

RECORDATION NO. 9650 B  
Filed & Recorded  
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RECORDATION NO. 9650 A  
Filed & Recorded  
AUG 22 1978 - 10 10 AM

RECORDATION NO. 9650  
Filed & Recorded  
AUG 22 1978 - 10 10 AM

AUG 22 1978 - 10 10 AM  
No.  
INTERSTATE COMMERCE COMMISSION  
Date.....  
Fee \$ 1.08  
8

L. AGNEW MYERS, JR.  
ATTORNEY AT LAW  
SUITE 406-7 WALKER BUILDING  
734 FIFTEENTH STREET, N. W.  
WASHINGTON, D. C. 20005  
(202) 737-2188

INTERSTATE COMMERCE COMMISSION RECEIVED  
AUG 22 10 08 AM  
I. C. C.  
FEE OPERATION BR.

ICC Washington, D. C. August 22, 1978

Office of the Secretary,  
Interstate Commerce Commission,  
Washington, DC 20423

Re: Section 20(c); I.C.C. Act.,  
Recordation of railroad  
documents; lease, rental  
assignment, and mortgage.

Dear Sir:

Pursuant to the provisions of Part I, Section 20(c), of the Interstate Commerce Act, there is enclosed herewith, one signed original, and two (2) conformed copies, of the following documents:

1. Railroad Car Lease Agreement dated August 1, 1978 between GWI Leasing Corp., and Genesee and Wyoming Railroad Company.
2. Assignment of rents dated August 21, 1978; between GWI Leasing Corp., and Marine Midland Bank.
3. Railroad Car Mortgage dated August 21, 1978 between GWI Leasing Corp. and Marine Midland Bank.

I would appreciate your recording the above documents on the Commission's records in the usual manner showing the numbers assigned thereto, and the date and hour of tender. Any fees assessed on the foregoing will be remitted by the undersigned, or, if required, I shall tender my check to cover such amounts upon advice from you as to such requirement.

Very truly yours,  
*L. Agnew Myers, Jr.*  
L. Agnew Myers, Jr.

lam/jr:s  
Encl. 3 each, properly verified  
as to originals only.

*Mark Russell*  
*Ann Lynd*

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/22/78

OFFICE OF THE SECRETARY

L. Agnew Myers, Jr. Atty.  
Suite 406-7 Walker Building  
734 15th St. N.W.  
Washington, D.C. 20005

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 **8/22/78** at **10:10am**, and assigned recordation number(s) **9650, 9650-A & 9650-B**

Sincerely yours,

H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

AUG 22 1978 -10 46 AM

RAILROAD CAR LEASE AGREEMENT

MINISTIAL SUMMERCE COMMISSION

THIS AGREEMENT AND LEASE, dated as of the 1st day of August, 1978, by and between GWI LEASING CORP., a Delaware corporation with headquarters in Greenwich, Connecticut (hereinafter called "Lessor"), and GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation (hereinafter called "Lessee").

W I T N E S S E T H T H A T:

1. Lessor agrees to lease to Lessee, and Lessee agrees to rent and hire from Lessor, upon the terms and conditions hereinafter set forth, the following described railroad cars (which cars, or such thereof as remain from time to time subject to the provisions of this Lease, are hereinafter called the "Cars"):

<u>No. of Cars</u>	<u>Specifications</u>	<u>Description of Cars</u>
25	Berwick Forge and Fabricating, a Division of Whittaker Corporation, BFF Specification C77-1123-1 dated November 23, 1977, including Revision A dated November 30, 1977 and BFF Specialty List dated November 30, 1977 together with proposal letters dated December 1 and December 8, 1977, as amended by Genesee and Wyoming Industries, Inc. acceptance letter dated January 5, 1978.	70-Ton 50'6" Box Cars with 10' Sliding Doors, Rigid Underframes, Nailable Steel Flooring Nos. GNWR 300011-300035 inclusive

2(a). Each Car shall be subject to Lessee's inspection before delivery to it. Delivery shall be made f.o.b. the Berwick Forge and Fabricating plant at Renovo, Pennsylvania. Lessor shall not be responsible for failure to deliver or delay in delivering Cars due to strikes, differences

with workmen, fires, accidents, governmental regulation, delays in receipt of materials, acts of God or any cause beyond the control of Lessor. Until all Cars are delivered, Lessee may keep one or more authorized inspectors at the Renovo plant, who (i) shall be responsible as the work progresses to inspect and accept or reject the materials and other components and work performed, and (ii) shall have authority on behalf of Lessee to certify Cars as acceptable after building is completed and Cars are ready for delivery. Upon completion of construction of Cars, Lessor shall present each Car to an Inspector for final inspection and acceptance. If the Car conforms to the Specifications and is in good order and condition, the Inspector shall accept delivery of such Car on Lessee's behalf and shall execute and deliver to Lessor in not less than six (6) counterparts a certificate of acceptance stating that such Car has been (a) inspected and found to be in good order and condition and in accordance with the Specifications, (b) marked and numbered as required by Lessee, and (c) accepted by Lessee. The execution and delivery by Lessee's Inspector of a certificate of acceptance shall be conclusive evidence that the Car is satisfactory to Lessee for its use and that the work called for by the Specifications has been completed to Lessee's satisfaction.

2(b). The period from the date of this Lease until the last day of the calendar month in which delivery of the last Car is made, is herein referred to as the "interim term" of the Lease. During the interim term, an interim rental

at the same rate as provided for the principal term in Paragraph (c) of this Section 2 hereof, shall be paid by the Lessee to Lessor from and including the date of acceptance and delivery of each Car to the end of the interim term, payable in a lump sum on the tenth (10th) day of the month following the end of the interim term.

2(c). The principal term of the Lease (hereinafter referred to as the "principal term") shall commence on the first day after the interim term, and shall extend for a period of fifteen (15) years. The monthly rental per Car shall at all times during the principal term be 30.41667 multiplied by 85% of the per diem, mileage and incentive per diem rate applicable to the Cars as prescribed by the Association of American Railroads multilevel value classification of railroad per diem freight cars which became effective in 1969, or other similar applicable classification which may be changed or established in the future. Under the applicable per diem, mileage and incentive per diem rates now in effect, the initial monthly rental per Car will be \$363.77 (\$297.84 of straight per diem and \$65.93 mileage) during the portion of the year the incentive per diem is not in effect and \$630.59 when the incentive per diem is in effect. During the first twelve months of the Lease, the mileage rate will be paid on the basis of 50 miles per day. Thereafter, it will be adjusted annually based on actual mileage for the preceding twelve months. For the purpose of determining the applicable per diem rate under any such classification, the base leasing

value of the Cars shall be \$32,390 per Car, and each Car shall have a new built date coincident with the date of delivery thereof under this Lease. In the event such applicable per diem rate shall at any time or from time to time be increased or decreased, the monthly rate shall be increased or decreased commencing on the effective date of such increase or decrease. All rentals shall be paid at the office of Lessor at Greenwich, Connecticut, or at such other place as Lessor may from time to time designate in writing to the Lessee, on the last day of each calendar month for which the rental is due.

3. Lessee shall pay or cause to be paid any and all taxes (including, without limitation, gross receipts taxes but excluding state or federal income taxes imposed upon the Lessor), and other governmental levies or charges lawfully imposed upon or measured by this Lease or any assignment hereof or upon or by any sale, use, operation, payment, shipment, delivery or transfer of title of the Cars under the terms hereof, or upon or by any or all the Cars or the interest of the Lessee therein, which Lessor may be legally obligated to pay. Lessee will keep at all times all the Cars free of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any of the Cars. Lessee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Lessee or its successors or assigns which, if unpaid, might become a lien or a charge upon the Cars equal or superior to the title of the Lessor thereto; but shall not be required to pay or satisfy and discharge any

such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Lessor in and to the Cars.

4. Prior to delivery of any Car, there shall be permanently and conspicuously stenciled on each side of such Car the following words (with proper changes as from time to time may be required to protect the interests of the Lessor or any assignee of the Lessor), in letters at least one inch high:

GWI LEASING CORP., GREENWICH, CONNECTICUT  
OWNER AND LESSOR

If any such stencil shall at any time be removed, defaced or destroyed, Lessee shall immediately cause it to be restored or replaced at Lessee's cost. Any assignee of Lessor's interest hereunder may at such assignee's cost require new or changed stencils to be placed on the Cars disclosing its interest and title in the Cars and Lessee shall maintain the same thereafter at its own cost as above provided. Lessee may cause the Cars to be lettered in any manner desired for identification of its leasehold interest therein, but no Car shall be marked or lettered in a manner which, in the judgment of Lessor, might be interpreted as a claim of ownership by Lessee or anyone other than Lessor. Before delivery, Lessor will cause each Car to be marked with Lessee's road numbers GNWR 300011 to 300035, inclusive. Such road numbers shall not be changed except by agreement.

5(a). At all times during the term of the Lease, Lessee shall see that the Cars are maintained and kept in good and proper repair and running condition, in accordance with the Code and Rules governing the condition of freight cars for the interchange of traffic between railroads adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, revised 1963, effective January 1, 1964 (said Code of Rules, as it may hereafter from time to time be amended, being hereinafter referred to as the "AAR Code of Rules"). The cost of all maintenance, compliance and repairs shall be paid for by Lessee.

5(b). In the event of the loss or destruction of any Car from any cause whatever during the term of the Lease, Lessee shall promptly give notice thereof to Lessor, and disposition shall be made as follows:

Lessee shall pay Lessor as full compensation for the loss or destruction of such Car, and for the loss of future rentals thereof, the value of such Car (including the value of the scrap and reusable parts) as set forth in the AAR Code of Rules (herein called the "destroyed Car value"), as follows:

(A) If such loss or destruction occurred on Lessee's road, Lessee will promptly pay the destroyed Car value to Lessor, and all rentals in respect of such Car shall abate from and after notice of loss.

(B) If such loss or destruction occurred on a foreign road, Lessee will settle with the foreign

road. All rentals in respect of such Car shall abate from and after the date of the notice to Lessee from the foreign road that such Car has been lost or destroyed and that the AAR per diem rental ceases with respect thereto. If the foreign road settles with Lessee on the basis that such Car has been lost or destroyed, Lessee will immediately pay the destroyed Car value to Lessor.

6. Whenever requested by Lessor, but not more than once in each year during the term hereof, Lessee shall deliver to Lessor a certificate, signed by an executive officer of Lessee, accurately listing and identifying by road numbers the Cars at the time being subject hereto, and showing in particular (a) the Cars then in actual service, (b) the numbers and identification of all such Cars as have been lost, damaged or destroyed or that have for any other reason become unserviceable, and (c) the numbers and identification of all such Cars as are then undergoing repairs or as are then withdrawn from use for repairs. Such certificate shall also contain a statement that the stencils required by Paragraph 4 hereof have been again renewed upon all such Cars as have been repainted or repaired since the date of the last preceding certificate. Lessor shall have the right, by its agents, to inspect the Cars at any time and from time to time during the term of the Lease; and to assure the convenient exercise of that right by the Lessor, Lessee shall, when so requested, inform Lessor of the whereabouts of the Cars or any of them as promptly as the whereabouts can be determined.

7. Lessee agrees at its sole cost to comply with all governmental laws, regulations and requirements, and with the AAR Code and Rules, with respect to the use, maintenance and operation of the Cars during the continuance of this Lease; in case any equipment or appliance on any Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Car in order to comply with such laws, regulations, requirements and Rules effective after the date of the delivery of such Car, Lessee agrees to make such changes, additions and replacements; and Lessee agrees to maintain the Cars in full compliance with such laws, regulations, requirements and Rules during the term hereof. Any parts installed or replacements made upon 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. Lessee agrees to indemnify and save harmless Lessor against any charge or claim made against Lessor, and against any expense or liability which Lessor may incur by reason of its ownership of the Cars during the term hereof, in any manner arising out of or as a result of the use or operation of the Cars, and to indemnify and save harmless Lessor against any claim or suit on account of any accident in connection with the operation of the Cars resulting in damage to property or injury to any person.

8. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession of the Cars and shall have the full right of use thereof upon the lines of railroad owned, leased or operated by Lessee, or over

which Lessee has trackage rights, and upon connecting and other railroads in the usual interchange of freight cars, but subject at all times to all terms and conditions of this Lease.

9. This Lease and the interest of the Lessee in any Car or Cars may be transferred or assigned by Lessee to another corporation, whether by written instrument or by operation of law, but only with the prior written consent of the Lessor or its assignee, as the case may be, which shall not be unreasonably withheld.

10. If Lessee shall fail to carry out and perform any of its obligations under this Lease, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver, is filed by or against Lessee (unless such petition shall be dismissed within thirty (30) days from the filing or other effective date thereof, or shall within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from the date of his or their appointment, affirm or adopt this Lease pursuant to due authority of the Court of his or their appointment), then and in any such event, Lessor may at its option declare this Lease terminated and upon such declaration all installments of rent not theretofore due and payable shall forthwith become due and payable and Lessor may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof. If Lessor waives its said rights or does not declare this Lease terminated, Lessee's obligations hereunder shall continue. The aforesaid

remedies of Lessor shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Lessor to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Lessor against Lessee or against any Cars, or any delay or indulgence granted or allowed by Lessor, shall prejudice any of Lessor's rights.

11. At the end of the term of this Lease or any renewal thereof or upon any termination thereof pursuant to Paragraph 10, the Lessee will, at its own expense, forthwith and in the usual manner and at the usual speed of freight trains, draw the Cars to such point or points on its railroad as shall reasonably be designated by Lessor and will store the Cars thereat for a period not to exceed ninety (90) days without charge until delivery to Lessor; and Lessee further agrees, at Lessee's expense, upon the request of Lessor, to return the Cars to Lessor at the office of GWI Leasing Corp. at Greenwich, Connecticut or to such other point or points as Lessor may designate provided the expenses of delivery to such other point or points do not aggregate more than the cost of redelivery at Greenwich, Connecticut; provided, however, that Lessor shall make every reasonable effort to lease, sell or otherwise dispose of the Cars at a point on the line of Lessee, or, if such cannot reasonably be done, to lease, sell or otherwise dispose of the Cars at a point where minimum delivery

expense will be incurred. Following such expiration or termination, the rental shall continue at the then current rate as provided in Section 2 hereof on a per-day basis on each Car until actual withdrawal from service and storage or delivery to Lessor, whichever event occurs earlier. The performance of the covenants by Lessee contained in this Paragraph 11 is of the essence of this Lease and it is agreed that on application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against Lessee requiring specific performance thereof. If, at the end of the term of this Lease, Lessor scraps the Cars or any of them, and salvages usable components thereof, Lessor shall afford Lessee the first opportunity to purchase such of the salvaged components as it may desire at a price not in excess of the best offer made to Lessor by another.

12. If the Lessee fails to make any of the following payments: amounts required under Section 3 hereof as taxes or other governmental levies or charges or in paying or satisfying and discharging claims upon the Cars; under Section 4 hereof in restoring and replacing numbers or marking upon the Cars; under Section 5 hereof in maintaining and keeping the Cars or upon the loss or destruction of a Car; under Section 7 hereof in complying with laws and rules; under Section 11 hereof in redelivering and storing the Cars; and under Section 14 hereof in connection with filing and recording of this Lease and taking other action therein required; then Lessor may at its option if it deems it advisable to protect its title and

interest in the Cars pay on behalf of Lessee any and all of such amounts. Lessee agrees to reimburse and pay to Lessor any such payments, such reimbursements to be paid as rent in addition to the amounts of rent hereinbefore provided, as well as all sums which may become due by reason of the failure of the Lessee to comply with all the covenants of this Lease and any damages, costs and expenses (including legal expenses) which the Lessor may suffer or incur by reason of any default of the Lessee.

13. Lessor and any assignee of Lessor shall be entitled to sell, assign, mortgage and transfer its entire title and reversion in and to the Cars and/or its rights to rents and other payments payable by Lessee hereunder, and to the performance of the other covenants herein made by Lessee, and such assignee or mortgagee or any subsequent assignee or mortgagee thereof shall have and succeed to all of the rights and remedies herein conferred upon and reserved to the Lessor.

14. Lessee shall promptly, and prior to the delivery of the first Car, cause this Lease to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to protect, the title of Lessor to the Cars. After delivery of the last Car to Lessee, Lessor and Lessee will, if requested by Lessor, execute and Supplement to this Lease, confirming the date of commencement of the principal term and the quantity of Cars and the road numbers thereof delivered to and accepted by Lessee and subject to the Lease, and Lessee will, if requested by

Lessor, cause the said Supplement to be similarly filed and recorded. Lessee will from time to time perform any other act required by law, and will execute any and all other and further instruments as shall reasonably be requested by Lessor, to assure such publication and such protection of such title. Lessee shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this Lease, the Supplement hereto and any instrument or further assurance hereunder, but not including assignment of Lessor's interest hereunder.

15. Unless an event of default hereunder shall have occurred and be continuing, the principal term of this Lease shall automatically be extended from year to year; but either party may terminate this Lease as to one or more or all of the Cars at the end of the principal term or at any time during any extended annual period by giving to the other party thirty (30) days' written notice of such termination. Any such extension shall be upon all of the terms, provisions and conditions hereof. Following termination as to any Car, the rental thereon shall continue on a per-day prorated basis until withdrawal from service and storage or return to Lessor as provided in Section 11 hereof.

16. Subject only to the limitations on assignment of Lessee contained herein, this Lease shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

17. This Lease may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same agreement, which shall be sufficiently evidenced by any such original counterpart.

18. Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail, first class postage prepaid, or delivered to a telegraph office charges prepaid, addressed as follows:

If to Lessor:

GWI Leasing Corp.  
270 Greenwich Avenue  
Greenwich, Connecticut 06830

If to Lessee:

Genesee and Wyoming Railroad Company  
Retsof, New York 14539

or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

19. The provisions of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Connecticut and applicable Federal laws.

IN WITNESS WHEREOF, Lessor and Lessee, respectively, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and

their respective corporate names and their respective corporate seals to be hereunto affixed and duly attested, as of the day year first above written.

Attest:

Gerald E. Johnson  
Secretary

(CORPORATE SEAL)

GWI LEASING CORP.

By:

Mortimer B. Fuller, III  
Mortimer B. Fuller, III, President

Attest:

James B. Gray, Jr.  
Secretary

(CORPORATE SEAL)

GENESEE AND WYOMING RAILROAD COMPANY

By:

Gerald E. Johnson  
Gerald E. Johnson, President

STATE OF New York )  
~~CONNECTICUT~~ )  
COUNTY OF Monroe ) ss:

On this 16 day of August, 1978, before me, personally appeared Mortimer B. Fuller, III, to me personally known, who, being duly sworn, says that he is President of GWI Leasing Corp., a Delaware corporation, 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.

James B. Gray, Jr.  
Notary Public  
JAMES B. GRAY, JR.  
Notary Public, State of NY, Monroe Co.  
Commission expires March 30, 1979

STATE OF NEW YORK )  
COUNTY OF Monroe ) ss:

On this 16 day of August, 1978, before me personally appeared Gerald E. Johnson, to me personally known, who, being duly sworn, says that he is President of Genesee and Wyoming Railroad 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.



Notary Public

JAMES B. GRAY, JR.

Notary Public, State of NY, Monroe Co.  
Commission expires March 30, 1979