

CHICAGO AND



TRANSPORTATION COMPANY

BERNARD J. ALLEN
DIANE KOHLER-RAUSCH
JOAN A. SCHRAMM
ASSISTANT SECRETARIES
DIRECT DIAL NUMBER
312/454-6534

October 3, 1978

File No.: A-10727

9783
RECORDATION NO. Filed 10/19/78

OCT 19 1978 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D. C. 20423
Attention: Mr. Robert L. Oswald, Secretary

Gentlemen:

Pursuant to Section 20c of the Interstate Commerce Act, as amended, attached for recordation are counterparts of Lease Agreement dated as of 9/29/78, covering lease by this Company of 484 100-ton coalporter cars.

The names and addresses of the parties to the transaction are as follows:

1. This Company, 400 W. Madison Street, Chicago, IL 60606, Lessee.
2. Trans-West Associates, Ltd., 5070 Pinyon, Littleton, Co. 80123, Lessor.

Enclosed is our check for \$50.00 to cover your recording fee. Please keep one counterpart and return the other counterparts showing your recordation data.

Very truly yours,

Diane Kohler-Rausch
Diane Kohler-Rausch
Assistant Secretary

DK: ps
enc.

- 3-202A-551
- cc: R. D. Smith
R. L. Schardt*
R. F. Guenther, Attn: J. James*
D. E. Stockham, Attn: John Voldseth*
F. E. Cunningham, Attn: H. Labno*
M. W. Payette
A. A. & Co., Attn: Gary Holdren*

RECEIVED
OCT 19 2 00 PM '78
I.C.C.
FEE OPERATION BR.

Paul Snyder
County

No. 1
Date OCT 19 1978
Fee \$50.00

ICC Washington, D. C.

* w/copy of agreement

Interstate Commerce Commission
Washington, D.C. 20423

10/19/78

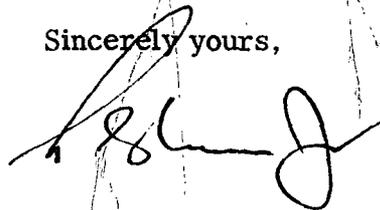
OFFICE OF THE SECRETARY

Diane Kohler-Rausch
Chicago & North Western Transp. Co.
400 W. Madison Street
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 10/19/78 at 2:05pm,
and assigned recordation number(s) 9783

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

FILED AND RECORDED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO SECTION 20C OF THE INTERSTATE COMMERCE ACT ON
_____, RECORDATION NUMBER _____.

LEASE OF RAILROAD CARS

THIS LEASE, made and entered into as of the twenty-ninth day of September, 1978, by and between TRANS-WEST ASSOCIATES LTD, a Colorado corporation, hereinafter referred to as "Lessor" and the CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation hereinafter referred to as "Lessee".

RECORDATION NO. 9783 Filed 10/19/78

OCT 19 1978 2 05 PM

INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H:

WHEREAS, the Lessor has entered into an agreement dated as of June 30, 1978 with the GRAND RIVER DAM AUTHORITY, a public corporation and agency of the State of Oklahoma, hereinafter referred to as "Owner", wherein Owner has agreed to lease and deliver to Lessor the newly constructed Units of Equipment (railroad) described in "EXHIBIT A" (Bethlehem Steel Corporation railcar specification 3400-485) hereto attached, hereinafter referred to as "Equipment", and

WHEREAS, Lessor desires to lease to Lessee and Lessee desires to lease from Lessor FOUR HUNDRED EIGHTY-FOUR (484) Units of Equipment as are delivered to and accepted by the Lessee at the rentals and subject to the terms and conditions as hereinafter provided;

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee and the Lessor, the Lessor hereby leases such equipment to the Lessee and the Lessee leases such Equipment from the Lessor upon the following terms and conditions:

Section 1. DELIVERY AND ACCEPTANCE OF EQUIPMENT. Each Unit of Equipment is to be delivered at Clinton, Iowa by Lessor: Lessor shall have the right to inspect and accept or reject the Equipment pursuant to its rights and remedies under its agreement with the Owner. After Lessee is notified by Lessor of its acceptance of the Equipment, Lessee shall promptly after its receipt of such units of Equipment cause an employee or agent to the Lessee to inspect the same, and if such Equipment is found to be acceptable, to accept delivery and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such Unit of Equipment has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Acceptance. Such Unit of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject hereafter to all the terms and conditions of this Lease (hereinafter called the Units). The Lessee hereby represents and warrants to the Lessor that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee.

Section 2. RENTALS. For each accepted Unit of Equipment, Lessee agrees to pay Lessor rentals monthly, with payments to be made in advance in the manner and form as follows: Lessee agrees to pay Lessor as rental the sum of THREE HUNDRED FORTY DOLLARS (\$340) per month per Unit ("Base Rental") and the sum of 4.1 cents per mile per Unit ("Supplemental Rental") for each month during the term hereof. Lessee guarantees that each Unit shall travel a fleet average of One Hundred Forty-Four Thousand (144,000) miles during the first twenty-four month term of this Lease, or in lieu thereof will pay a minimum amount of TWO HUNDRED FORTY SIX DOLLARS (\$246) on account of Supplemental Rental per month per Unit. Supplemental Rental (including computing the minimum) shall be computed on a fleet average, i.e., the total amount of miles run for all Units divided by the number of Units leased hereunder. However, the minimum Supplemental Rental shall be adjusted on a prorated basis for each day a Unit of Equipment is out of service account of mechanical warranty and design defects.

Five (5) days prior to the delivery of the subject Units of Equipment to the Lessee, as estimated in "EXHIBIT B" attached hereto, Lessee agrees to deposit with the Lessor a sum equal to (a) \$178, with respect to each of the Units to be delivered and Lessee agrees to pay to Lessor a sum equal to (b) \$322, which sum however shall be applied by the Lessee for the account of the Lessor for the payment of freight charges covering the Unit. Such deposits shall be credited to Lessee, as set forth in the next paragraph or, to the extent not repaid thereby, will be applied against Base Rental and Supplemental Rental at the end of this Lease. The parties agree that no interest shall be due Lessee on such deposits at any time.

Five (5) days following acceptance of each Unit of Equipment by Lessee, Lessee shall pay to Lessor the Base Rental plus the minimum Supplemental Rental for the balance of the month in which the Unit was accepted; the Lessee shall pay on the fifth (5th) day of each month until the termination of this Lease, the Base Rental and the minimum Supplemental Rental for that month. The payment for mileage in excess of the minimum for each month for each Unit of Equipment shall be made upon the fifth day of the fifth month after the date that the Base Rental and minimum Supplemental Rental was paid to Lessor, less any adjustments to minimum Supplemental Rental because a Unit of Equipment is out of service account of mechanical warranty and design defects, provided however, commencing with the first monthly payment for mileage in excess of the minimum, to the extent actual mileage exceeds a fleet average of 7000 miles per Unit, Lessee shall be entitled to offset 80% of the payments it would owe Lessor for such supplemental rental over 7000 miles as a credit against the deposits it made to Lessor, until all such deposits are so repaid to Lessee. In any month that actual mileage falls below a fleet average of 7000 miles per Unit, Lessee shall pay Lessor, in addition to other payments provided for in this Lease, a replenishment of such deposits equal to the mileage rate times the mileage below said 7000 miles (but not below 6000 miles per Unit since Lessee will have paid minimum Supplemental Rental on that amount), but only to the extent that Lessee's deposits have been reduced pursuant to the preceding sentence, but no such payment shall be made at the end of the Lease at which time Lessee's deposits must be repaid by applying said deposits against Base Rental and Supplemental Rental.

In the event that the Lease commences after the first day of the month or terminates prior to the last day of the month, the payment of Base Rental and Supplemental Rental shall be prorated for that month. Lessee's payments of Base Rental and minimum Supplemental Rental, as well as the initial payment, shall be based on Lessor's invoices to Lessee, received no later than the 25th day of the prior month.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall then be payable on the next succeeding business day. Any payment past due shall bear interest at the rate of ten percent (10%) per annum for the period of time during which it is overdue. All payments pursuant hereto shall be made pursuant to Section 19 hereof.

Section 3. TERM OF LEASE. The term of this Lease as to each Unit shall begin on the date of Lessee's acceptance and, subject to the provisions of Sections 6 and 10 hereof, and the succeeding paragraph hereof, shall terminate on November 1, 1981. Except for obligations hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessor or the Lessee hereunder shall survive the expiration of the term of this Lease.

Notwithstanding anything contained herein to the contrary, Lessor or Lessee shall have the right to terminate the Lease, upon thirty (30) days' written notice, with respect to any or all of the subject Units of Equipment Twenty-four (24) months after the date of Lessee's acceptance thereof.

Section 4. IDENTIFICATION MARKS. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in EXHIBIT A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words designed by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested, to protect Owner's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed.

Upon written approval by the Owner and the Lessor, the Lessee at its own expense may change or permit to be changed the reporting mark, but not the number nor corresponding Automatic Car Identification (ACI) label, of any Unit. If the reporting mark is changed the following "equipment ownership" stencil shall be placed in the upper left hand corner of the car and in accordance with the standard practice as outlined by the Association of American Railroads:

"OWNED BY THE GRAND RIVER DAM AUTHORITY
AND LEASED TO THE CHICAGO AND NORTH
WESTERN TRANSPORTATION COMPANY"

Section 5. TAXES. Owner has represented and warranted to Lessor that Owner is a tax exempt agency of the State of Oklahoma. Therefore, Lessor agrees to indemnify and to hold Lessee harmless from all taxes that would normally accrue to Owner as owner of the cars. Lessee agrees to indemnify and to hold Lessor harmless from all taxes to be paid by Lessee under the second paragraph of this Section 5, plus any interest or penalties.

Lessee agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof, or any tax accruing to the Lessee as the user of the cars, which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that Lessee shall not be required to pay any such tax during the period it may be contesting the same. It is expressly agreed that Lessee will not, without obtaining prior written permission of Lessor, assert on its behalf immunity from taxation based on the tax-exempt status of the Owner.

Section 6. RISK OF LOSS OR DAMAGE. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by Lessee for repair or maintenance other than normal preventive maintenance, (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall promptly notify Lessor with respect thereof, and at Lessee's option, this Lease, ipso facto, shall terminate with respect to such Units, as of the

date of the Casualty Occurrence. Upon the exercise of such option, the rental for such Unit shall cease to accrue as of the date of such Casualty Occurrence, Lessee shall be entitled to the \$500 prepayment it made before it received the Unit of Equipment, minus any amounts of the prepayment that have been repaid to Lessee pursuant to the third paragraph of Section 2 hereof, and, (except in the case of the loss, theft or complete destruction of such Unit) Lessor shall be entitled to recover possession of such Unit.

Lessee hereby assumes all risk of loss (except by condemnation) of and damage to the Units of Equipment from any cause during the term of this Lease. For any Unit destroyed, Lessee will pay the Lessor an amount equal to the depreciated value of the Unit as computed under AAR Interchange Rules minus the prepayment Lessee made before it received the Unit, to the extent such prepayment has not been repaid to Lessee as provided for in the third paragraph of Section 2 hereof. Lessee will, at all times prior to the termination of this Lease, with respect to each Unit of Equipment, maintain or cause to be maintained, at its own expense, an umbrella policy for property and casualty insurance coverage against all of the risks and in the amount customarily insured against by Lessee on similar equipment owned by it. Lessee will at all times prior to the termination of this Lease, and with respect to each Unit of Equipment, maintain or cause to be maintained, at its own expense, an umbrella policy for public liability insurance against the risks and in the amount customarily insured against by Lessee on similar equipment owned by it. The benefits of all such insurance shall be payable to the Lessor and the Lessee, as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall require thirty (30) days prior notice of cancellation to Lessor.

Section 7. REPORTS. On or before the fifth (5th) day of each month during the term of this Lease, the Lessee will deliver to the Lessor a report recording the car mileage traveled by each Unit of Equipment during the fourth preceding month.

On or before April 15, 1979 and each year thereafter, the Lessee will furnish to Lessor an accurate statement (a) setting forth as at the preceding December 31st the amount, description, and numbers of all Units that have suffered any loss or damage during the preceding calendar year (specifying the dates of such loss or damage) or to the knowledge of the Lessee then undergoing repairs (other than running repairs), and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 4 hereof have been preserved or replaced. Lessor, Owner, or the agent of either of them, shall have the right to inspect the Units at such reasonable times as Lessor or Owner may request during the term of this Lease. The books and records of Lessee relating to the Units of Equipment shall be made available at Lessee's place of business by Lessee for inspection and examination by any authorized agent of Lessor or Owner between the hours of 9 a.m. and 5 p.m., Monday through Friday, inclusive, excluding legal holidays.

Section 8. WARRANTY; MAINTENANCE. Lessor, not being the manufacturer of the Units nor the manufacturer's agent, makes no express or implied warranty of any kind whatsoever with respect to the equipment, including but not limited to: the merchantability of the Units or their fitness for any particular purpose; the design or condition of the Units; the quality or capacity of the Units; the workmanship in the Units; compliance of the Units with the requirements of any law, rule, specification or contract pertaining thereto; patent infringement; or latent defects. Lessee will be subrogated to Lessor's claims, if any, against Bethlehem Steel Corporation (hereinafter referred to as "Builder", for breach of any warranty or representation under the Sales Document and all related agreements, instruments, and documents, or the Lease. Upon written

request from Lessee, Lessor shall take all reasonable action, at its expense, to enforce any such warranty which is enforceable by Lessor in its own name provided, however, that Lessee is not in default under this Lease and Base Rental does not abate. Lessor hereby represents and warrants to Lessee that during the term of this Lease, Owner shall own and hold title to each Unit, free and clear of all liens, claims and encumbrances, including, without limitation, security interests. Lessor has not made and does not make any other representation, warranty or covenant, express or implied. Lessee shall have no other remedies, account of damages arising from breach of warranties, than are provided for under this Lease.

Lessor agrees that, at no cost or expense to Lessee, each Unit (including any parts installed or replacements made to any Unit and considered in accession thereto as herein below provided) will, in accordance with the Association of American Railroads standards for cars in high utilization services, in a commercially reasonable manner, be maintained and kept in good operating order, repair and condition. Any required running repairs to the Units will be made by the user railroad and will be billed to Lessor under standard AAR procedures. With regard to major repairs, the Lessor further agrees that within ten (10) days of notice from the Lessee to Lessor, each Unit designated in such notice shall be transported at no cost or expense to Lessee to a maintenance facility of Lessor's designation and shall cause the requested and/or required maintenance and service to be performed promptly, in the manner described above, following which, the subject Units shall be delivered to Lessee at no cost or expense to Lessee. If Lessor orders any car to a shop not under Lessee's control for repairs, Base Rental shall abate. Additionally, during the time that any Unit of Equipment is out of service being inspected or repaired or maintained because of its nonconformance to the Builder's design or warranty, the Base Rental shall abate, provided however, Lessee first reassigns to Lessor all warranties Lessor assigned to Lessee.

Lessee agrees that it shall not use, operate, or store any Unit improperly, carelessly or in violation of this Lease, or of any applicable regulatory rules, regulations and laws whatsoever or in the instructions furnished by the Builder's suggested program; or use or operate any Unit other than in a manner and for the use contemplated by the Builder' or, except to the extent provided in Section 12 hereof, without the prior written consent of Lessor, assign, transfer, pledge, or hypothecate this Lease, the Units or any part thereof, or any interest therein, whether by operation of law or otherwise. Lessee shall keep the Units free and clear of all liens, claims and encumbrances, including, without limitation, security interests and leasehold interests.

Section 9. INDEMNIFICATION. The Lessee hereby agrees to indemnify and save harmless the Lessor and Owner from and against any and all liability, demands and causes of action, whether well founded or otherwise, including the cost of defending same, for bodily injury to or death of any person or damage to the property of any person whomsoever, including the parties hereto or the employees of either of them, arising out of or in connection with the use or operation of the said Equipment leased hereunder, provided, however, that this indemnification shall be of no force or effect if the proximate cause of such injury or death is a patent or latent defect in a Unit of Equipment, or other cause related thereto, or willful misconduct or negligence attributable to Lessor or Owner. The indemnities contained in this section shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by Lessor and Owner.

Section 10. DEFAULT. If, during the term of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(a) Payment of any part of the rental provided in Section 2 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for ten (10) days after written notice thereof is delivered to Lessee; or

(b) A petition under the Bankruptcy Act shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective within sixty (60) days after such petition shall have been filed; or

(c) The non-performance by Lessee of any other term, covenant, or condition of this Lease which is not cured within twenty (20) days after written notice thereof is delivered to Lessee,

then, in any such case,

(A) Lessor and/or Owner, at its option, may proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or the agreement between Lessor and Owner, as the case may be, or to recover damages for the breach thereof; or

(B) Lessor, at its option, may by notice in writing to the Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units of Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as in this subparagraph provided; and thereupon Lessor or its agents may enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to Lessee for such action or inaction or for any proceeds arising therefrom; but Lessor or Owner shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period).

In addition, Lessee shall be liable, except as otherwise provided above, for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's or Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit of Equipment.

The remedies in this Lease provided in favor of Lessor and Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

The failure of Lessor or Owner to exercise the rights granted it hereunder upon the occurrence of any of the events of default set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such events of default, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by Lessor or Owner, as the case may be.

Lessee or Lessor have the following rights of termination:

(i) During the term of this Lease, Lessee may, at its option, terminate this Lease, without further obligation or liability to Lessor if Lessor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Lease, which is to be performed, kept or observed by Lessor and the same is not cured within twenty (20) days after written notice thereof is mailed by Lessee to Lessor.

(ii) Lessor or Lessee may, at their option, without further obligations to the other, terminate this lease if the Owner shall have failed or refused to deliver FOUR HUNDRED EIGHTY-FOUR (484) acceptable Units to Lessee on or before January 1, 1979 and the same is not cured within ten (10) days after written notice thereof is mailed by Lessor to Owner.

However, the default provisions, as they apply to Lessee in subparagraphs (a), (b), (c), or (ii), or to Lessor in subparagraphs (i) and (ii) shall not apply in the event performance is delayed or interrupted due to unforeseeable causes beyond such person's control and without his fault, such as acts of God, or of a public enemy, fires, floods, epidemics, quarantines, strikes, freight embargoes, unusually severe weather, or delays of the Builder.

Section 11. RETURN OF UNITS UPON DEFAULT. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith surrender possession of the Units to the Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units.

For the purposes of surrendering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost and expense forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Lessor on instructions by the Owner, but in any case, to no point more than 200 miles from any outermost interchange point on Lessee's railroad.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 11, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 12. ASSIGNMENT; POSSESSION AND USE. This Lease may not be assigned to any other person or entity without the written consent of Lessor, which consent will not be unreasonably withheld, provided nevertheless, that Owner approves such assignment. All the rights and obligations of Lessee hereunder shall inure to the benefit of and become the responsibility of Lessee's assigns.

Lessee agrees to place, and will use its best efforts to keep, all Units of Equipment in the Union Pacific Railroad Company's Hanna Pool at Cheyenne, Wyoming.

So long as no Event of Default exists hereunder, Lessee shall be entitled to the possession of the Units and also to sublease the Units, for a period not to exceed six (6) months to, or to permit their use under the terms of car contracts by, a responsible sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, only upon and subject to all the terms and conditions of this Lease. However, Lessee shall not be permitted to enter into any such sublease whose fixed term extends beyond the fixed term, as provided in Section 3 hereof, of this Lease.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be expressly subject to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder. Except as permitted in the preceding paragraph, Lessee agrees that the Units of Equipment shall not be subject to any sublease without the prior written consent of the Lessor, which consent will not be unreasonably withheld, provided, nevertheless, that Owner approves such sublease, and that Lessor and Owner shall have the right and opportunity to personally inspect any and all facilities upon which the Units may be used by any assignee or sublessee, including rail yards, loading and unloading facilities.

Nothing in this Section 12 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from Lessor.

Section 13. RETURN OF UNITS UPON EXPIRATION OF TERM. Upon the termination of this Lease, Lessee will, at its own cost and expense, promptly cause each Unit to be transported to any point on Lessee's railroad as Lessor directs. Lessee shall pay rental at the rate of TWENTY-FIVE DOLLARS (\$25.00) per day for any Unit not returned to Lessor immediately upon expiration or the termination of the term of this Lease. Lessee agrees to return all Units of Equipment to Lessor in as good a working order and condition as when the cars were delivered to Lessee, ordinary wear and tear excepted and Lessor's failure to maintain and repair the same pursuant to the terms and conditions of this Lease excepted.

Section 14. RECORDING. Lessee, at its own expense, will cause this Lease, and any assignment hereof to be filed and recorded with the Interstate Commerce Commission (ICC) in accordance with Section 20C of the Interstate Commerce Act. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's and/or Owner's interests in the Units, or for the purpose of carrying out the intention of this Lease.

Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing or recording. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Section 15. NOTICES. Any notice required or permitted to be given by either party hereto the other shall be deemed to have been given when delivered to such other party or deposited in the United States mail, first class postage prepaid, addressed as follows:

LESSOR: TRANS-WEST ASSOCIATES LTD.
5070 Pinyon
Littleton, Colorado 80123

LESSEE: CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
400 W. Madison Street
Chicago, Illinois 60606
Attention: Vice President-Finance

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party.

Section 16. CHOICE OF LAW. This lease shall be governed by, and construed under, the laws of the State of Oklahoma.

Section 17. OWNERSHIP OF THE UNITS OF EQUIPMENT. The Units of Equipment are and shall at all times remain the sole property of the Owner, and Lessee, assignee, sublessee shall have no right, title, or interest therein except as expressly set forth in this Lease.

Section 18. SEVERABILITY: EFFECT AND MODIFICATION OF LEASE; THIRD PARTY BENEFICIARIES. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, 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.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all prior agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee.

Section 19. PAYMENT DIRECTION. Until or unless Lessee is directed otherwise in a writing signed by Lessor and delivered to Lessee, Lessor directs Lessee to deliver to the Fourth National Bank and Trust Company, Tulsa, Oklahoma, as agent for Lessor, all payments of Base Rental and Supplemental Rental.

Section 20. RIGHTS AND REMEDIES OF OWNER AGAINST LESSOR. This Agreement is subject to the rights and remedies of Owner against Lessor upon default by Lessor under the provisions of this Agreement between Owner and Lessor dated June 30, 1978.

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



ATTEST:



Glendora B. Taylor
GLENORA B. TAYLOR, Secretary

ATTEST:

10

W. E. Braun

TRANS-WEST ASSOCIATES LTD.

By

Thomas M. Taylor
THOMAS M. TAYLOR, President,
Lessor

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

By

W. E. Braun
Vice President - Sales and Marketing Lessee

STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 15th day of October, 1978, by THOMAS M. TAYLOR, President of TRANS-WEST ASSOCIATES LTD., a Colorado corporation, on behalf of the corporation.

Witness my hand and official seal.

My commission expires: July 20, 1981

Rachel N. Malcolm

Notary Public

STATE OF Illinois)
COUNTY OF Cook)

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared W. E. BRAUN, VICE PRESIDENT of Chicago and North Western Transportation Company, the corporation which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 18th day of October, 1978.

Lee Swiontek

Notary Public

LEE SWIONTEK

Notary Public

Cook Co. Illinois

My Commission Expires Oct. 27, 1980

E X H I B I T A

BETHLEHEM STEEL CORPORATION RAILCAR SPECIFICATION
3400-485, DATED JUNE 19, 1978 (Revised August 14)
FOR FOUR HUNDRED EIGHTY-FOUR, 100TON BETHGON COALPORTER
CARS BEING ACQUIRED BY GRAND RIVER DAM AUTHORITY

CARS TO BE IN THE FOLLOWING SERIES:

- (A) M&St.L 1001 thru 1006
- (B) M&St.L 101 thru 578

E X H I B I T B

THE FOLLOWING REVISED SCHEDULE (September 21, 1978)
OF PRODUCTION AND ANTICIPATED ACCEPTANCE BY THE
EQUIPMENT OWNER PROVIDES FOR MINIMUM ONE HUNDRED AND
TWENTY CAR "UNIT" EMPTY TRAINS TO BE AVAILABLE FOR
MOVEMENT FROM JOHNSTOWN, PENNSYLVANIA IS AS NOTED:

- (A) FIRST TRAIN SETFriday, September 29th
- (B) SECOND TRAIN SET.....Friday, October 13th
- (C) THIRD TRAIN SET.....Friday, October 27th
- (D) FOURTH TRAIN SET.....Friday, November 10th