outstanding. Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge or eliminate or bond in a manner satisfactory to Lessor any such Liens not excepted above if the same shall arise at any time.

SECTION 19. RENEWAL OPTION. If no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option upon written notice to Lessor at least 90 days prior to the expiration of the base term, to renew this Lease with respect to all or any units of the Leased Property for a renewal term of two years commencing at the expiration of the base term. All of the provisions of this Lease shall be applicable during the renewal term for any unit, except that the rent for each unit leased hereunder during such renewal term shall be payable in 8 installments, quarterly in arrears, each in an amount equal to the sum of (a) 8% of the fair market value of such unit as of the end of the base term, plus (b) interest on the amount determined in (a) at a rate per annum, compounded quarterly, equal to 2% in excess of the prime rate from time to time in effect during the renewal term at the Industrial National Bank of Rhode Island. Fair market value shall be the value upon which a willing buyer and a willing seller would agree, each respectively under no compulsion to buy or sell, to be determined by agreement between Lessor and Lessee, and if they cannot agree, by an independent appraiser selected by Lessor but satisfactory to Lessee. Any such appraisals shall be made solely at Lessee's expense. Lessee may terminate the renewal term by written notice to Lessor not less than 90 days prior to the next succeeding quarterly payment date in the renewal term.

SECTION 20. RECORDING. The Lessee will promptly do any and all acts reasonably requested by Lessor to permit Lessor to cause this Lease, any assignment hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection of the Lessor's interest in the Leased Property and take such further action as Lessor may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be

created in favor of Lessor hereunder. Lessee agrees to pay the actual cost, not to exceed \$200, for the initial filing and recording of this Lease or required of the Lessor under the Conditional Sale Agreement or as required under any other document executed in connection with the Lease transaction. Lessee also agrees to pay all filing and recording fees which are required because of any amendments or supplements to this Lease, any assignment by Lessee of this Lease to the extent permitted hereunder or as may be required as a result of any other act by Lessee, but not including filing and recording fees which are required as a result of any assignment by Lessor of its interest other than the initial assignment to Vendor as security under the Conditional Sale Agreement.

SECTION 21. LESSOR'S RIGHT TO PERFORM FOR LESSEE. If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, shall be deemed additional rent hereunder and shall be payable by Lessee upon demand.

SECTION 22. SUCCESSOR TRUSTEE; CO-TRUSTEE. In the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement, such successor trustee shall, upon written notice by such successor trustee to Lessee, succeed to all the rights, powers and title of Lessor hereunder and shall be deemed to be Lessor and the legal owner of the Leased Property for all purposes hereof. The Trustees or any successor trustee from time to time serving as Lessor hereunder may from time to time appoint one or more co-trustees or separate trustees pursuant to the terms of the Trust Agreement to exercise or hold any or all of the rights, powers and title of Lessor hereunder. No such appointment of any successor trustee, co-trustee or separate trustee shall require any consent or approval by Lessee or shall in any way alter the terms of this Lease or Lessee's obligations or rights hereunder.

The appointment of one successor trustee, co-trustee or separate trustee shall not exhaust the right to appoint further successor trustees, co-trustees and separate trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Lease may be in effect.

SECTION 23. ENFORCEMENT BY VENDOR. The provisions of this Lease as they relate to the Vendor are for the benefit of the Vendor and may be enforced by the Vendor, to the same extent as if it were a party hereto, as a third-party beneficiary hereof, without any assignment thereof to such Vendor and without any responsibility by the Lessor in connection therewith.

SECTION 24. QUIET ENJOYMENT. Unless an Event of Default shall have occurred and be continuing, Lessor agrees that Lessee shall be entitled, on the terms and conditions of this Lease for any unit of Leased Property, to the uninterrupted use and quiet enjoyment of such unit as against Lessor or Vendor or any person claiming under or through the Lessor or Vendor other than as a result of any failure of Lessee to discharge any of its duties or obligations hereunder.

In the absence of an Event of Default or failure of Lessee to discharge any of its duties or obligations hereunder, Lessee shall be entitled to proceed in any court of law or equity against Lessor or Vendor or any person claiming under or through the Lessor or Vendor for the recovery of damages from and/or injunctive relief against any such party or parties who interfere with Lessee's right to uninterrupted use and quiet enjoyment of any unit of Leased Property as provided in this Section 24. Nothing contained in this Section shall in any way affect the obligations and duties of the Lessee, including but not limited to, the payment of rent as provided in Section 3 hereof.

SECTION 25. NOTICES. All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when delivered or deposited in the United States mail, with proper postage for certified mail prepaid, addressed, if to Lessee at 2850 South Broadway, St. Louis, Missouri 63118, Attention: R. W. Schmidt, and if to

Lessor addressed to it at its office at 111 Westminster Street, Providence, Rhode Island 02903, Attention: Theodore L. Daleiden, with a copy to C. Perry Bascom c/o Bryan, Cave, McPheeters & McRoberts, 500 North Broadway, St. Louis, Missouri 63102, or, as to either party, at such other address as such party shall from time to time designate in writing to the other party.

SECTION 26. MISCELLANEOUS. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any unit of Leased Property except as a Lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of Missouri, including all matters of construction, validity and performance; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing and recording hereof. Although this Lease is dated as of January 23, 1973 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

[CORPORATE SEAL]

MANUFACTURERS RAILWAY COMPANY,

as Lessee

ATTEST:

M. H. Smith  
Assistant Secretary

By R. W. Schmidt  
President

WITNESS:

James Thomas

Theodore L. Daleiden, Trustee  
Theodore L. Daleiden

John H. ...

C. Perry Bascom, Trustee  
C. Perry Bascom

as Lessor

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

On this 2nd day of march, 1973, before me personally appeared RALPH W. SCHMIDT, to me personally known, who, being by me duly sworn, says that he is the President of MANUFACTURERS 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.

Ronald K. Stillman

Notary Public

Notary for the County of St. Louis  
which adjoins the City of St. Louis

[NOTARIAL SEAL]

My Commission Expires:

My Commission Expires December 6, 1973

STATE OF RHODE ISLAND )  
COUNTY OF PROVIDENCE ) ss.:

On this 22nd day of February, 1973, before me personally appeared THEODORE L. DALEWIDEN, to me personally known, who, being by me duly sworn, says that he is a Trustee under a Trust Agreement dated as of January 23, 1973 with Industrial Leasing Corporation as Beneficiary, that said instrument was signed on behalf of said Trust, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Trust.

Francis H. Chapman  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

My Commission Expires June 30, 1976

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

On this 28<sup>th</sup> day of February, 1973, before me personally appeared C. PERRY BASCOM, to me personally known, who, being by me duly sworn, says that he is a Trustee under a Trust Agreement dated as of January 23, 1973 with Industrial Leasing Corporation as Beneficiary, that said instrument was signed on behalf of said Trust, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Trust.

Dolores Clark  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

My Commission Expires May 11, 1976

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

SCHEDULE A TO LEASE

<u>Quantity</u>	<u>Description</u>	<u>Lessee's Road Numbers (inclusive)*</u>
21	40' 50 ton Standard Gauge Railroad General Service Boxcars	MRS 5220-5240

\* to be assigned to units of Leased Property

SCHEDULE B TO LEASE

[This Schedule will be completed upon the commencement date of the base term of the Lease]

<u>Rent Payment No.</u>	<u>Due Date</u>	<u>Total Base Rent</u> <u>Per Unit</u>	<u>Total</u>
1		\$463.56	
2			
3			
4			
5			
6			
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8			
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EXHIBIT A  
TO  
LEASE

CERTIFICATE OF ACCEPTANCE

This CERTIFICATE OF ACCEPTANCE, dated as of 197\_\_, executed and delivered by MANUFACTURERS RAILWAY COMPANY, a Missouri corporation ("Lessee") to THEODORE L. DALEIDEN and C. PERRY BASCOM, as Trustees under the Trust Agreement dated as of January 23, 1973 ("Trust Agreement") between the Beneficiary named therein and said Trustees (herein in their capacity as Trustees being called "Lessor"),

W I T N E S S E T H:

WHEREAS, Lessor and Lessee have heretofore entered into that certain Lease dated as of January 23, 1973 (herein called the "Lease" and the terms defined therein being hereinafter used with the same meaning), which Lease provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purpose of confirming delivery and acceptance of the units of Leased Property leased under the Lease;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessee hereby confirms and agrees as follows:

1. Lessee hereby accepts and leases from Lessor under the Lease, the units or unit of Leased Property (the "Delivered Unit") which are described below:

Description of  
Unit

Lessee's Road Numbers

2. The acceptance date of the Delivered Unit is the date of this Certificate of Acceptance set forth in the opening paragraph hereof.

3. Lessee hereby confirms to Lessor that the Delivered Unit has been duly inspected in accordance with Section 1 of the Lease and duly marked in accordance with the terms of Section 4 of the Lease and that Lessee has accepted the Delivered Unit for all purposes hereof and of the Lease; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right which Lessee or Lessor may have with respect to the Delivered Unit against Seller or any subcontractor of Seller under the Purchase Agreement.

4. The undersigned, as the authorized representative of Lessor, hereby accepts the Delivered Units on behalf of the Lessor under the Purchase Agreement.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be duly executed as of the day and year first above written and to be delivered in the State of Missouri.

MANUFACTURERS RAILWAY COMPANY,  
as Lessee

By \_\_\_\_\_  
(Title)