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INTERSTATE COMMERCE COMMISSION

LEASE OF EQUIPMENT

THIS AGREEMENT, entered into as of this 6<sup>th</sup> day of April, 1970, by and between AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation, whose address is Missouri Pacific Building, 210 North 13th Street, St. Louis, Missouri 63103, hereinafter referred to as "Lessor", and MISSISSIPPI LIME COMPANY, a Missouri corporation, whose address is 7 Alby Street, Alton, Illinois 62002, hereinafter referred to as "Lessee", WITNESSETH:

R E C I T A L S:

The parties hereto have reached an understanding with respect to Lessor's arranging for the construction of 100 covered hopper cars and the leasing of said cars by Lessor to Lessee, and desire to set forth in writing their agreement with respect thereto.

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

1(a) Lessor hereby lets to Lessee and Lessee hereby hires from Lessor the following railroad equipment:

100 100-ton covered hopper cars, AAR  
mechanical designation IO,  
numbered MLCX 716500-599,  
inclusive,

hereinafter referred to collectively as "cars" and separately as "car", upon the terms and conditions herein contained.

(b) The cars at the time of delivery thereof to Lessee will conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads, interpreted as being applicable to railroad equipment of the character of the cars as of the date of this agreement.

2. The term of this agreement shall commence as to each of the cars to be leased hereunder with the date of delivery of said car or cars and, unless sooner terminated as hereinafter provided, shall continue for a period of 5 years from the average date of delivery of all of the cars to be leased

shall be made on the first day of each succeeding month. The last payment of rental shall cover the number of days from the first day of the final month to the termination date of this agreement at the pro rata rate per day.

6(a) Any mileage allowances, rentals and/or other compensation payable by railroads by reason of the use of the cars (hereinafter referred to as "allowances") shall be collected by Lessor, and in connection therewith, Lessee agrees to report to Lessor movements of the cars giving therein the date, destination and routing of the cars together with all information which Lessee may receive from railroads or from any other source.

(b) Lessee agrees, insofar as possible, to so use the cars that their total mileage under load will equal or exceed their mileage empty on each railroad over which the cars move. In the event that the empty mileage of the cars should exceed their loaded mileage on any railroad and Lessor is notified by such railroad to equalize such mileage with loaded mileage or to pay for such excess empty mileage, Lessee, after notice from Lessor, shall equalize such excess empty mileage within the time limit established by such railroad or pay Lessor for such excess at the rate established by the tariff of such railroad.

(c) Insofar as applicable laws and regulations permit, Lessee (unless an event specified in paragraph 14 hereof shall have occurred and be continuing) shall be entitled to all allowances collected by Lessor from railroads as a credit against fixed rents and any amounts that Lessee may be required to pay Lessor in accordance with subparagraph 6(b) hereof, but in no event shall such credit exceed the sum of such obligations during the term of this agreement. The aforesaid mileage credits will be reported to Lessee on or about the last day of the second month succeeding the month during which such mileage shall be earned.

7. Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, and by payments and performance hereunder it does not and will not have or obtain any title to the cars or any of them at any time subject to this agreement, nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder and subject to all of the terms hereof. Lessee shall keep the cars free from any encumbrance or lien which

may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title. This agreement is expressly subject, junior and subordinate to the title, rights, powers and remedies of the Manufacturer-Vendor or its Assignee, under any Conditional Sale Agreement or other financing arrangement under which the cars were acquired.

8. Responsibility for loss or destruction of, or damage to, cars or parts thereof or appurtenances thereto furnished under this agreement shall be as fixed by the then prevailing Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the Interchange of Traffic, promulgated by the Association of American Railroads, and said Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing to such Code of Rules and moving the cars over its lines in respect of all matters to which said Code of Rules relate. In the event that any car is lost, damaged or destroyed while on the tracks of Lessee, any private track, or on the track of a railroad that does not subscribe to such Code of Rules, or in the event that any car is damaged or destroyed by any commodity which may be transported or stored in or on such car, such repairs, renewals or replacements as may be necessary to replace the car or to place it in good order and repair shall be at the sole cost and expense of Lessee. Lessor shall not in any event be liable for any damage to or loss of the whole or any part of any shipment made in such cars. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested, but without affecting their respective obligations under this paragraph, to establish proper claims against parties responsible for loss or destruction of or damage to the cars.

9(a) Except where responsibility is placed upon others as provided in paragraph 8, Lessor agrees to maintain the cars, at its expense in good condition and repair, according to the Code of Rules heretofore mentioned. No repairs other than ordinary running repairs shall be made without Lessor's prior written consent.

(b) If any of the cars become unfit for service and are reported to Lessor as needing repairs, rental charges for such car or cars shall abate from and after a period of five (5) days from the date when each such car is so reported and made empty and until it is repaired and released from shop or replaced by another car.

(c) Lessor shall have the right but shall not be obligated to substitute, for any of the cars which shall be damaged or destroyed, another car of similar type and capacity.

10. Lessor agrees to bear all property taxes levied on the cars and to file all reports relating thereto; provided, however, that Lessee will comply with all laws requiring it to withhold taxes and file appropriate reports or amounts due Lessor as car hire, and will thereafter advise Lessor of all pertinent facts in connection therewith so that Lessor may reimburse or credit Lessee.

11(a) Lessor will not be responsible for the payment of any tariff, duty, customs, switching, demurrage or other charges made by any governmental, railroad or other agency in respect of any of the cars except as specifically provided herein, and Lessee agrees to reimburse Lessor for any such charges.

(b) Lessor will not have any liability to Lessee for loss of use of any car or cars regardless of the cause thereof.

12. Except where responsibility is placed on others as provided in paragraph 8, Lessee agrees to indemnify and save harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees, arising out of or as a result of the use and/or operation of the cars during the term of this agreement, or by reason of any default by Lessee under this agreement. Lessor shall not be liable for any loss of or damage to anything loaded in or on the cars and makes no representation as to the suitability of the cars for use in any particular service.

13(a) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, with or without notice to Lessee, but subject to Lessee's rights under this agreement. In the event of any such assignment, etc., this lease shall become subordinate to and subject to the terms, covenants and conditions of such instrument and to all of the rights of the assignee or other holder of the legal title to such cars and the cars may be re-lettered or marked at Lessor's expense, to identify the legal owner of the cars.

(b) Without the prior written consent of Lessor, Lessee shall not (i) assign, transfer or encumber its leasehold

interest under this agreement in the cars or any of them, (ii) loan, hypothecate or otherwise transfer or dispose of any of the cars, or (iii) sublease any of the subject cars. Any such assignment, transfer, loan, subletting, etc., of cars consented to by Lessor shall in no way relieve Lessee from any of its obligations to Lessor under the terms of this agreement.

14. If (a) Lessee shall fail to carry out and perform any of its obligations under this agreement within twenty (20) days after Lessor shall have demanded in writing performance thereof, or (b) if a petition in bankruptcy or for reorganization or for a trustee or receiver is filed by or against Lessee and all of the obligations of Lessee under this agreement shall not have been duly assumed by the trustee or receiver appointed, if any, in such proceeding or otherwise given the same status as obligations assumed by the trustee or receiver within thirty (30) days after the appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier, or (c) if Lessee shall make a general assignment for the benefit of creditors, then and in any such event Lessor may take possession of the cars and any accessions thereto wherever they may be found, and, may, at the election of Lessor or its assignee, as the case may be, either (i) declare the agreement terminated, in which event all rights and obligations of the parties hereunder shall cease except only Lessee's rental or other obligations which have accrued to the date of retaking, or (ii) attempt to relet the cars as agent of the Lessee, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new Lessee, then to the payment of amounts due Lessor under this lease, and Lessee shall remain liable for any sums remaining due after so applying the proceeds so realized and Lessee shall and hereby agrees to pay said deficit monthly as the same may accrue to the end of the term of this agreement.

15(a) Lessee agrees to furnish Lessor promptly, at Lessor's request, with complete and accurate information reasonably required for the efficient administration of this agreement.

(b) Lessor or its assignee shall have the right, by its authorized representatives, to inspect the cars, at the sole cost and expense of Lessor, at such times as shall be deemed necessary.

16. If any car is withdrawn or diverted from the use of Lessee pursuant to regulation, order or direction of any governmental agency having authority, such action shall not terminate this agreement or affect the rights and obligations of the parties hereto, except that in every such case all rights and liabilities of the parties hereto as to any car so withdrawn shall be suspended until such car or replacement thereof shall have been made available to Lessee, and any such withdrawal, diversion or non-furnishing shall not be deemed a breach of this agreement by either party.

17. On termination of this agreement, howsoever, Lessee, at its sole cost and expense, shall thoroughly clean the interior of each car and shall return all the cars to the Lessor at Lessor's St. Louis, Missouri shop or at such other point as Lessor and Lessee may then mutually agree upon; provided, however, that any car loaded on or before the next to the last day before termination of this agreement may complete the loaded trip, and return of such car to Lessor shall be made at the time such car is released after unloading; and provided further, that each car leased hereunder shall remain subject to the terms and conditions of this agreement until return thereof.

18. This agreement is subject to all governmental laws, rules, regulations and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions.

19. Lessee shall comply with all governmental laws, regulations, and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance, and operation of each of the cars. In case any equipment or appliance on any of the cars shall be required to be changed or replaced, or in case any additional or other equipment or appliance shall be required to be installed on any of the cars in order to comply with such laws, regulations, requirements, and rules, Lessor agrees to cause such changes, additions and/or replacements to be made at its cost and expense. Any part or parts installed or replacements made upon any of the cars by Lessee shall be considered accessions to

the cars and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be signed in their respective names as of the day and year first above written.

ATTEST:

B. A. Stege  
Secretary

AMERICAN REFRIGERATOR TRANSIT COMPANY

By W. E. J. J.  
President

ATTEST:

G. Howard  
Secretary

MISSISSIPPI LIME COMPANY

By W. B. Bellinger  
President



STATE OF ILLINOIS     )  
                                  )   SS  
CITY OF ALTON         )

On this 6<sup>th</sup> day of April, 1970, before me personally appeared Homer J. Ballinger, to me personally known, who, being by me duly sworn, says that he is President of Mississippi Lime 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.

Charles W. Good  
Notary Public

My Commission Expires:

August 19, 1973.

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

The undersigned, being the duly authorized representative of MISSISSIPPI LIME COMPANY (hereinafter referred to as "Lessee") hereby certifies that the following railroad equipment bearing Lessor's identification marks "MLCX" and the following numbers

has been delivered in good order and running condition by AMERICAN REFRIGERATOR TRANSIT COMPANY (hereinafter referred to as "Lessor"), was inspected and found to be clean, and was accepted by the undersigned on \_\_\_\_\_ at \_\_\_\_\_ on behalf of Lessee, in accordance with the provisions of the Lease of railroad equipment dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 1970, between Lessor and Lessee.

The undersigned further certifies that there was plainly marked upon each side of each unit of said railroad equipment at the time of its delivery and acceptance the following words in stenciled letters:

American Refrigerator Transit Company, Lessor

Mississippi Lime Company, Lessee

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1970.

MISSISSIPPI LIME COMPANY

Duly Authorized Representative of

