GREYHOUND LEASING & FINANCIAL CORPORATION

7995

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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT, hereinafter referred to as "Agreement", by and between GREYHOUND LEASING & FINANCIAL CORPORATION, a Delaware Corporation, hereinafter referred to as "Lessor", and United States Railway Leasing Company of 2200 East Devon Avenue, Des Plaines, Illinois hereinafter referred to as "Lessee",

WITNESSETH:

I. LEASING: In consideration of the covenants herein contained, Lessor agrees to lease to Lessee and Lessee agrees to hire from Lessor such unit or units of equipment, hereinafter referred to as "Unit", described in the Equipment Lease Schedule or Schedules, hereinafter referred to as "Schedule", in the form attached hereto as Exhibit A, to be attached hereto and to become a part hereof as same are executed from time to time by the parties hereto.

II. TERM, RENT AND PAYMENT: (a) The lease of and rent for each Unit shall commence on the day specified in the Schedule pertaining thereto and shall continue for the period specified as the "term" in said Schedule. If any such term be extended, the word 'term' or 'period', as used in this Agreement, shall be deemed to refer to the extended term, and all provisions of this Agreement shall apply during and until the expiration of said extended period, except as may be otherwise specifically provided in this Agreement or in any subsequent written agreement of the parties.

(b) The rental for each Unit shall be in the amount set forth in the Schedule and shall be payable in advance at the times set forth in said Schedule. As additional rental, Lessee shall pay and discharge, when due, all license fees, assessments and sales, use, property and other tax or taxes now or hereafter imposed by any State, Federal or local government upon any Unit or payments hereunder, whether the same be payable by or billed or assessed to Lessor or to Lessee, together with any penalties or interest in connection therewith; however, if under local law or custom Lessee may not make any such payments Lessee will promptly notify Lessor and Lessee shall reimburse Lessor on demand for all payments thereof made by Lessor. If any such license, assessment or tax is, by law, to be assessed or billed to Lessor, Lessee at its expense will do any and all things required to be done by Lessor in connection with the levy, assessment, billing or payment thereof and is hereby authorized by Lessor to act for and on behalf of Lessor in any and all such respects including, but not limited to, the contest or protest, in good faith, of the validity or the amount thereof; Lessee will cause all billings of such governmental obligations of Lessor to be made to it in care of Lessee and will from time to time, on request of Lessor, submit written evidence of the payment of all such governmental obligations. In the event any rental is not paid on or before the due date, such arrearage may, at the election of Lessor, be subject to the maximum legal rate of interest permitted by applicable law, or five percent (5%) above the then current prime rate of interest of the First National City Bank of New York, whichever is less.

(c) Rent shall be paid to the Lessor at its office at Greyhound Tower, Phoenix, Arizona 85077, or as otherwise directed, and shall not be pro-rated for any cause or reason except as herein specifically provided.

~~III. DEPOSIT: Upon delivery of each Unit, Lessee will deposit with Lessor the sum specified in the Schedule therefor as security to be applied by and at the option of Lessor to the payment [illegible] tions of Lessee hereunder. Such deposit shall not excuse the performance at the time and in the manner prescribed herein of any obligation of Lessee or prevent default thereof, and any of such deposit not so applied will be returned to Lessee after the termination of this Agreement.~~

IV. REPORTS: (a) Upon demand Lessee will advise Lessor where each Unit is located and permit Lessor to examine each Unit.

(b) Without demand Lessee will (1) immediately notify Lessor of each accident arising out of the alleged or apparent improper manufacturing, functioning or operation of any Unit, the time, place and nature of the accident and damage, the names and addresses of parties involved, persons injured, witnesses and owners of property damaged, and such other information as may be known, and promptly advise Lessor of all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to improper manufacturing, operation or functioning of any Unit or charging Lessor with liability, and together with Lessee's employees, aid in the investigation and defense of all such claims and shall aid in the recovery of damages from third persons liable therefor; and (2) notify Lessor in writing, within ten (10) days after any day on which any tax lien shall attach to any Unit, of the location of such Unit, on such day; and (3) notify Lessor forthwith in writing of the location of any Unit moved by Lessee from the place where delivered to Lessee or from the location specified in this Agreement or any Schedule or supplemental agreement subsequently executed.

(c) Lessee will, as soon after the close of each fiscal year of Lessee as practicable, furnish to Lessor

duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report and/or balance sheet and profit and loss statement, certified to by either a recognized firm of Certified Public Accountants or by the chief fiscal officer of the Lessee. ~~Interim statements, so certified, will be furnished as requested by Lessor.~~

V. SERVICE: (a) Lessee will pay for and provide all electric power, oil, gasoline and lubricants consumed by and required for each Unit, and all repairs, parts and supplies necessary therefor.

(b) Lessee will at its sole expense at all times during the term of this Agreement maintain each Unit in good operating order, repair, condition and appearance and keep the same protected from the elements, except during use in the normally contemplated manner. Lessee will maintain on each Unit any insignia or identification furnished by Lessor and will not remove said insignia or identification without the prior written consent of Lessor.

(c) Lessee will not, without the prior written consent of Lessor, affix or install any accessory, equipment, or device on any Unit leased hereunder if such addition will impair the originally intended function or use of any such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to any Unit shall thereupon become the property of Lessor (except such as may be removed without in any wise affecting or impairing the originally intended function or use of such unit). Further, Lessee will not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit leased hereunder to or in any other personal property or to or in any real property.

(d) Lessee acknowledges and agrees (1) that each Unit is of a size, design, capacity and manufacture selected by Lessee, (2) that Lessee is satisfied that the same is suitable for its purposes, (3) that Lessor is not a manufacturer thereof nor a dealer in property of such kind, and (4) that Lessor has not made, and does not hereby make, any representation or warranty or covenant with respect to the merchantability, condition, quality, durability or suitability of any such Unit in any respect or in connection with or for the purposes and uses of Lessee, or any other representation or warranty or covenant of any kind or character, express or implied, with respect thereto. Lessee agrees that Lessor shall not be liable to Lessee for any liability, claim, loss, damage or expense of any kind or nature caused, directly or indirectly, by any Unit or any inadequacy thereof for any purpose, or any deficiency or defect therein, or the use or maintenance thereof, or any repairs, servicing or adjustments thereto, or any delay in providing or failure to provide any thereof, or any interruption or loss of service or use thereof, or any loss of business, or any damage whatsoever and howsoever caused.

(e) Lessor hereby assigns to Lessee, for and during the term of this Agreement, any applicable factory warranty, express or implied, issued on or applicable to each new Unit, and hereby authorizes Lessee during the term of this Agreement to obtain the customary service furnished in connection therewith by the manufacturer at Lessee's expense.

VI. USE AND OPERATION: (a) Lessee will not use, operate, maintain or store any Unit leased hereunder improperly, carelessly or in violation of this Agreement, or of any applicable regulatory laws and bodies whatsoever, or the instructions therefor furnished by Lessor; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof; nor let or use the same for hire other than to the extent and in the manner similar property has heretofore been let or used for hire in the regular and ordinary course of Lessee's business; nor, without the prior written consent of Lessor, assign this Agreement or sub-lease or let any Unit (it being understood that written consent in one instance will not constitute a waiver of any of the terms of this Agreement) or permit anyone other than its authorized agents or employees to operate the same, or permit any Unit to be subject to any lien, charge or encumbrance whatsoever, or remove any Unit from the location as set forth in Paragraph 2 of the applicable Schedule.

(b) Lessee assumes all risks and liability for each Unit leased hereunder and for the use, operation and storage thereof, and for injuries or deaths of persons and damage to property, howsoever arising from or incident to such use, operation or storage, whether such injury or death to persons be of agents or employees of Lessee or of third parties, and such damage to property be of Lessee or of others. Lessee will save and hold Lessor harmless from all losses, damages, claims, penalties, liabilities, and expenses, including attorneys' fees, howsoever arising or incurred because of or incident to any Unit or the use, operation or storage or alleged use, operation or storage thereof.

s between Lessor and Lessee,

~~VII. INSURANCE: At its own expense, Lessee will maintain insurance on each Unit as specified in the~~ Schedule pertaining thereto for the actual value of such Unit and in no event for less than the "Stipulated Loss Value" specified in such Schedule, and will maintain public liability and ~~property damage~~ insurance with respect to each Unit. Except as otherwise provided in any Schedule, ~~all such insurance~~ shall name Lessor and Lessee as insureds, shall be in amounts and companies ~~approved by Lessor~~, and shall provide that it may be altered or cancelled by the insurer only after ~~ten (10) days'~~ written notice to, and that losses shall be adjusted only with and paid to, Lessor and ~~its assignee~~, if any. Certificates or other evidence satisfactory to Lessor showing the existence of ~~such insurance~~, the terms and conditions of the policy, and payment of the premium therefor shall be de~~livered to Lessor forthwith and periodically prior to each expiration of such insurance.~~

except as permitted in Paragraph 11 of the Supplement hereto,

VIII. DAMAGE TO EQUIPMENT: Lessee assumes all risks of loss, theft or destruction of, and damage to, each Unit and will hold Lessor harmless from any thereof and from all claims and liens for storage, labor and materials incurred by Lessee in connection with each Unit. Should a Unit be damaged so as to preclude its use for the purpose intended by reason of any cause for which Lessor shall be indemnified pursuant to any collectible insurance specified in the Schedule pertaining to such Unit and should Lessor have made a full insurance recovery with respect thereto in an amount not less than the "Stipulated Loss Value" specified in the Schedule pertaining to such Unit, this Agreement shall terminate as to such Unit; provided, however, that upon mutual agreement of Lessor and Lessee the proceeds of such insurance recovery may be applied to the repair or replacement of such Unit. Should a Unit be damaged so as to preclude its use for the purpose intended by reason of any cause for which Lessor shall be only partially indemnified pursuant to any collectible insurance specified in the Schedule pertaining to such Unit and should Lessor have made an insurance recovery with respect thereto in an amount which is less than the "Stipulated Loss Value" specified in the Schedule pertaining to such Unit and should such Unit be capable of repair, Lessee will repair or replace the same at its cost and the proceeds of the insurance recovery shall be applied to the cost of such repair or replacement. Should a Unit be damaged by reason of any cause against which no insurance is required under the Schedule pertaining to such Unit or against which Lessor shall have no indemnification for any other reason and should such Unit be capable of repair, such damage shall not annul or terminate this Agreement as to such Unit and Lessee will repair such damage or replace such Unit at its cost. Should a Unit be damaged beyond repair or be lost, stolen, or wholly destroyed by reason of any cause for which Lessor shall not be fully indemnified pursuant to any insurance specified in the Schedule pertaining to such Unit, then this Agreement shall cease and terminate as to such Unit and Lessee shall pay Lessor the "Stipulated Loss Value" specified in the Schedule pertaining to such Unit, less the amount of any insurance recovery received by Lessor.

IX. RETURN OF EQUIPMENT: Lessee agrees, by the acceptance of each Unit, that such Unit is in good operating order, repair, condition and appearance. At the expiration or sooner termination of the term pertaining thereto, Lessee will return each Unit to Lessor free of all advertising or insignia placed thereon by Lessee and in the same operating order, repair, condition and appearance as when received, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance specified in the Schedule pertaining thereto, and will pay for any repairs necessary to restore such Unit to its original condition, except as aforesaid. Lessee will return each Unit to Lessor in the same city in which Lessee first received the same or, if Lessor shall so request, Lessee will load the same at its expense on board such carrier as Lessor shall specify and ship the same freight collect as directed by Lessor.

X. DEFAULT: (a) Should Lessee default in payment of any sum to be paid hereunder, or fail to perform at the time and in the manner herein specified any term or covenant in this Agreement or any Schedule or supplement hereto and such default continue for 10 ~~any~~ days after receipt by Lessee of written notice that Lessee has been placed in default, or should Lessee commit an act of bankruptcy or be the subject of any proceeding under the Bankruptcy Act (provided, however, that if the same is an involuntary proceeding which is stayed or removed within thirty (30) days from the date of commencement the same shall not constitute default) or become insolvent (that is, unable to pay its debts as they fall due), or should any substantial part of Lessee's property be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessor, at its option, may (1) proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable covenants and terms of this Agreement or to recover from Lessee, any and all damages or expenses including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's default in any covenant or covenants of this Agreement or on account of Lessor's enforcement of its remedies hereunder, (2) terminate Lessee's rights under this Agreement and (3) take possession of all of the equipment leased hereunder (damages occasioned by such taking of possession are hereby expressly waived by the Lessee), and thereupon Lessee's right to the possession thereof shall terminate. In the event of any such repossession, Lessor shall either (i) lease the Units or any portion thereof for such period and rental, and to such persons as Lessor shall elect or (ii) sell the Units or any portion thereof at public or private sale and without demand or notice of intention to sell or of sale or presence of the same at the place of sale. If any Unit is sold, leased or otherwise disposed of pursuant to this Paragraph X (a) Lessee shall be liable to Lessor for and Lessor may recover from Lessee, as liquidated damages for the breach of this Agreement, but not as a penalty, and as reasonable rent for the use of such Unit and for the depreciation thereof, the amount by which the proceeds of such lease, sale or other disposition, less expense of retaking, storage, repairing and lease, sale or other disposition, and reasonable attorneys' fees incurred by Lessor is less than the sum of (i) all due and unpaid rent for such Unit, (ii) the "Stipulated Loss Value" as of the date of repossession by Lessor, (iii) an amount equal to accrued taxes, and other amounts payable hereunder by Lessee with respect to such Unit, (iv) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default, and (v) interest at the legal rate on each of the foregoing and on all sums not paid when due under any provision of this Agreement. If on the date of such termination or repossession any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall also remain liable for the "Stipulated Loss Value" pertaining to such Unit, less the amount of any insurance recovery received by Lessor in connection therewith.

(b) No right or remedy conferred upon or reserved to Lessor by this Agreement shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies of Lessor conferred upon Lessee by this Agreement or by law shall be cumulative and in addition to every other right and remedy available to Lessor.

(c) In the event of any default, Lessee will pay to Lessor a reasonable sum as and for attorneys' fees, such costs and expenses as shall have been expended or incurred by Lessor in the enforcement of any right or privilege hereunder, and interest at the legal rate on each of the foregoing and on all sums not paid when due under any provision of this Agreement.

(d) Should Lessor be in default hereof as to any one Unit, Lessee may not because of such default terminate the lease of any other Unit leased hereunder.

XI. ASSIGNMENT BY LESSOR: Lessee acknowledges and understands that the terms and conditions of this Agreement have been fixed by the Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Units leased hereunder to a bank or other lending institution or to others having an interest in the leased Units or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this paragraph; and Lessee agrees with Lessor and with such bank or other lending institution and/or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (1) to recognize any such assignment, (2) to accept the directions or demands of such assignee in place of those of the Lessor, (3) to surrender any leased property only to such assignee, (4) to pay all rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (5) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection aforesaid being hereby waived as to any and all of such assignees. However, nothing hereinbefore contained shall relieve Lessor from its obligations to Lessee hereunder.

XII. QUIET POSSESSION: Lessor covenants that it is the lawful owner of the Units leased hereunder and that conditioned upon the Lessee performing the conditions hereof, Lessee shall peaceably and quietly hold, possess and use such units during the term of this lease. Lessor covenants that it will not give a mortgage or mortgages securing an amount exceeding the cost of such units and that annual payments for amortization will not exceed the annual rent payable by the Lessee. In the event that the Lessee shall default in the payment of either principal or interest of any indebtedness secured by any mortgage or mortgages which constitute a first mortgage lien on any such unit, Lessee shall have the right and privilege to pay the amount so in default, and the amount so paid by the Lessee shall, at its option, be credited against rentals due or thereafter becoming due.

XIII. MISCELLANEOUS: Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a Lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the term of the lease of any Unit or sooner termination of this lease, and should Lessor permit the use of any Unit beyond the term specified therefor, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the term thereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time upon demand after thirty (30) days' notice. Any cancellation or termination by Lessor, pursuant to the provisions hereof, of this Agreement, any Schedule, supplement or amendment hereto or the lease of any Unit hereunder, shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to paragraph VI hereof. Time is of the essence of this Agreement. This Agreement shall be construed in accordance with the laws of the State of ~~Arizona~~ Illinois.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the 3rd day of March, 1975.

United States Railway Leasing Co., LESSEE

By [signature]

(Seal)

By [signature]
Asst Sec

GREYHOUND LEASING & FINANCIAL CORPORATION, LESSOR

By [signature]
Vice President

(Seal)

By Thomas L. Wilmoy
ASS'T Secretary

GREYHOUND LEASING & FINANCIAL CORPORATION
GREYHOUND TOWER
PHOENIX, ARIZONA 85077

SCHEDULE NO. _____

EQUIPMENT LEASE SCHEDULE

#1895

1. DESCRIPTION OF EQUIPMENT:

(1) GLFC No. _____

(2) Description of Equipment to be Leased 150-100 ton, new 4750 cu. ft. capacity Covered Hopper Cars with trough hatch and gravity discharge gates, and bearing reporting numbers and marks: USLX 8000 thru 8149, inclusive, or such other reporting numbers and marks as United shall advise in writing for all or any of the Equipment. CB WK

(3) Units Covered by this Schedule: _____ units of Equipment bearing reporting numbers and marks _____ thru _____, inclusive.

2. SITUATE: Continental United States and Canada

3. TERM: 180 months from "Average Date of Delivery" as defined in Paragraph 9 hereof
COMMENCING On date of delivery of each car to Lessee

4. RENT:

A. $20,000 deposit to be applied against initial rental due as provided in Paragraph 12(i) of the Supplement to Equipment Lease Agreement.

B. Rent: Payable monthly in advance in an amount determined as provided in Paragraph 3 of the Supplement to Equipment Lease Agreement.

5. RENEWAL OPTION: See Supplement to the Lease dated March 3, 1975.

6. INSURANCE: None

7. STIPULATED LOSS VALUE: See Exhibit D to Supplement to the Lease

8. SPECIAL CONDITIONS: The monthly rentals are based on a Prime Rate of 9.5% and will float with the Prime Rate as provided in the Supplement to the Lease Agreement.

9. AVERAGE DATE OF DELIVERY is that date which is determined by (i) multiplying the number of cars delivered to Lessee on each day be the number of days elapsed between such day and the date of delivery of the first car hereunder, and (ii) adding all of the produts so obtained and dividing that sum by the total number of cars delivered, and (iii) adding such quotient rounded and to the nearest whole number to the date of delivery of the first car.

APPROVED AND AGREED TO this 3rd day of March, 1975, as a schedule to and part of Equipment Lease Agreement dated the _____ day of March, 1975.

UNITED STATES RAILWAY LEASING COMPANY, Lessee

By [signature]

By [signature]
Asst Sec

(SEAL)

GREYHOUND LEASING & FINANCIAL CORPORATION, Lessor

By _____
Vice President

By _____
Assistant Secretary

(SEAL)

EXHIBIT A