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No. **8-354A073** Telephone 226-4211  
Date **DEC 20 1978** (Area Code 512)  
Fee \$ **50.00**

ICC Washington, D. C.

December 15, 1978

RECORDATION NO. **9926** Filed 1425

REGISTERED MAIL #249560  
RETURN RECEIPT REQUESTED

DEC 20 1978-8 50 AM

Secretary of Interstate Commerce Commission  
Washington, D.C. 20423

Re: Filing, pursuant to 49 U.S.C.A.,  
§20c, of lease documents relating  
to railroad cars

Dear Sir:

Pursuant to 49 U.S.C.A., §20c, and in accordance with 49 C.F.R., §1116, enclosed for filing and recordation are the original executed Equipment Lease dated July 10, 1978, between Greyhound Leasing & Financial Corporation, a Delaware corporation, as Lessor, and RailTex, Inc., a Texas corporation, as Lessee, together with two certified true copies thereof. Also enclosed is our check in the amount of \$50.00 in payment of your recordation fee.

The address of Greyhound Leasing & Financial Corporation, Lessor, is Greyhound Tower, Phoenix, Arizona 85077, and the address of RailTex, Inc., Lessee, is 300 Elizabeth Road, San Antonio, Texas 78209.

The lease documents relate to 25 new rapid discharge, self-cleaning bottom dump rail cars manufactured by Ortner Freight Car Company, with A.A.R. mechanical designation No. HTS, AAB car-type code K340, each of which is marked: Greyhound Leasing & Financial Corporation, Phoenix, Arizona, Owner and Lessor, and RailTex, Inc., Lessee, respectively bearing Serial Nos. TRAX 1000 through 1019 and WRR (TRAX) 1020 through 1024, inclusive.

RECEIVED

DEC 20 1978  
8:30 AM  
F.P.C.  
B.R.

*Matthews, Nowlin, Macfarlane & Barrett*

Page 2  
Dec. 15, 1978

After filing and stamping, please return the enclosed original to this law firm.

Should you have any questions or need further information with respect to this matter, please contact the undersigned by collect telephone call at (512) 226-4211.

Thanking you for your cooperation, we are

Very truly yours,

MATTHEWS, NOWLIN, MACFARLANE & BARRETT

BY: *Jonel R. Fuller*

LRF:fm  
Enclosures  
cc: Mr. Bruce Flohr  
Mr. Steven W. Bienstock

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

12/27/78

OFFICE OF THE SECRETARY

Lionel R. Fuller  
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1500 Alamo National Building  
San Antonio, Texas 78205

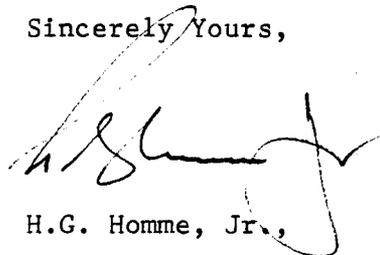
Dear

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 12/20/78 at 8:50am,  
and assigned recordation number(s) 9926.

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. .... Filed 1425

DEC 20 1978 - 8 50 AM

CERTIFICATE OF NOTARY PUBLIC  
PURSUANT TO 49 C.F.R., §1116.3(b)

STATE OF TEXAS       X  
                                  X  
COUNTY OF BEXAR    X

I, the undersigned Notary Public in and for Bexar County, Texas, do hereby certify that I have compared the attached copy of an Equipment Lease dated July 10, 1978, executed by Greyhound Leasing & Financial Corporation, a Delaware corporation, as Lessor, and RailTex, Inc., a Texas corporation, as Lessee, with the original document and that it is a true and correct copy thereof in all respects.

Dated: December 15<sup>th</sup>, 1978.

Genie M. Moody  
Notary Public in and for Bexar County,  
Texas

My Commission Expires June 1, 1980

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated this 10th day of July, 1978, between GREYHOUND LEASING & FINANCIAL CORPORATION, a Delaware corporation, ("Lessor") and RAILTEX, INC., a Texas corporation, ("Lessee").

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

WHEREAS, subject to certain limitations on the purchase price contained herein, Lessor has agreed to purchase the railroad rolling stocks described on Exhibit A hereto (the "Cars"), which by this reference is incorporated herein as if set forth in its entirety, and to lease the Cars to Lessee and Lessee has agreed to lease the Cars from Lessor; and

WHEREAS, Lessee, as purchaser, has entered into a purchase agreement (the "Purchase Agreement") whereby the manufacturer of the Cars has agreed to sell and Lessee has agreed to purchase the Cars; and

WHEREAS, Lessee is prepared to assign its right to purchase the Cars under the Purchase Agreement to Lessor;

WHEREAS, the Cars are to be manufactured in accordance with the specifications approved by Lessee (the "Specifications"); and

WHEREAS, Lessee represents that all acts and things necessary to make this Lease valid and binding on Lessee have been done and performed;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Cars to Lessee and Lessee hereby hires the Cars from Lessor, on the following terms and conditions.

#### 1. DEFINITIONS

As used in this Lease, the following terms shall have the meanings set forth below unless the context otherwise requires:

1.(a) "Bank" shall mean Citibank, N.A.

1.(b) "Conform" shall have the same meaning accorded to the term by Section 2-106 of the Uniform Commercial Code.

1.(c) "Cost" shall mean the total consideration, including freight charges, if applicable, and any and all taxes applicable to the purchase of the Cars by Lessor, which must be paid as the purchase price of the Cars under the terms of the Purchase Agreement, including any payments to Lessee for reimbursement of progress payments made by Lessee for

the Cars, in an aggregate sum of money not to exceed Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00).

1.(d) "Depreciation" shall mean depreciation deductions for Federal income tax purposes on the full Cost of the Cars using a method of depreciation provided by Section 167(b)(2) or (3) of the IRC, a reasonable salvage value and an asset depreciation range under the system of Treasury Regulations Section 1.167(a)-11 with an asset guideline class of 00.25.

1.(e) "Determination" shall have the meaning accorded to said term by virtue of Section 1313 of the IRC.

1.(f) "Event of Default" shall have the meaning specified in paragraph 13 below.

1.(g) "Fair Market Value" shall mean the price that would be paid for the Cars by a disinterested third party under no compulsion to buy from a seller under no compulsion to sell assuming the Cars are in a reasonable operating condition and acceptable for interchange service.

1.(h) "IRC" shall mean the Internal Revenue Code of 1954, as amended.

1.(i) "ITC" shall mean the credit allowed for "new Section 38 property" by Sections 38 and 46 et seq. of the IRC at a ten percent (10%) rate on the full Cost of the Cars.

1.(j) "Prime" shall mean the base interest rate in effect from time to time on ninety (90) day loans offered by the Bank to responsible and substantial commercial borrowers.

1.(k) "Rental" shall mean the rent or rents, as the case may be, for the leasing of the Cars due to the Lessor from Lessee pursuant to paragraph 4, below.

1.(l) "Stipulated Loss Value" shall mean a sum of money in an amount equal to the Cost of a Car or Cars, as the case may be, multiplied by the percentage set forth on Exhibit B, which by this reference is made a part hereof, for the applicable period of the Term in which the calculation of the Stipulated Loss Value is made. The Stipulated Loss Value has been calculated on the premise that any and all Rentals due for the applicable period and all prior periods of the Term have been made by Lessee on or before the dates due.

1.(m) "Term" shall mean the period of this Lease for each Car and shall be for the period set forth in paragraph 3, below.

## 2. ASSIGNMENT OF PURCHASE AGREEMENT, DELIVERY, ACCEPTANCE OF THE CARS AND LEASE

2.(a) Lessor's obligations hereunder shall be limited to the purchase of Cars having a Cost not to exceed in total Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00), inclusive of freight and taxes which may be applicable to the purchase hereof.

2.(b) Lessee covenants, represents and warrants to Lessor that (i) it has entered into the Purchase Agreement which provides for the sale and delivery of the Cars to Lessee in exchange for the consideration which does not exceed the Cost, (ii) it has fully and completely performed each and every obligation imposed on the buyer under the Purchase Agreement on

the date such performance was due, (iii) the Purchase Agreement is valid and in full force and effect in accordance with its terms, no default has occurred thereunder and it has not been amended, altered or assigned, (iv) it will assign to Lessor its rights (not its obligations other than the payment of the purchase price thereunder at a price not to exceed the Cost hereunder) under the Purchase Agreement, enabling Lessor to purchase the Cars directly from the Manufacturer for the purpose of leasing the Cars to Lessee, by instrument in form and content satisfactory to counsel for Lessor, and (v) it will not alter, amend, modify or assign the Purchase Agreement without the prior written consent of Lessor. As soon as the Cars are available for purchase, the Lessor shall cause the manufacturer to tender delivery thereof to Lessee.

2.(c) On tender of delivery of the Cars by the manufacturer thereof, Lessee will forthwith cause the Cars to be inspected by an authorized representative of Lessee and, if such inspection reveals that the Cars Conform to what were ordered under the Purchase Agreement, meet the Specifications, are in good order and are ready for service, Lessee will cause its representative to execute and deliver to Lessor the Certificate of Inspection and Acceptance which shall be in the form attached as Exhibit C hereto, which by this reference is incorporated herein as if set forth in its entirety. Execution by the Lessee of the Certificate of Inspection and Acceptance shall be deemed to be delivery to and acceptance by Lessee of the Cars and the Cars described in the Certificate of Inspection and Acceptance shall be subject immediately thereafter to all the terms and conditions of this Lease. The date on which the Certificate of Inspection and Acceptance is executed shall be the "Delivery Date".

2.(d) In the event that less than all of the Cars are delivered and accepted under the terms of this Lease, then concurrently with the delivery and acceptance of the last Car to be delivered and accepted, Lessee will cause to be executed and delivered to Lessor a supplement to this Lease in substantially the form attached as Exhibit D hereto, which by this reference is incorporated herein as if set forth in its entirety.

2.(e) At all times during the continuance of this Lease, title to the Cars shall be vested in Lessor to the exclusion of Lessee and any rights of Lessee in respect of the Cars shall constitute a leasehold interest only.

2.(f) The Cars to be placed under this Lease shall be delivered by or on behalf of Lessor and accepted by Lessee on or before April 18, 1979, but Lessor shall not be liable for any damages to Lessee for any delay in or a failure to make delivery of the Cars; in no event shall Lessor deliver the Cars to Lessee if they are not delivered to Lessor by the manufacturer thereof on or before April 18, 1979.

### 3. TERM

3.(a) The Term of this Lease as to each Car shall be one hundred forty-four (144) months, commencing on the Delivery Date of the Car.

3.(b) From and after the date of execution hereof until the expiration or termination of this Lease, this Lease shall not be subject to termination by Lessor except pursuant to paragraph 4(a) hereof upon Lessee's failure or refusal to pay the commitment fee or pursuant to paragraph 13 hereof on the occurrence of an Event of Default or by Lessee except pursuant to paragraphs 3(d) and 11 hereof.

3.(c) Unless an Event of Default shall have occurred and be continuing, Lessee shall have the right and option on the expiration of the Term of this Lease, by written notice given to Lessor not less than six (6) months but not more than twelve (12) months prior to the end of the said Term to purchase all, but not less than all, the Cars at a price equal to their then Fair Market Value.

3.(d) If at any time after the thirty-sixth (36th) month of the Term of this Lease, the Car(s) should become surplus or inadequate to Lessee's reasonable business requirements (i.e., being unable to perform the normal function for which said Car(s) was (were) acquired), Lessee shall have the option of terminating the Lease as to said Car(s) provided that (i) Lessee shall have provided satisfactory proof of such condition to Lessor, (ii) Lessee shall have given Lessor written irrevocable and unequivocal notice of Lessee's option to terminate the Lease as to said Car(s) not less than six (6) months but not more than twelve (12) months prior to the date of termination and (iii) Lessee it is not in default under the Lease at the time of such notice and continues to remain not in default until the date of termination. Upon receipt of notice of termination under this paragraph 3(d), Lessor shall have the option, as determined in its sole discretion, upon giving Lessee not less than thirty (30) days written notice prior to the date of termination, to (x) take back the Car(s) so terminated with Lessee being relieved of any further obligations as to said Car(s) to Lessor hereunder, or (y) take back the Car(s) so terminated and sell said Car(s) to third parties with Lessee paying to Lessor upon demand the amount by which the proceeds resulting from said sale (net of expenses reasonably necessary for repossessing, repairing, storing and selling the Car(s), including, without limitation, reasonably attorneys' fees) to third parties is less than the greater of one hundred four percent (104%) of the Stipulated Loss Value in effect at the time of such termination or the then Fair Market Value of the Car(s) so terminated and sold or (z) sell said Car(s) to Lessee with Lessee paying to Lessor upon demand the greater of one hundred four percent (104%) of the Stipulated Loss Value in effect at the time of such termination or the then Fair Market Value of the Car(s) so terminated and sold; plus interest on the amount computed in either (y) or (z) above, as the case may be, from the date of termination to date of payment by Lessee at the rate set forth in paragraph 4(d) below. All rentals shall cease upon the date of termination.

#### 4. COMMITMENT FEE, DOCUMENTATION FEE AND RENTALS

4.(a) As consideration for Lessor's commitment to purchase the Cars and to place them on Lease hereunder through April 18, 1979, Lessee shall pay to Lessor a commitment fee ("Commitment Fee") of one-half of one percent (0.5%) per annum on the outstanding and non-utilized portion of the full commitment amount of Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00) calculated from ~~July~~<sup>September</sup> 17, 1978, until delivery of the Cars, payable quarterly in arrears. The Commitment shall be nonrefundable to Lessee, shall be held and retained by Lessor as its sole property and shall not be applied to Rentals due under this Lease. If Lessee fails or refuses to pay the Commitment Fee when due and such failure or refusal to pay continues for five (5) days subsequent to any such due date, Lessor shall have the option to terminate all its obligations and commitments hereunder; provided, however, such termination of Lessor's obligations to Lessee hereunder shall not relieve Lessee of its obligations to Lessor.

4.(b) Lessee has deposited with Lessor a documentation fee (the "Documentation Fee") in the sum of Ten Thousand Dollars (\$10,000.00), which will be applied, pro rata per Certificate of Inspection and Acceptance, to the payment of the first monthly Rental for the Cars. Any balance of the Documentation Fee remaining as a result of the non-utilization of the full commitment amount of Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00) by

Lessee through no fault of Lessor shall not be returned to Lessee or applied to subsequent Rentals, but shall be kept and retained by Lessor as its sole property.

4.(c) As consideration for Lessor's leasing the Cars to Lessee, Lessee agrees to pay to Lessor rent ("Rental"), in advance in one hundred forty-four (144) consecutive monthly payments, with the first such payment due on the Delivery Date, and each monthly payment thereafter due on the same day of the month as said Delivery Date. Each Rental payment shall equal 1.2238% of the Cost of the Cars.

4.(d) In the event the Rental and any and all other payments due Lessor hereunder are not paid on or before the due dates, 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%) per annum above the then current Prime, whichever is less.

4.(e) Rental and any and all other payments due Lessor hereunder shall be paid to Lessor at its office at Greyhound Tower, Phoenix, Arizona 85077, or as otherwise directed.

4.(f) All payments to be made by Lessee hereunder will be free of expense to Lessor with respect to the amount of any taxes (other than any tax measured by net income payable by Lessor to any State or political subdivision thereof or to the United States under Section 11 or Section 1201 of the IRC in consequence of the receipt of payments provided for herein), license fees, assessments, charges, fines, penalties, property, excise or other taxes currently or hereafter levied or imposed by any State, local, Federal or foreign authority (all such expenses, taxes, license fees, assessments, charges, fines, penalties, property or other taxes being hereinafter referred to as "Impositions") upon or in connection with or measured by this Lease or any sale, Rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions Lessee assumes and agrees to pay on demand in addition to the other payments to be made by it provided for herein. Lessee's obligation to pay Impositions shall likewise include the obligation to pay any increase to Lessor in State, local, Federal or foreign income tax as a result of inclusion in income of Lessor of any amount required by this paragraph to be paid to or for Lessor. Lessee will also pay promptly all Impositions which may be imposed upon the Cars or for the use or operation thereof or on the earnings arising therefrom (except as provided above) or on Lessor solely by reason of the ownership thereof and will keep at all times all and every part of the Cars free and clear of all Impositions which might in any way affect the title of Lessor to such Cars or result in a lien upon the Cars. In the event that during the continuance of this Lease any reports with respect to Impositions involving any Cars are required to be made, Lessee will either make such reports in such manner as to show the interest of Lessor in the Cars or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to Lessor. To the extent that Lessee is prohibited by law from performing in its own name the duties required by this paragraph, and only to that extent, Lessor hereby authorizes Lessee to act in Lessor's name and on its behalf, provided, however, that Lessee shall indemnify and hold Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by Lessee pursuant to this authorization. Lessee shall, whenever requested by Lessor, submit to Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor of Lessee's performance of its duties under this paragraph. Lessee shall also furnish promptly on request all data as Lessor shall reasonably require to permit Lessor's compliance with the requirements of taxing jurisdictions.

4.(g) The Rental and other sums payable by Lessee hereunder shall be paid without notice, demand, counterclaim, set-off, deduction, recoupment or defense and without abatement, suspension, deferment, diminution or proration by reason of any circumstance or occurrence whatsoever. Lessee waives all rights now or hereafter conferred by statute or otherwise to terminate or surrender this Lease or the Cars or any part thereof or to any abatement, suspension, deferment, diminution, reduction or proration of the Rental and other sums payable hereunder on account of any occurrence described in this Lease.

5. COVENANTS, REPRESENTATIONS AND WARRANTIES

5.(a) Lessor covenants, represents and warrants that, subject to the provisions of paragraph 15.(a) herein, at the time the Cars become subject to this Lease, Lessor has received, or will receive, whatever title to the Cars covered by the respective Certificate of Inspection and Acceptance was conveyed, or will be conveyed, to Lessor by Lessor's predecessor in title to such Cars free and clear of all claims, liens, and encumbrances of every kind whatsoever resulting from any act of Lessor and shall have the right to lease the Cars to Lessee under this Lease, and Lessee shall have the exclusive right to possession and quiet enjoyment of the Cars for the duration of the Term, so long as Lessee shall not be in default under this Lease. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED, IT BEING UNDERSTOOD AND AGREED THAT LESSOR EXTENDS NO OTHER WARRANTY TO LESSEE. LESSOR SPECIFICALLY AND EXPLICITLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, DESIGN, CONDITION AND FITNESS (FOR USE OR FOR ANY PARTICULAR PURPOSE), THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP OR IN THE QUALITY OR SUITABILITY OF THE CARS DELIVERED TO LESSEE HEREUNDER, AND LESSEE AGREES TO ACCEPT THE CARS FROM LESSOR "AS IS".

5.(b) Lessee covenants, represents and warrants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and has the corporate power to own its assets and to transact the business in which it is engaged. Lessee is not qualified to do business as a foreign corporation in any jurisdiction and no such qualification is required.

(ii) The execution and delivery of this Lease by Lessee and its assumption and undertaking of the obligations, duties and liabilities hereof have been duly authorized. This Lease is legal, valid, binding and enforceable against Lessee in accordance with its terms.

(iii) Upon the full payment of the purchase price the rights of Lessor and the title of Lessor to the Cars are free and clear of any and all liens, charges or security interests created (other than by an act of Lessor) by any mortgage, security agreement or other instrument binding on Lessee.

(iv) Lessee is currently not in default under any other existing mortgage, indenture, contract, agreement or other instrument or undertaking, order, decree, judgment of any court, arbitration or governmental authority to which it is a party or by which it is bound, and it is not in default under this Lease.

(v) There is no provision in any existing mortgage, indenture, contract, lease, agreement or other instrument or undertaking binding on Lessee which would be contravened by the execution and delivery of this Lease or performance by Lessee of the terms of this Lease, or if there is such a provision, consents to such execution, delivery or performance have been obtained.

(vi) No governmental authorizations, approvals or exemptions are required of Lessee and no registration by Lessee with any governmental agency or commission is necessary for the execution, delivery or performance of this Lease by Lessee or for the validity and enforceability hereof or for the leasing of the Cars hereunder, for the Rental or any of the other terms and conditions herein provided; or, if any such authorizations or registrations are required, they will be or have been obtained or accomplished; and, if any such authorizations or registrations hereafter shall be required, they will be promptly obtained or accomplished.

(vii) No litigation or administrative proceedings are pending or, to the knowledge of Lessee, are threatened against Lessee in any court or before any arbitrator of any kind, any governmental authority, any bureau or any agency, the adverse determination of which would affect the validity of this Lease, the rights of Lessor hereunder, the ability of Lessee to make Rental and other payments due under this Lease or the ability of Lessee to perform its other obligation and duties under this Lease.

(viii) The execution, delivery and performance of this Lease will not contravene any provision of law, including without limitation thereto, any statute, rule, regulation, judgment, decree, order, franchise or permit applicable to Lessee and will not conflict with or violate any provision of its Charter or Articles or Certificate of Incorporation, or its By-Laws.

(ix) All financial statements that have heretofore been presented by Lessee to Lessor in conjunction with the transaction which is the subject of this Lease fairly and accurately present a true and correct picture of its financial condition as of the date given and as of the date hereof; moreover, as of such dates, such financial statements do not contain any untrue statement of a material fact nor do they omit to state a material fact required to be stated therein or necessary in order to make such financial statements not misleading; and there is no fact, situation or event which, in the opinion of its officers, materially adversely affects or, so far as they can now foresee, will materially adversely affect the properties, business, assets, income, prospects or condition (financial or otherwise) of Lessee.

(x) All tax returns which are required to be filed by the Lessee under the laws of any jurisdiction in which its business and operations are conducted have been filed and all taxes shown on the returns have been paid.

(xi) Neither Lessee nor any other person has used or placed into use or service the Cars, and it will not do so prior to the Delivery Date as set forth in the Certificate of Inspection and Acceptance.

6. OPINION OF COUNSEL

Lessee will deliver to Lessor an opinion of its independent legal counsel substantially in the form attached hereto as Exhibit "F" and made a part hereof.

7. IDENTIFICATION OF CARS

7.(a) On or before the delivery to Lessee of the Cars, Lessee, at its sole cost and expense, agrees to cause to be plainly, distinctly, permanently and conspicuously placed, fastened or painted upon each side of each of the Cars a legend in letters not less than one inch in height bearing the following words:

"GREYHOUND LEASING & FINANCIAL CORPORATION,  
PHOENIX, ARIZONA, OWNER AND LESSOR"

7.(b) In case any such legend at any time shall be painted over or otherwise made inconspicuous, removed, defaced or destroyed during the Term of this Lease, Lessee shall immediately cause such legend to be restored or replaced. Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than Lessor or its assignees; but the Cars may be lettered with the names or initials or other insignia customarily used by Lessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Cars under this Lease.

7.(c) On or prior to the respective Delivery Date of the Cars, Lessee agrees to cause to be placed on each side thereof Lessee's assigned number. At all times thereafter, during the Term of this Lease, Lessee will cause the Cars to bear the number so assigned to it, and Lessee will not change or permit to be changed the number except in accordance with a statement of new number to be substituted therefor which previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

8. TAX BENEFITS

8.(a) Lessor confirms to Lessee, and Lessee acknowledges, that Lessor shall be the party entitled to claim the Depreciation available on Lessor's purchase and ownership of the Cars. Lessee agrees that it shall not be entitled to, nor will it claim, the Depreciation. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of Rentals required to be taken into income by Lessor over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to accomplish the intent hereof.

8.(b) If (i) Lessor shall not be entitled for each of its taxable years (or portions thereof) during which this Lease is in effect to full use of Depreciation and (ii) such loss of Depreciation is not solely attributable to an act of Lessor described in paragraph 8(c) hereof, then Lessee shall pay to Lessor, as additional Rentals, a sum which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or any state or local government or taxing authority in the United States, or

under the laws of any taxing authority or political or governmental subdivision of a foreign country, shall be equal to an amount, payable at the time of the Determination of the loss of Depreciation in a lump sum for each calendar year (or portion thereof) for which Depreciation shall or will thereafter be disallowed, sufficient to give Lessor the same after-tax cash flow for such taxable year (or portion thereof) as is contemplated by this Lease and would have resulted had such Depreciation been allowed to Lessor in the amounts and at the times the Depreciation would otherwise have been allowed on the aforesaid basis, together with any interest, addition to tax or penalty which may be assessed by the United States Government against Lessor in connection with such loss of Depreciation on the aforesaid basis, which amounts shall be payable, together with interest thereon from the date of payment by Lessor to the date the Lessee shall reimburse the Lessor at the rate set forth in paragraph 4(d) hereof, on written demand made at any time after payment of the consequential additional income tax. If at any time subsequent to such payment, Lessor shall be allowed and shall receive a refund of tax attributable to such Depreciation, then promptly after receipt of said refund, Lessor shall pay to Lessee the sum of (i) the refund (including the amount of interest and penalties refunded and any interest on the refund) to the extent so attributable, reduced by all taxes required to be paid by Lessor in respect of the receipt of such refund and (ii) the amount of any taxes saved by Lessor in respect of its payment to Lessee of amounts pursuant to said clause (i) above and this clause (ii).

8.(c) Lessee shall not be required to pay to Lessor the amounts provided for in paragraph 8(b) hereof with respect to the Cars if the loss or disallowance of Depreciation, as the case may be, or the right to claim the same, is attributable to the occurrence of any of the following events:

(i) Lessor shall fail to claim the Depreciation in its income tax returns for the appropriate years or shall fail to follow procedures in claiming such Depreciation and such failure to claim or to follow such procedures in claiming such Depreciation and such failure to claim or to follow such procedures, as the case may be, shall preclude Lessor from claiming such Depreciation, provided that the foregoing does not apply to any Depreciation not claimed because of a good faith determination made by Lessor based on the advise of its tax counsel that it is not properly allowable;

(ii) Lessor (or, if Lessor files its Federal Income tax returns as a member of an affiliated group, the group) shall not have sufficient income to benefit from the Depreciation;

(iii) Lessor shall voluntarily or involuntarily transfer legal title to the Cars to anyone (other than a transfer pursuant to paragraph 11 hereof and paragraph 3(d) hereof) or shall dispose of or reduce its interest in the Cars and such transfer, disposition or reduction in interest (A) shall be the direct cause of such loss, (B) shall occur at any time when no Event of Default has occurred and is continuing and (C) shall not be pursuant to the written consent of Lessee; or

(iv) Lessee shall have paid Lessor the amounts requested to be paid to Lessor pursuant to paragraphs 3(d) and 11 hereof.

8.(d) Lessor agrees that if, in the opinion of Lessor's tax counsel, a bona fide claim to all or a portion of the Depreciation exists in respect of which Lessee is required to pay additional Rentals and interest as aforesaid to Lessor as above provided, Lessor shall, on request and at the expense of Lessee, take all such legal or other appropriate action with respect to such claim deemed reasonable by Lessor's tax counsel with respect to such claim in

order to sustain such claim. Lessor hereby agrees to notify Lessee of any proposed disallowance and, provided that Lessee has fully indemnified and secured Lessor to Lessor's reasonable satisfaction, against all anticipated liabilities, costs and expenses resulting from contesting the claims as determined by Lessor in its sole discretion, then the Lessor agrees that no settlement or compromise of any claim at any stage prior to final judicial determination of the matter shall be made without Lessee's consent, which consent shall not be unreasonably withheld.

In the event that this Lease is terminated prior to the time Lessee is obligated to pay additional Rentals with respect thereto pursuant to this paragraph 8, then instead of paying such additional Rentals, Lessee shall pay to Lessor, within thirty (30) days after the date of a Determination that Lessor is not eligible to claim or retain the Depreciation, or any portion thereof, an amount which in the reasonable opinion of Lessor will cause Lessor's discounted after-tax rate of return with respect to the Cars to be equal to Lessor's discounted after-tax rate of return that would have been available if Lessor had been entitled to the utilization of all or such portion of the Depreciation which was not claimed or was disallowed or required to be recaptured, and on such date Lessee shall also pay to Lessor the amount of any interest, addition to tax or penalty paid to the United States by Lessor attributable to the disallowance, recapture or loss of all or any portion of such Depreciation.

8.(e) If for any reason (regardless if required under paragraphs 12(a) and 12(b) or not) all or part of the cost of any alterations, modifications, additions, maintenance or repairs of or to the Cars (hereinafter called "Additional Expenditures") is required to be included in the gross income of Lessor under the laws of the United States or any state or local government or taxing authority in the United States, or under the laws of any taxing authority or political or governmental subdivision of a foreign country, at any time prior to the expiration of the Term of this Lease, then Lessee shall pay to Lessor on demand the sum of (i) the amount of any increase in state, local, federal or foreign income tax liability resulting from the inclusion of such Additional Expenditures in the gross income of Lessor, (ii) the amount of any interest (net of any actual decrease in state, local or federal income tax caused by any allowable deduction of such interest from the taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection therewith, and (iii) the amount of any state, local, federal, or foreign income taxes which are or will be required to be paid by (or, if previously paid, which will not be refunded to) Lessor as a result of the receipt of amounts pursuant to this paragraph 8(e); provided, however, that Lessee shall not be required to pay Lessor the amount provided for in this paragraph 8(e) if the inclusion of such Additional Expenditures in the gross income of Lessor shall occur as the direct result of the failure of Lessor to take timely action pursuant to paragraph 8(d) in contesting a claim made by the Internal Revenue Service or the applicable state, local or foreign taxing authority, unless the requirements of paragraph 8(d) have been satisfied. If at any time subsequent to such payment, Lessor shall be allowed and shall receive a refund with respect to any portion or all of the amount of any such increase in Federal, state or local income tax liability, then, promptly after receipt of said refund, Lessor shall pay to Lessee the sum of (W) all amounts with respect to such allowance received by Lessor from the Federal government or state or local taxing authority, as the case may be (including refunds of interest and penalties and any additional interest received by Lessor on such refunds), reduced by all taxes required to be paid by Lessor in respect of the receipt of such amounts, and (X) the amount of any taxes saved by Lessor in respect of its payment to Lessee of amounts referred to in subclause (W) above and its payment to Lessee of amounts pursuant to this subclause (X). As and if Lessor actually realizes a present or future Federal, state or local income tax benefit as a direct result of the inclusion in Lessor's gross income of all or part of

any additional Expenditures as to which the foregoing is applicable, Lessor shall pay to Lessee (Y) an amount equivalent to the Federal, state or local income tax benefit actually realized, and (Z) the amount of any Federal, state or local income taxes saved by Lessor in respect of its payment to Lessee of amounts referred to in subclause (Y) above and its payment to Lessee of amounts pursuant to this subclause (Z).

8.(f) Lessee agrees to keep and make available for inspection and copying by Lessor those records as will enable Lessor to determine the fulfillment of the foregoing indemnity and the extent to which it is entitled to the benefit of the Depreciation with respect to the Cars.

8.(g) Reference in this Lease to specific sections of the IRC shall be deemed to include comparable sections or provisions of any successor laws.

8.(h) ITC Election. Lessor agrees, for the sole purpose of ITC on the Cars, to treat Lessee as the purchaser of the Cars; provided, however, that Lessor's election to so treat Lessee as such purchaser shall not (i) be construed as and Lessor shall not have been deemed to have made any representation or warranty that any ITC is available to Lessee with respect to such Cars and (ii) in any manner whatsoever affect this transaction as a true lease. Lessor agrees that it shall not be entitled to, nor will it claim, any ITC with respect to the Cars or file any returns or other documents or take any other action inconsistent with the election herein to treat Lessee as the purchaser of the Cars for such purposes.

## 9. MAINTENANCE AND LIENS

9.(a) It is agreed between the parties that, as between Lessor and Lessee, all risks, as to the merchantability, fitness, design or condition of, or as to the quality of the material, equipment or workmanship in or the quality or suitability of the Cars delivered to Lessee hereunder, are to be borne by Lessee.

9.(b) Lessee agrees, during the continuance of this Lease, at Lessee's own cost and expense, to maintain and keep the Cars in first-class condition, repair, and appearance and in good and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange. Except for alterations or changes required by law, Lessee shall not, without the prior written approval of Lessor, effect any change in the design, construction or body of the Cars. Lessee shall notify Lessor promptly of any alterations or changes in the Cars required by law, describing by identification number the Cars affected and the nature of the alterations or changes. Lessee agrees to enter into a maintenance contract with Safety Railway Service, Inc., of Victoria, Texas (or another company receiving the prior approval of Lessor), at Lessee's own cost and expense for the Term of the Lease, in which said company agrees to perform the maintenance and repairs on the Cars as required by this Lease. Lessee further agrees to assign the required maintenance contract to Lessor immediately on the request of Lessor, such assignment shall be in a form and content satisfactory to Lessor and its counsel.

9.(c) 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 the Cars or any inadequacy thereof for any purpose, or any deficiency or defect therein, or the use or maintenance thereof, or any repairs, servicing, modification 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.

9.(d) Any part installed or replacements made by Lessee upon the Cars shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor except that this shall not apply to special equipment installed on the Cars by Lessee with the consent of Lessor, provided that such equipment is removed by Lessee before the Cars are returned to Lessor and all damage resulting from such installation and removal is repaired by Lessee, and further provided that removal of such equipment does not affect the Cars' serviceability or use in unrestricted interchange.

9.(e) Lessee shall pay or satisfy and discharge any and all sums claimed by any party other than those which were created by act of Lessor which, if unpaid, might become a lien or a charge upon the Cars or entitled to priority over any of the rights of Lessor in and to the Cars, but Lessee shall not be required to discharge any such claim so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which, in the opinion of Lessor, will not affect or endanger the title and interest of Lessor in and to the Cars.

9.(f) At the termination of this Lease, and absent the exercise of Lessee's option to purchase the Cars, Lessee shall return the Cars to Lessor in such condition as to permit use in unrestricted interchange and shall meet all interchange requirements of the Association of American Railroads.

## 10. INSURANCE

10.(a) Lessee, at its own cost and expense, shall insure the Cars from the time of delivery and acceptance thereof and at all times thereafter until Lessee's obligations under this Lease with respect to the Cars have been discharged against loss, damage or destruction thereof caused by fire, lightning, theft, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, such insurance to be in an amount equal to the Stipulated Loss Value therefor, except that such coverage may be limited so that any loss amounting to less than Five Hundred Dollars (\$500.00) shall not be payable by the insurer.

10.(b) All such insurance (i) shall be taken for the benefit of Lessor and Lessee, as their respective interests may appear, in a financially sound and responsible insurance company or companies satisfactory to Lessor, (ii) shall insure the respective interests of Lessor and Lessee in the Cars and shall provide that the proceeds of such insurance shall be payable to Lessor and (iii) shall insure the interests of Lessor regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policies.

10.(c) All insurance proceeds received by Lessor with respect to the Cars shall:

(i) Be applied by Lessor, in the case of the loss, destruction or damage beyond repair of the Cars, toward the satisfaction of Lessee's obligation to make the payment required by paragraph 11 hereof; or

(ii) Be paid to Lessee, in the case of repairable damage to the Cars, on receipt by Lessor of a written application signed by Lessee or by a person designated by Lessee for the payment of or to reimburse Lessee for the cost of

repairing the Cars. The written application shall be accompanied by satisfactory evidence of the cost and satisfactory completion of the repair to the Cars. If an Event of Default has occurred and is continuing hereunder, the proceeds of insurance may be applied by Lessor, at Lessor's option, against any liability of Lessee to Lessor hereunder for such Default, as defined in paragraph 13.

10.(d) The proceeds of any insurance received by Lessor on account of loss, theft, destruction or damage to the Cars in respect of which Lessee shall have made payment to Lessor pursuant to paragraph 11 hereof shall be released to Lessee on receipt by Lessor of a written application signed by Lessee or a person designated by Lessee, provided, however, that if an Event of Default has occurred and is continuing hereunder, such proceeds may be applied by Lessor, at Lessor's option, against any liability of Lessee to Lessor hereunder for such Default as defined in paragraph 13.

10.(e) Lessee shall maintain comprehensive general liability coverage with respect to the Cars satisfactory to Lessor as set forth in Exhibit E hereto, which by this reference is incorporated herein as if set forth in its entirety.

10.(f) All insurance policies required herein shall contain a provision to the effect that the insurer will give Lessor thirty (30) days prior written notice before cancellation, termination or modification of any such policies are effective.

10.(g) In the event Lessee is notified that Lessor has sold or encumbered the Cars, assigned this Lease or assigned the Rentals payable hereunder, Lessee shall exercise its best efforts to provide insurance containing loss payable clauses satisfactory to both Lessor and Lessor's assignee but in no event shall said clause provide less coverage than provided for herein. The Lessee shall furnish Lessor or Lessor's assignee with certificates or other satisfactory evidence of the maintenance of the insurance required hereunder.

## II. LOSS, THEFT OR DESTRUCTION OF THE CARS

In the event the Cars, or any of them, are lost or stolen or are destroyed or damaged beyond economic repair from any cause whatsoever, or shall be appropriated, requisitioned, taken over or nationalized by any governmental authority under the power of eminent domain or otherwise during the Term of this Lease, and all of the obligations of Lessee hereunder are not assumed by such governmental authority within sixty (60) days after such appropriation, requisitioning, taking over or nationalization (hereinafter referred to as a "Loss"), Lessee shall promptly and fully inform Lessor of such occurrence and this Lease shall cease and terminate as to such Cars and the Rental thereof shall be abated and Lessee shall pay Lessor the Stipulated Loss Value of the Cars, less the amount of any insurance recovery received by Lessor; provided, however, Lessee shall pay to Lessor an amount equal to the last previous Rental on the date that the next Rental would have fallen due and shall continue to pay such amount each month thereafter until such time as Lessor shall have received from Lessee or from the proceeds of insurance an amount equal to the sum of (a) accrued Rentals, if any, to the date of such Loss, (b) the Stipulated Loss Value as of the date of such Loss and (c) interest on the unpaid and declining balance of said amount at the rate set forth in paragraph 4.(d) above from the date of such Loss to the date of receipt. At such time as Lessor has received the sum of (a), (b) and (c) above, either from Lessee or from the insurance proceeds, Lessee shall then be entitled to receive the remainder, if any, of all insurance proceeds as compensation for the loss of Lessee's leasehold interest in the Cars, and to the extent and at

the time that Lessor shall have received any monies in excess of the sum of (a), (b) and (c) above, Lessor shall then refund the amount of such excess to Lessee.

## 12. COMPLIANCE WITH LAWS AND RULES, AND INDEMNIFICATION

12.(a) Lessee agrees to preserve and keep in full force and effect its corporate existence and all rights, licenses, permits and franchises necessary for the proper conduct of its business and to comply in all respects (i) with all laws of the jurisdictions in which its operations involving the Cars may extend, (ii) with the interchange rules of the Association of American Railroads, (iii) with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body, and (iv) with all lawful rules of any other association of carriers or shippers exercising any power or jurisdiction over Lessee or over the Cars, to the extent that such laws and rules affect the title, operation, storage, maintenance or use of the Cars.

12.(b) In the event such laws or rules require the alteration of the Cars, Lessee shall conform the Cars in accordance therewith at Lessee's expense and shall maintain the same in proper condition for operation under such laws and rules; provided, however, that Lessee may in good faith contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of Lessor as owner hereunder.

12.(c) Lessee agrees to assume all risks and liability for the Cars leased hereunder, for the delivery, use, operation, storage and sale thereof and for injuries or deaths of persons, maintenance and damage to property, howsoever arising from or incident to such delivery, use, operation, storage or sale, 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 and against all losses, damages, claims, injuries, demands, penalties, liabilities, and expenses, including, without limitation, attorney's fees, howsoever arising or incurred because of or incident to (i) the Cars or the actual or alleged orderings, purchase, acquisition, delivery, management, control, leasing, condition, destruction, damage, return, storage, repossession, surrender, sale or other disposition, use, operation or storage thereof, (ii) the assertion of any claim or demand based on any infringement or alleged infringement of any patent, trademark or other right by or in respect of the Cars and (iii) strict liability in tort.

## 13. DEFAULT AND REMEDIES

13.(a) Lessor shall have the benefit of the remedies stated in paragraph 13.(b) herein if during the Term of this Lease one or more of the following events shall occur ("Events of Default" or "Default"):

(i) Lessee shall fail to pay when due any part of any of the payments required by paragraph 4 hereof or of any other sum to be paid hereunder and such failure shall continue for twenty-four (24) hours after receipt by Lessee of written, telegraphic or telex notice of such failure to pay;

(ii) Lessee should fail at any time to procure or maintain any insurance coverage prescribed herein;

(iii) Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or of possession of the Cars or any of them, except appropriation, requisitioning, taking over or nationalization as described in paragraph II hereof, and shall fail or refuse to cause such assignment or transfer to be canceled by agreement of all parties having any interest therein and to recover possession of the Cars within five (5) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

(iv) Lessee shall fail to observe or perform any other of the covenants, conditions and agreements on the part of Lessee contained herein and such failure shall continue for ten (10) days after written notice from Lessor to Lessee specifying the Default and demanding the same to be remedied;

(v) Lessee or any successor shall be in material default under any existing mortgage, note, indenture, contract, lease, agreement, instrument of undertaking, order or decree of any court, arbitrator of any kind, or any governmental agency or any other obligation;

(vi) Any material representation made by Lessee herein or hereunder or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

(vii) Lessee should commit an act of bankruptcy or be the subject of any proceeding under the Bankruptcy Act or any amendment thereto or under any other insolvency law or law providing for the relief of debtors (provided, however, that if the same is an involuntary proceeding which is stayed or dismissed within thirty (30) days from the date of commencement the same shall not constitute default);

(viii) Lessee should become insolvent (that is, unable to pay its debts as they fall due);

(ix) If final judgment from which no appeal may be taken or a stay of enforcement granted for the payment of money aggregating in excess of \$10,000.00 should be rendered against Lessee and the same shall remain outstanding and undischarged for a period of thirty (30) days thereafter.

13.(b) Upon the occurrence of an Event of Default, Lessor may at its option:

(i) Proceed by appropriate court action, or actions, either at law or in equity, to enforce performances by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, and it is expressly agreed that the right to resort to any such court action is a remedy given to Lessor in addition to, and not in lieu of, any other remedies given to Lessor under this Lease;

(ii) Give written notice to Lessee specifying the occurrence giving rise to such Event of Default, or Events of Default, and stating that this Lease shall expire and terminate on the date specified in such notice, and on the date so specified (if any such Event of Default shall be continuing), subject to the provisions hereof relating to the survival of Lessee's obligations, this Lease shall

expire and terminate (hereinafter such expiration and termination sometimes being referred to as "Premature Termination") and all rights of Lessee under this Lease shall absolutely cease and terminate as though this Lease had never been made but Lessee shall redeliver the Cars to Lessor in accordance with paragraph 17 hereof and Lessor may take or cause to be taken by its agent or agents immediate possession of the Cars without liability to return to Lessee any amounts theretofore paid hereunder and free of any claims of Lessee whatsoever and may remove the same from the possession and use of Lessee, and for such purpose may enter upon Lessee's premises where the Cars may be located and may use and employ in connection with such removal any supplies, services, means or other facilities of Lessee with or without process of law;

(iii) Recover from Lessee any and all amounts which may be due and unpaid, or which may become due, for the use of the Cars (including, without limitation, Rentals and Impositions accruing hereunder after the date of the Event of Default and up to and including the date of Premature Termination) as well as to recover forthwith from Lessee:

(A) Any damage in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of Rental.

(B) If the Cars have been repossessed, as damages for the loss of a bargain and not as a penalty, a sum with respect to the Cars which represents (1) either (a) the excess of the then present worth of the unpaid balance of total Rentals payable under this Lease discounted at the rate of five percent (5%) per annum, computed as of the date of the Premature Termination, for such repossessed Cars over the then present worth of the rents for the Cars which Lessor is to receive from the subsequent user of the Cars for the period from the date of Premature Termination to the date on which the Term hereof would have expired but for such Premature Termination discounted at the rate of five percent (5%) per annum, or (b) the amount by which the Stipulated Loss Value of the Cars, computed as of the date of Premature Termination, exceeds the net sales price for the Cars which Lessor received from the buyer(s) of the Cars after repossession, whichever is applicable, plus (2) interest on such excess until paid at the rate set forth in paragraph 4.(d) hereof from the date of Premature Termination, plus (3) reasonable expenses (including, without limitation, attorneys' fees) incurred by Lessor in taking possession of, overhauling, repairing and/or modifying the Cars after repossession thereof as determined by Lessor to be reasonably required to place the Cars in a condition reasonably suitable for sale, release or other use.

(C) If the Cars have not been repossessed as damages for the loss of a bargain and not as a penalty, a sum with respect to the Cars which represents an amount equal to one hundred ten percent (110%) of the Stipulated Loss Value of the Cars as of the date of Premature Termination.

13.(c) FOR AND IN CONSIDERATION OF AND AS AN INDUCEMENT TO LESSOR TO ENTER INTO THE LEASE, LESSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES

ANY AND ALL RIGHTS TO NOTICE AND/OR HEARING PRIOR TO ANY RETAKING OF POSSESSION OR REPLEVY OF THE CARS BY LESSOR, ITS AGENTS OR ASSIGNS UPON DEFAULT OF LESSEE, AND FOR THAT PURPOSE LESSOR MAY, TO THE EXTENT LESSEE CAN GIVE AUTHORITY THEREFOR, ENTER UPON ANY PREMISES ON WHICH THE CARS MAY THEN BE SITUATED AND REMOVE THE SAME THEREFROM. LESSOR MAY REQUIRE LESSEE TO DELIVER THE CARS TO LESSOR AT A PLACE TO BE DESIGNATED BY LESSOR WHICH IS REASONABLY CONVENIENT TO BOTH PARTIES. LESSEE SHALL BE LIABLE TO LESSOR OR THE LESSOR MAY RECOVER FROM LESSEE ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND OTHER LEGAL EXPENSES INCURRED BY LESSOR IN OBTAINING POSSESSION OF THE CARS.

13.(d) If on the date of such termination or repossession any Car is damaged, lost, stolen or destroyed or subject to appropriation, requisition, takeover or nationalization by governmental agency, or is subject to any levy, seizure, assignment, application or sale for or by any creditor, Lessee shall also remain liable for payment of the Stipulated Loss Value as specified in paragraph 11 hereof.

13.(e) The rights and remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other rights and remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event of any Default, Lessor shall be entitled to recover reasonable costs and expenses, including attorneys' fees, as shall have been expended or incurred by Lessor in the enforcement of any right or privilege hereunder, plus interest thereon at the rate provided in paragraph 4.(d) herein.

13.(f) Lessor may at its election waive any Event of Default and its consequences and rescind and annul any such notice of termination by notice to Lessee in writing to that effect within sixty (60) days after delivery of any such notice of termination, and thereupon the respective rights of the parties shall be as they would have been if no Event of Default had occurred and no such notice had been given.

#### 14. POSSESSION AND USE OF THE CARS, PER DIEM AND OTHER CHARGES

14.(a) Unless an Event of Default shall have occurred and be continuing, Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease. Lessee shall not use or permit the use of the Cars involving the operation and/or maintenance thereof outside the United States of America. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control the Cars except that Lessee may permit the use thereof or any part thereof by other railroad companies in the usual interchange of traffic agreement, but only on and subject to all the terms and conditions of this Lease; provided however, Lessee may sublease the Cars subject to the following terms and conditions:

- (i) Each Car must be subleased at a rental of not less than \$19.00 per day;
- (ii) Prior to the Lessee entering into a sublease transaction, the sublessee must receive the written approval of Lessor; and

(iii) Each sublease entered into by Lessee must be assigned to Lessor, the sublease and assignment being in form and content acceptable to Lessor and its counsel.

14.(b) All per diem payments, sublease rentals and other charges payable for the use of the Cars while being used by others and proceeds payable for the loss, destruction or damage of or to the Cars under the current Code of Rules Governing the Settlement for Destroyed or Damaged Cars adopted by the Association of American Railroads shall be paid to Lessor's agent, care of Lessor, who, prior to Default and until a successor is designated by Lessor, may be the Lessee. Lessee shall cause appropriate instructions as to such payments to be published in each issue of the Official Railway Equipment Register. Prior to the occurrence of an Event of Default the amounts so paid shall be remitted by such agent to Lessee; provided, however, that if an Event of Default shall occur no such payments, sublease rentals or other charges shall be paid to Lessee from and after the occurrence of said Event of Default, and Lessee hereby releases any claim thereto, and all such payments, sublease rentals and other charges shall be remitted to Lessor and may be applied by Lessor against any liability of Lessee to Lessor hereunder or any expense incurred by Lessor because of such Default.

#### 15. ASSIGNMENT

15.(a) All rights, benefits and advantages of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Cars with or without notice to Lessee. At the request of Lessor or any chattel mortgagee, assignee, trustee or other holder of the legal title to the Cars, the Cars may be lettered or marked to identify the legal owner of the Cars, if other than Lessor, at no expense to Lessee. If, during the continuance of this Lease, any such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced, at Lessee's expense.

15.(b) Lessee, without the prior written consent of Lessor, shall not sell, assign, transfer or encumber its leasehold interest under this Lease in the Cars or sublet the Cars, except as provided in paragraph 14 above. Any sale, assignment, transfer, encumbrance or sublease prohibited by this paragraph 15 shall be void.

#### 16. REPORT AND RIGHT TO INSPECT THE CARS

16.(a) During the Term of this Lease and without demand, Lessee agrees that it and its agents, employees and representatives will cooperate with Lessor in the investigation and defense of any and all claims against Lessor which may arise as a result of the alleged or apparent improper manufacturing, functioning or operation of the Cars and that they will aid in the recovery of damages from any third parties responsible therefor.

16.(b) During the Term of the Lease, Lessee will furnish to Lessor (a) as soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of the Lessee, a balance sheet of the Lessee as at the end of such fiscal year and statements of income and of changes in financial position of the Lessee for such fiscal year (together, in each case, with the comparable figures for the immediately preceding fiscal year), all in reasonable detail, prepared in accordance with generally accepted accounting

principles applied on a basis consistently maintained throughout the period involved and with prior periods and certified to by a recognized firm of Certified Public Accountants selected by the Lessee and satisfactory to the Lessor, (b) as soon as available, and in any event within sixty (60) days after the end of each of the first three quarterly periods of each fiscal year of the Lessee, a balance sheet of the Lessee as at the end of such quarterly period and related statements of income and of changes in financial position of the Lessee for the period from the beginning of the fiscal year to the end of such quarterly period (together, in each case, with the comparable figures for the corresponding period of the immediately preceding fiscal year), all in reasonable detail but without explanatory footnotes, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and with prior periods and certified by the chief financial officer of the Company (subject to normal year-end audit adjustments), (c) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate from a recognized firm of Certified Public Accountants who audited such statements stating that in making the examination necessary for the audit of such financial statements they obtained no knowledge of any default by the Lessee in the observance, performance or fulfillment of any of the covenants contained in this Lease, or if they shall have obtained knowledge of any such default, specifying the same, (d) concurrently and simultaneously with the delivery of the financial statements referred to in clauses (a) and (b) above, Lessee shall issue and deliver to Lessor a certificate stating whether there exists on the date of issuance of said certificate any condition or event which constitutes or which, after notice or lapse of time or both, would constitute an Event of Default hereunder, and if any such condition or event then exists, specifying the nature and period of existence thereof and the action Lessee is taking and proposes to take with respect thereto, and (e) from time to time, such additional financial and other information as the Lessor may reasonably request.

16.(c) During the Term of this Lease, Lessee will furnish to Lessor, on or before February 1st of each year (commencing with the year 1979) and on such other dates as Lessor may from time to time reasonably request, an accurate report certified by a duly authorized officer of Lessee stating as of a recent date (but, in the case of each annual statement, not earlier than the preceding December 31 and in case of any other such statement, not earlier than a date ninety (90) days preceding the date of such statement) (i) that the Cars have been maintained in accordance with paragraph 9.(b) hereof or, if such be the case, then being repaired in accordance with paragraph 9 hereof, and that the legends placed on the Cars as required by paragraph 7 hereof have been preserved or repainted on each side of each of the Cars, and that Lessee's identifying reporting mark and the appropriate car number have been preserved or repainted on each side of each of the Cars as required by paragraph 7 hereof, (ii) the location of the Cars and (iii) such other information regarding the location, condition and state of repair of the Cars as Lessor may reasonably request.

16.(d) During the Term of this Lease, the Lessee will promptly give notice in writing to Lessor of (a) the occurrence of any Default or Event of Default, (b) the occurrence of any default by any party (including the Lessee) under any sublease (if permitted hereunder), (c) the occurrence of any default or event of default under any other agreement or instrument relating to any indebtedness of the Company for borrowed money, for the deferred purchase price of property or equipment or for the leasing of equipment and (d) the occurrence of any litigation or proceedings affecting the Lessee and of any proceeding or proceedings affecting the Lessee and of any proceeding or threatened proceeding between the Lessee and any governmental regulatory body or any other party which might interfere with the normal

operations of the Lessee or which might result in any adverse change in the business or condition (financial or otherwise) of Lessee.

16.(e) Lessor or its assignee shall have the right, at its sole cost and expense, by its authorized agents, employees or representatives, to inspect the Cars and Lessee's records with respect thereto, at such times and from time to time during the term of this Lease as may be reasonably necessary to confirm to the satisfaction of Lessor or its assignee the existence and proper maintenance of the Cars.

#### 17. RETURN OF THE CARS

17.(a) On the expiration of the Term of this Lease, or if Lessor shall rightfully demand possession of the Cars pursuant to this Lease or otherwise, Lessee shall forthwith remove or cause to be removed any lettering of the names or initials or other insignia customarily used by Lessee from the Cars at its cost and expense and deliver the possession of the Cars to Lessor, such Cars to be 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 collectable insurance in accordance with this Lease, and Lessee will pay for any repairs necessary to restore the Cars to their original condition, except as aforesaid. For such purpose Lessee, at its own cost and expense, shall forthwith assemble the Cars and place them upon such storage tracks as Lessor may designate or, in the absence of such designation, as Lessee may select, and Lessee shall pay all costs and expenses of such storage for a period not exceeding one hundred eighty (180) days from the date that the Cars are so assembled at the risk of Lessor, and at Lessee's own cost and expense shall transport or cause to be transported the Cars at any time within such one hundred eighty (180) day period on the written direction of Lessor to do so to the place the Cars were located when the Certificate of Inspection and Acceptance was executed. The assembling, delivery, storage and transportation of the Cars as hereinabove provided are of the essence of this Lease and, upon application to any court of equity having a jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee so as to require Lessee to assemble, deliver, store and transport the Cars.

17.(b) Without in any way limiting the obligation of Lessee under the foregoing provisions of this paragraph 17, Lessee hereby irrevocably appoints Lessor as its agent and attorney, with full power and authority, at any time while Lessee is obligated to deliver possession of the Cars to Lessor, to demand and take possession of the Cars in the name and on behalf of Lessee from whomsoever shall be at the time in possession of the Cars.

17.(c) Except as otherwise provided in paragraph 11 hereof, in the event that the Cars are not redelivered to Lessor on or before the date on which the Term of this Lease expires, all of the obligations of Lessee under this Lease with respect to the Cars shall remain in full force and effect until the Cars are redelivered to Lessor.

#### 18. PURCHASE OPTION

Provided that this Lease has not been earlier terminated and Lessee is not in Default hereunder, Lessee may elect to purchase the Cars covered by this Lease at the times and in the manner specified in paragraph 3 hereof.

19. FORCE MAJEURE

Lessor's obligation to deliver and place the Cars on lease hereunder shall be subject to delays or impossibility of performance resulting from causes beyond the control of Lessor or the manufacturer and vendor of the Cars in the ordinary course of their respective businesses, including but not limited to acts of God, acts of government establishing embargoes or imposing controls on price or interest rates having the effect of preventing, suspending or delaying the operation of the terms of paragraph 4 herein, priorities, allocations, war or war conditions, riot or civil commotion, sabotage, strikes, lockouts, labor disputes, accidents, fire, flood, explosion, damage to plant equipment or facilities or delays in receiving necessary materials.

20. MODIFICATION OF LEASE

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the Cars. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of Lessor and Lessee, or the successors, transferees or assigns of either, subject, however, to the limitations on assignment hereof by Lessee. This Lease supersedes any and all prior representations, warranties and/or inducements, written or oral, heretofore made by Lessor concerning this transaction, which are null and void and of no force or effect whatsoever.

21. HEADINGS AND CERTAIN REFERENCES

All paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. Unless otherwise indicated, all references herein to clauses and other subdivisions refer to the corresponding paragraphs, clauses and other subdivisions of this Lease; the words "herein", "hereof", "hereto", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular paragraph, clause or other subdivision hereof; and reference to a numbered or lettered subdivision of a paragraph shall include relevant matter within the section which is applicable to but not within such numbered or lettered subdivision.

22. CERTAIN APPLICABLE LAWS

Any provision hereof prohibited by or unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without modifying the remaining provisions of this Lease. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be deemed to be a valid, binding agreement enforceable in accordance with its terms.

23. 360-DAY YEAR

Computations hereunder involving the determination of interest shall be made on the basis of a 360-day year of twelve (12) 30-day months.

24. NOTICES

All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered to Lessee or any officer of Lessor or delivered to the United States Post Office, registered or certified, postage prepaid, or to a telegraph office, charges prepaid, addressed as follows:

If to Lessor:

GREYHOUND LEASING & FINANCIAL CORPORATION  
Greyhound Tower  
Phoenix, Arizona 85077  
Attention: Vice President - Operations

If to Lessee:

RAILTEX, INC.  
300 Elizabeth Road  
San Antonio, Texas 78209  
Attention: President

or to such other addresses as may hereafter be furnished in writing by either party to the other.

25. GOVERNING LAW

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 Texas.

26. SURVIVAL OF COVENANTS

Any other provisions contained in this Lease to the contrary notwithstanding, it is hereby agreed that the provisions of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 shall survive the expiration or termination hereof.

27. SUCCESSORS AND ASSIGNS

Subject to the provisions of paragraph 15, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns, and no other persons shall have or acquire any right under or by virtue of this Lease.

28. FURTHER ASSURANCES

Lessee agrees from time to time throughout the Term of this Lease to execute such additional documents and to perform such further acts as may be reasonably requested by Lessor in order to carry out and effectuate the purposes and intents of this Lease.

29. EXECUTION IN COUNTERPARTS

This Lease may be executed simultaneously in several counterparts, each of which

so executed shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

### 30. DOCUMENTS

As soon hereafter as feasible and in any event prior to Lessor's purchase of the Cars, Lessee shall at its sole cost and expense execute, deliver and/or file and record or cause to be executed, delivered and/or filed and recorded to or for Lessor, as the case may be, the following documents, which must be in form and content satisfactory to Lessor and its counsel:

30.(a) A legal opinion of Lessee's independent legal counsel, as to the matters set forth in paragraph 6 above.

30.(b) A certified copy of the Resolution adopted by the Board of Directors of Lessee, authorizing the execution of and performance under this Lease.

30.(c) A certificate of insurance issued by an insurer acceptable to Lessor, in which Lessor appears as a named insured and which evidences Lessee's purchase of (i) a comprehensive general liability policy covering the operations of Cars and having policy limits of not less than those specified in Exhibit E hereto, which by this reference is incorporated herein as if set forth in its entirety, and (ii) a physical damage insurance policy in an amount acceptable to Lessor, all in accordance with paragraph 10 above.

30.(d) The Lease shall have been duly filed and recorded with the Interstate Commerce Commission under Section 20(c) of the Interstate Commerce Act and with the Railroad Commission of Texas.

30.(e) An executed counterpart of a maintenance contract by and between Lessee and Safety Railway Services, Inc.

30.(f) Such other agreements, certificates or other instruments in writing as shall be deemed reasonably necessary or desirable by Lessor or its counsel in order to more fully and completely secure, protect, perfect or preserve Lessor's ownership interest in and to the Cars, including without limitation UCC Financing Statements.

30.(g) Acknowledgement by Lessor that it is holding the Certificate of Deposit described in Paragraph 32.(a) hereof as security.

### 31. CONDITIONS PRECEDENT TO LESSOR'S OBLIGATION TO PURCHASE THE CARS

The obligations of Lessor hereunder to purchase the Cars and lease them to Lessee are expressly contingent on satisfaction and fulfillment of the following:

31.(a) Lessee shall have executed and delivered, or caused to be executed and delivered, the documents described in paragraph 30 above.

31.(b) There shall be no materially adverse change in the financial condition of Lessee and no materially adverse change in the ability of Lessee to perform its obligations under this Lease prior to the date on which Lessor is requested to purchase the Cars.

31.(c) Lessee shall have kept and performed the various covenants, obligations and duties of its part to be kept and performed hereunder.

31.(d) The filing and recording of this Lease with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and with the Railroad Commission of Texas.

31.(e) Lessee shall, at its sole cost and expense, purchase and maintain (including, without limitation, the prompt payment of all premiums due thereon) in full force and effect during the Term of this Lease a life insurance policy on the life of Bruce M. Flohr, with Lessor as the sole beneficiary of the policy, which shall have a policy limit of not less than \$150,000.00 during the Term of this Lease. The life insurance policy must be acceptable in form and substance to Lessor, must be from a company acceptable to Lessor, must provide for not less than thirty (30) days prior written notice to Lessor of its termination, reduction of amount of coverage or material alteration of the policy and must be delivered to Lessor prior to Lessor's purchase of the Cars. The life insurance policy and the proceeds thereof shall be additional security for the prompt, complete, faithful and unconditional performance by Lessee of each and every, all and singular, obligation, duty, covenant and undertaking of Lessee under the Lease. Lessee may fulfill its obligations to purchase the new life insurance policy described herein by irrevocably assigning to Lessor its interest as beneficiary under an existing policy on the life of Bruce M. Flohr the first \$150,000.00 of benefits paid under such existing life insurance policy. The agreement for the assignment of the existing life insurance benefits shall be in form and substance satisfactory to Lessor and its counsel.

31.(f) Lessee shall secure the due and proper execution and delivery by Mr. and Mrs. Bruce M. Flohr, husband and wife, to Lessor of a Guarantee Agreement in favor of Lessor and in form and substance satisfactory to counsel for Lessor in which the Guarantors jointly and severally guarantee the full, prompt, complete and faithful performance, payment, observance and fulfillment by Lessee of all the obligations, covenants and conditions of the Lease;

31.(g) Lessor shall receive from Lessee evidence satisfactory to Lessor that (i) one hundred thousand (100,000) shares of the Lessee's capital stock has been sold and (ii) Lessee's shareholders' equity immediately after such sale of stock was increased by Five Hundred Thousand Dollars (\$500,000.00).

31.(h) Lessee shall have (i) entered into sublease(s) for all the Cars, under terms and conditions in compliance with paragraph 14(a) hereof and (ii) assigned said sublease(s) to Lessor in accordance with paragraph 14(a) hereof.

31.(i) Lessor shall have received Lessor's Security Deposit in accordance with paragraph 32(a) hereof.

## 32. SECURITY DEPOSIT

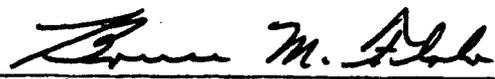
32.(a) As a condition precedent to the performance by Lessor of its obligation to deliver the Cars hereunder, concurrently with the execution of each Certificate of Inspection and Acceptance, Lessee shall deposit with Lessor as a security deposit (the "Security Deposit") a Certificate of Deposit from a bank acceptable to Lessor and in Lessor's name in an amount of not less than thirty-five percent (35%) of the Cost of the Car(s) covered by each Certificate of Inspection and Acceptance. The Security Deposit (including all

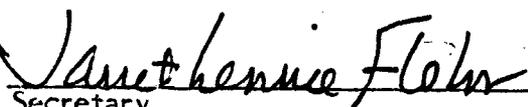
renewals of or replacements for the Certificate of Deposit) shall remain and be additional collateral for the full, prompt and complete performance by Lessee of all its covenants, conditions, obligations and duties under this Lease. Commencing at the end of the fourth (4th) year of the Term and on each annual anniversary thereafter, the amount of said Security Deposit shall be reduced by the same percentage that the Stipulated Loss Value for the Cars declines during the year then ended, provided that the Lessee at the end of said fourth (4th) year and on each annual anniversary thereafter enters into or renews the sublease(s) for all of the Cars for a term of not less than one (1) year at a rate of not less than \$19.00 per day per Car under terms and conditions in compliance with paragraph 14(a) hereof and assigns said subleases to Lessor in accordance with paragraph 14(a) hereof. In the event the Lessee is unable to enter into such sublease(s), the Security Deposit shall not be reduced below its original amount of thirty-five percent (35%) of the Cost of the Cars covered by each Certificate of Inspection and Acceptance or shall cease being reduced, as the case may be. In addition, upon Lessor's receipt of any payments due it pursuant to paragraphs 3(d) and 11 hereof, Lessor agrees to reduce the existing Security Deposit by an amount calculated by dividing the amount received pursuant to paragraphs 3(d) and 11 by the total Cost of the Cars and multiplying that quotient by the initial original amount of the Security Deposit.

32.(b) Unless and until an Event of default shall occur and be continuing, Lessor shall be entitled to hold the Security Deposit as it sees fit; and, in the event that Lessee shall fully and faithfully perform and comply with all of the terms, covenants, conditions, obligations and duties on its part to be performed under this Lease, then Lessor shall (a) return such Security Deposit to Lessee on the expiration of the Term of this Lease and (b) remit the interest thereon to Lessee promptly on the receipt thereof by Lessor from the issuing bank. However, in the event of the occurrence of a default by Lessee in its obligations to pay any sums due Lessor under this Lease, to perform any other of its obligations and duties under this Lease or to honor its covenants and warranties under this Lease, then Lessor may, but is not obligated to, apply such Security Deposit, and accrued interest thereon, if any, or any portion thereof, against any such obligations, duties, covenants and warranties of Lessee; and such application shall not in any way diminish or excuse the performance by Lessee of any of its obligations, duties, covenants and warranties under this Lease; it being understood that Lessor shall be entitled throughout the Term of the Lease to hold and retain a Security Deposit in the amounts set forth above.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed in their respective corporate names by its officers thereunto duly authorized and their corporate seal to be hereunto affixed and duly attested, all as of the day and year first above written.

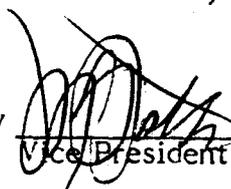
RAILTEX, INC.  
"Lessee"

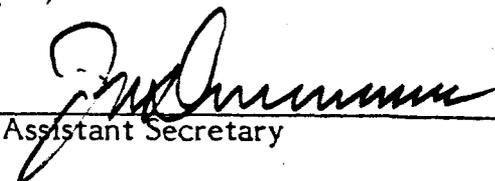
By   
President

By   
Secretary

(seal)

GREYHOUND LEASING & FINANCIAL CORPORATION, "Lessor"

By   
Vice President

By   
Assistant Secretary

(seal)

STATE OF ARIZONA            )  
  )ss.  
COUNTY OF MARICOPA    )

On this 5<sup>th</sup> day of October, 1978, before me, the undersigned Notary Public, personally appeared Martin G. Roth and James N. Dunnum, known to me to be the persons whose names are subscribed to the foregoing instrument and to be the Vice President and Assistant Secretary, respectively, of Greyhound Leasing & Financial Corporation, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

Catherine B. Fleckley  
Notary Public

STATE OF Texas            )  
  )ss.  
COUNTY OF Bexar        )

On this 27th day of November, 1978, before me, the undersigned Notary Public, personally appeared Bruce M. Flohr and Janet Lennie Flohr, known to me to be the persons whose names are subscribed to the foregoing instrument and to be the President and Secretary, respectively, of Ralftex, Inc., and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

Patricia Carter  
Notary Public

PATRICIA CARTER  
Notary Public, Bexar County, Texas  
My Commission Expires Sept. 22, 1979

EXHIBIT "A" TO EQUIPMENT LEASE AGREEMENT  
BETWEEN  
GREYHOUND LEASING & FINANCIAL CORPORATION  
AND  
RAILTEX, INC.  
DATED JULY 10, 1978

TM  
Twenty-five (25) new "Rapid Discharge" Self-Cleaning Bottom Dump  
Rail Cars manufactured by Ortner Freight Car Company

<u>Description</u>	<u>Specification Number</u>	<u>Units</u>	<u>Road Numbers All Inclusive</u>
Model No. OC-5025(100 Ton)	EX-279	20	TRAX 1000-1019
Model No. OC-5025(100 Ton)	EX-279	5	WRRC(TRAX)1020-1024

<u>Quarter</u>	<u>Percentage</u>
1	101.31
2	101.31
3	101.29
4	101.18
5	101.03
6	100.73
7	100.39
8	99.97
9	99.47
10	98.89
11	98.24
12	97.50
13	96.69
14	95.79
15	94.82
16	93.77
17	92.64
18	91.44
19	90.15
20	88.79
21	87.34
22	85.82
23	84.22
24	82.54
25	80.78
26	78.95
27	77.03
28	75.04
29	72.97
30	70.82
31	68.59
32	66.28
33	63.89
34	61.43
35	58.88
36	56.25
37	53.56
38	50.78
39	47.92
40	44.98
41	41.95
42	38.87
43	35.70
44	32.44
45	29.11
46	25.70
47	22.22
48	18.65

EXHIBIT "C" TO EQUIPMENT LEASE AGREEMENT  
BETWEEN  
GREYHOUND LEASING & FINANCIAL CORPORATION  
AND  
RAILTEX, INC.  
DATED JULY 10, 1978

CERTIFICATE OF INSPECTION AND ACCEPTANCE

RAILTEX, INC., ("Lessee") does hereby certify to GREYHOUND LEASING & FINANCIAL CORPORATION ("Lessor") that the new Rapid Discharge Self-Cleaning Bottom Dump Rail Car(s), Model No. \_\_\_\_\_, manufactured by Ortner ("Manufacturer"), bearing the identifying reporting marks and Car numbers of Lessee as follows:

was (have been) delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 1978, ("Delivery Date"), pursuant to the Equipment Lease dated as of July 10, 1978, between Lessor and Lessee (the "Lease"); and the Lease with respect to said Car(s) shall commence as of the said Delivery Date.

The Lessee further certifies:

1. That during the manufacture of said Car(s) by the Manufacturer, Lessee, through qualified inspectors, inspected in accordance with inspection and testing practices and methods which, in their opinion, are adequate for the protection of Lessor, the materials and other components incorporated in and the construction of said Car(s).
2. That the materials and other components incorporated in and the construction of said Car(s) comply fully with, and said Car(s) has (have) been completed in full accordance with, the Specifications referred to in the Lease; and was (were) otherwise in all respects satisfactory and acceptable to Lessee on said Delivery Date;
3. That said Car(s) has (have) been delivered in good order and ready for service by the Manufacturer directly to Lessee and has (have) been accepted by Lessee as of the Delivery date in accordance with the provisions of the Lease;

4. That there was plainly, distinctly and conspicuously placed upon each side of the said Car(s) at the time of its delivery and acceptance a legend bearing the following words in letters not less than one (1) inch in height:

"GREYHOUND LEASING & FINANCIAL CORPORATION,  
PHOENIX, ARIZONA,  
OWNER AND LESSOR"

5. That the representations and warranties contained in paragraph 5(b) of the Lease were true as of the Delivery Date, and that there has been no Event of Default as defined in paragraph 13(a) of the Lease as of the Delivery Date.

DATED: \_\_\_\_\_

RAILTEX, INC. ("Lessee")

By \_\_\_\_\_  
Its:

EXHIBIT D TO EQUIPMENT LEASE AGREEMENT  
BETWEEN  
GREYHOUND LEASING & FINANCIAL CORPORATION  
AND  
RAILTEX, INC.

DATED JULY 10, 1978

SUPPLEMENT DATED December 5, 1978, TO EQUIPMENT LEASE AGREEMENT  
DATED JULY 10, 1978, BETWEEN GREYHOUND LEASING & FINANCIAL CORPORATION  
("LESSOR") AND RAILTEX, INC., ("LESSEE")

Lessor and Lessee agree that the Car(s), as defined below, are the only cars subject to the Lease and that all other cars described in the Lease are hereby deleted therefrom.

Lessor and Lessee hereby confirm that the below-described standard rapid discharge self-cleaning bottom dump rail cars (the "Cars") manufactured by Ortner ("Manufacturer") for sale to Lessor were delivered to Lessee on or before the date hereof:

TRAX 1000	TRAX 1014
TRAX 1001	TRAX 1015
TRAX 1002	TRAX 1016
TRAX 1003	TRAX 1017
TRAX 1004	TRAX 1018
TRAX 1005	TRAX 1019
TRAX 1006	TRAX 1020
TRAX 1007	TRAX 1021
TRAX 1008	TRAX 1022
TRAX 1009	TRAX 1023
TRAX 1010	TRAX 1024
TRAX 1011	
TRAX 1012	
TRAX 1013	

Lessor and Lessee confirm that the Cars were inspected by duly appointed and authorized representatives of Lessee in accordance with Section 2 of the aforesaid Lease. Such inspection showed (a) that the Cars have been constructed in accordance with the Specifications, all applicable Federal Railroad Administration requirements and all standards recommended by the Association of American Railroads and (b) that there was plainly, distinctly, permanently and conspicuously placed, fastened or painted upon each side of each Car a legend in letters of not less than one (1) inch in height bearing the following words:

"GREYHOUND LEASING & FINANCIAL CORPORATION  
PHOENIX, ARIZONA  
OWNER AND LESSOR"

and that each side of each Car was plainly and distinctly marked with the Lessee's Road Number set forth above with respect thereto.

Lessor and Lessee confirm that on the aforesaid Date(s) of Delivery the Cars were duly accepted by a representative of Lessee in accordance with Section 2 of the Lease, and Lessee acknowledges that the Cars are now held by Lessee subject to the terms and conditions of the aforesaid Lease, including the payment of the Rentals provided for therein with respect to the Cars to Lessor.

IN WITNESS WHEREOF, Lessor has caused this Supplement to be executed in its corporate name, by one of its financial officers thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, and Lessee has caused this Supplement to be executed in its corporate name by one of its officers thereunto duly authorized and its corporate seal to be hereunto affixed and duly attested the day and year first above written.

ATTEST:

GREYHOUND LEASING & FINANCIAL CORPORATION

By *J. M. [Signature]*  
Assistant Secretary

By *[Signature]*  
Vice President

(Seal)

ATTEST:

RAILTEX, INC.

By *Jane Henrie Flor*  
Its: Secretary

By *Ernest M. Albo*  
Its: President

(Seal)

EXHIBIT "E" TO EQUIPMENT LEASE AGREEMENT  
BETWEEN  
GREYHOUND LEASING & FINANCIAL CORPORATION  
AND  
RAILTEX, INC.

DATED JULY 10, 1978

Lessee shall maintain or cause to be maintained, with respect to its activities and operations in which the Cars shall be utilized, comprehensive general liability coverage including, but not limited to, bodily injury to any and all persons including employees and property damage liability insurance. All liability insurance policies shall be primary and without right of contribution from other insurance which is carried by Lessor, shall name both Lessor and Lessee as insureds, and shall expressly provide that all of the insurance provisions, except the limit of liability shall operate in the manner as if there were a separate policy covering each insured. Bodily injury and property damage liability insurance shall be in the amount of \$2,000,000.00 combined single limit. The insurance coverage described above covers liability of Lessee, including liability assumed under any contract or agreement arising out of any occurrence or occurrences caused or growing out of Lessee's operations anywhere in the world and/or operations incidental thereto.

*Matthews, Nowlin, Macfarlane & Barrett*  
*Attorneys at Law*

<i>William L. Matthews</i>	<i>W. F. Nowlin</i>
<i>Harvey Macfarlane</i>	<i>Frank Barrett</i>
<i>Leonard R. Fuller</i>	<i>P. H. Swearingen, Jr.</i>
<i>Louis T. Lewis, Jr.</i>	<i>F. W. Barber</i>
<i>James D. Rankin, Jr.</i>	<i>Richard C. Goldenwith</i>
<i>W. H. Nowlin</i>	<i>Frank C. Morgan, Jr.</i>
<i>John D. Fitch</i>	<i>Joe E. Wood</i>
<i>George P. Parker, Jr.</i>	<i>E. M. Montgomery</i>
<i>W. Roger Wilson</i>	<i>Charles J. Fitzgerald</i>
<i>Kevin S. Wiley</i>	<i>Howard P. Nowlin</i>
<i>Wesley M. Ramsey Cripps</i>	<i>Mary D. Kelly</i>
<i>Leon D. Milligan, Jr.</i>	<i>Charles J. Miller III</i>
<i>John M. Pennington III</i>	<i>Justine Pearl Blakemore</i>
<i>Marshall T. Perry, Jr.</i>	<i>John T. Perry, Jr.</i>
<i>A. Elvin Hummel</i>	

*1500 Alamo National Building*  
*San Antonio, Texas - 78205*  
*Telephone 226-4211*  
*(Area Code 512)*

November 29, 1978

Greyhound Leasing & Financial Corporation  
Greyhound Tower  
Phoenix, Arizona 85077

Gentlemen:

We are counsel to Railtex, Inc., a Texas corporation ("Railtex"), and have acted as such since its incorporation. We have acted as its counsel in connection with the execution and delivery of an Equipment Lease ("Lease") dated July 10, 1978, between Lessee and Greyhound Leasing & Financial Corporation, a Delaware corporation ("Lessor"), under which Lessor has agreed to lease to Lessee and Lessee has agreed to lease from Lessor certain railroad rolling stocks (the "Cars") upon the terms and conditions set forth therein.

In connection with the foregoing, we have examined originals, or copies certified to our satisfaction of all such corporation records and of all such agreements, certificates and other documents as we have deemed relevant and necessary as a basis for the opinion herein set forth. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid documents. We have made a diligent effort in determining all relevant, factual and legal circumstances pertaining to this transaction and the opinion expressed in this letter.

The opinion expressed below is subject to the qualification that (i) the enforceability of the rights and remedies of the parties to the Lease is subject to the usual equity principles and the effect of any applicable bankruptcy, insolvency, reorganizatio

*Matthews, Nowlin, MacFarlane & Barrett*

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Nov. 29, 1978

or other laws affecting creditors' rights generally in the event of the bankruptcy or insolvency of any party or applicability to any party of such other laws affecting creditors' rights generally; and (ii) the opinion expressed below is limited to federal law and the laws of the State of Texas.

You should further take notice that one of the partners in this firm is general counsel for Railtex, is a director and officer thereof, and together with three other partners in this firm, are shareholders of Railtex.

Based upon and subject to the foregoing and the qualifications and assumptions referred to above, we are of the opinion that

1. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the corporate power to own its assets and to transact the business in which it is engaged. Lessee is not qualified to do business as a foreign corporation in any jurisdiction and no such qualification is required.

2. The execution and delivery of the Lease by Lessee and its assumption and undertaking of the obligations, duties and liabilities thereof have been duly authorized, and the Lease is legal, valid, binding and enforceable against Lessee in accordance with its terms.

3. The rights of Lessor as set forth in the Lease and the title of Lessor to the Cars when paid for in full by Lessor will be free and clear of any and all liens, charges or security interests created (other than by an act of Lessor) by any mortgage, security agreement or other instrument binding on Lessee.

4. To the best of counsel's knowledge and belief, the Lessee is currently not in default under any other existing mortgage indenture, contract, lease, agreement or other instrument or undertaking, order, decree, judgment of any court, arbitration or governmental authority known to counsel and to which it is a party or by which it is bound.

5. To the best of counsel's knowledge and belief, there is no provision in any existing mortgage, indenture, contract, lease or agreement known to counsel and binding on Lessee which would be contravened by the execution, delivery and performance by Lessee of the terms of the Lease.

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6. No consent of holders of any indebtedness known to counsel is or will be required as a condition to the validity of the Lease.

7. No governmental authorizations, approvals or exemptions are required and no registration with any governmental agency or commission is necessary for the execution, delivery or performance of the Lease or for the validity and enforceability thereof or for the leasing of the Cars thereunder or for the Rental and other terms and conditions therein provided.

8. The execution, delivery and performance of the Lease will not contravene any provision of law, including, without limitation thereto, any statute, rule, regulation, or any judgment, decree, order, franchise or permit known to counsel applicable to Lessee.

9. There is nothing contained in the Lease as to substance and form that would prevent the filing and recording of the Lease with the Interstate Commerce Commission and such public offices as are necessary for the full protection of the rights of Lessor in the United States of America. Once filing and recordation has occurred, we will render a supplemental second opinion confirming such filing and recordation.

Very truly yours,

*Matthews, Nowlin, Macfarlane & Barrett*