

COPY

7398

LEASE NUMBER **P-0021**



Peoples Bank
& Trust Company

RECORDATION NO. _____ Filed & Record

FEB 14 1974 - 8 30 AM

LESSOR

130 SOUTH FRANKLIN STREET, ROCKY MOUNT, N. C. 27801

INTERSTATE COMMERCE COMMISSION

FULL LEGAL NAME AND ADDRESS OF LESSEE

SUPPLIER OF EQUIPMENT (Complete Address)

Laurinburg & Southern Railroad Company
P. O. Box 546
Laurinburg, N.C. 28352

Briggs & Turivas, Inc.
P.O. Box 27
Imperial, Pa. 15126

ATTENTION:

Tax Exemption Number **711 5 064 08223** Supplier's Salesman **Phillip Paul** Phone No. _____

QUANTITY	DESCRIPTION, MODEL #, CATALOG # OR OTHER IDENTIFICATION	SERIAL NO.	PRICE
8	Gondola Cars - A.A.R. Type G 342 @ \$11,915.00 each Rebuilt to A.A.R. Rule 88 (New Car Status) 521.6 " long; 70 ton capacity - Roller Bearing Trucks; End of Car Cushioning Devices; New Wood Floors; Welder Air Brake Train Line; Painted Light (Sky) Blue Road Numbers - LRS 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008.		\$ 95,321
TOTAL LIST			95,32
TRANSPORTATION			
OTHER			
LESS TRADE-IN (IF ANY)			
TOTAL COST			\$ 95,32

Location of Equipment: Street Address _____ City _____ State _____ Zip Code _____

SCHEDULE OF LEASE PAYMENTS DURING INITIAL TERM OF LEASE				AMOUNT OF EACH LEASE PAYMENT	
NO. OF MONTHS	NO. OF LEASE PAYMENTS	LEASE PAYMENTS WILL BE MADE:	NO. AND AMOUNT OF ADVANCE LEASE PAYMENTS	Payment \$	1,669.91
84	84	MONTHLY <input checked="" type="checkbox"/> SEMI-ANNUALLY <input type="checkbox"/> QUARTERLY <input type="checkbox"/> ANNUALLY <input type="checkbox"/>	1 NO. AND LAST 1.720. PAYMENTS) \$ EACH, TOTALING \$	Tax	50.09
				Insurance	1,720.00
				Total	1,720.00

TERMS AND CONDITIONS OF LEASE

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RECORDATION NO. _____ Filed & F

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INTERSTATE COMMERCE COMMI

1. LEASE. Lessee hereby leases from lessor, and lessor leases to lessee, the personal property described above and in any schedule made a part hereof by the parties hereto (herein called "equipment"). THIS LEASE CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN.

2. SELECTION OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above and has selected the supplier named above. Lessor agrees to order such equipment from said supplier, but shall not be liable for specific performance of this lease or for damages if for any reason the supplier delays or fails to fill the order. Lessee shall accept such equipment if delivered in good repair, and hereby authorizes lessor to add to this lease the serial number of each item of equipment so delivered. Any delay in such delivery shall not affect the validity of this lease.

3. WARRANTY: DEFECTS IN EQUIPMENT. Lessor is not the manufacturer of the equipment, nor manufacturer's agent. Accordingly, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION, THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATORS, OR SPECIAL METHODS. Responsibility for all such matters, as between lessor and lessee, is to be borne by lessee at its sole risk and expense. Lessee further acknowledges that defects or breakdowns of the leased equipment occurring after receipt by the lessee of equipment shall not relieve the lessee from the obligation of payment of the lease or payment of any other obligation

receipt of the property by the lessee, should such a need arise.

4. INITIAL TERM. The initial term and lease payment commencement date of this lease shall begin upon the date of acceptance of the equipment by the lessee, and shall end upon the expiration of the number of months specified above after the payment commencement date.

5. ENTIRE AGREEMENT. THIS INSTRUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN LESSOR AND LESSEE. NO AGENT OR EMPLOYEE OF THE SUPPLIER IS AUTHORIZED TO BIND LESSOR TO THIS LEASE BY WARRANTY OR OTHERWISE, TO WAIVE OR ALTER ANY TERM OR CONDITION PRINTED HEREIN OR ADD AN PROVISION HERETO. EXCEPT AS OTHERWISE PROVIDED IN THIS LEASE, A PROVISION MAY BE ADDED OR A PROVISION HEREOF MAY BE ALTERED OR VARIED ONLY BY A WRITING SIGNED AND MADE A PART HEREOF BY AN AUTHORIZED OFFICER OF LESSOR. WAIVER BY LESSOR OF ANY PROVISION HEREOF IN ONE INSTANCE SHALL NOT CONSTITUTE A WAIVER AS TO ANY OTHER INSTANCE.

6. ERRORS IN ESTIMATED COST. As used herein, "TOTAL COST" means the cost to lessor of purchasing and delivering the equipment to lessee, including taxes, transportation charges and other charges. The amount of each lease payment and the advance lease payment are based on the total cost initially set forth above, which is an estimate, and shall each be adjusted proportionally if the actual cost of the equipment differs from said estimate. Lessee hereby authorizes lessor to correct the figures set forth above when the total cost is known, and to add to the amount of each lease payment any sales tax that may be imposed on or measured by the lease payments. If the total cost of the equipment differs from the estimated total cost by more than ten per cent (10%) thereof, however, either party at its option may terminate this lease by giving written notice to the other party within fifteen (15) days after receiving notice of the total cost or the corrected lease payment.

7. WARRANTIES. Lessor will permit lessee to enforce in its own name all warranties, agreements or representations, if any, which may be made by the supplier to the lessee. Any action to enforce such warranties, agreements, or representations may be brought in the name of the lessor or lessee, provided, however, the said lessee pays all costs which may be occasioned by such action and will immediately reimburse lessor for any and all sums which it may be required to pay as a result of any action taken in accordance with this portion of the lease.

Lessee warrants that it will not use the equipment in any manner that will result in its disqualification as "Section 38 Property" under the provisions of the Internal Revenue Code pertaining to the investment tax credit which the lessee understands and agrees shall be taken by the lessor and shall not be taken by the lessee.

8. LEASE PAYMENT. Lessee agrees to pay during the initial term of this lease an amount equal to the "Amount of Each Lease Payment" specified above multiplied by the "No. of Lease Payments" specified above. The advance lease payment as specified above is due and payable upon the signing of this lease. The first lease payment (after the advance payment), whether lease payments are payable monthly, quarterly, semi-annually or annually, shall be due and payable on the last day of such period measured from the date of the signing of the Lessee's Receipt for Equipment or within (10) business days after receipt of equipment, whichever event is sooner. Subsequent lease payments shall be due and payable on the like day of each successive period. All lease payments shall be paid to Lessor at its address set forth above, or as otherwise directed by Lessor or its assignees in writing.

9. ADVANCE LEASE PAYMENT. Advance lease payments shall not

apply to cure any default of lessee in the monthly lease payments.

10. LOCATION. The equipment shall be delivered and thereafter kept at the location specified above, or if none is specified, at lessee's address as set forth above, and shall not be removed therefrom without lessor's prior written consent.

11. LABELS. If lessor supplies lessee with labels stating that the equipment is owned by lessor, lessee shall affix and keep the same in a prominent place on each item of equipment.

12. REPAIRS AND ALTERATIONS. Lessee, at its expense, shall keep the equipment in good repair and furnish all parts, mechanisms and devices required therefor. Lessee shall not make any alterations, additions or improvements to the equipment without lessor's prior written consent. All additions and improvements made to the equipment shall belong to lessor.

13. SURRENDER. Upon expiration or earlier termination of this lease, by the lessor, lessee, at its expense, shall return the equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place or carrier as lessor may specify.

13 A. See Optional Provisions for Equipment Schedules attached

14. LOSS AND DAMAGE. Lessee shall bear the entire risk of loss, theft, damage or destruction of the equipment from any cause whatsoever; and no loss, theft, damage or destruction of the equipment shall relieve lessee of the obligation to pay lease payments or of any other obligation under this lease.

In the event of damage to any item of equipment, lessee shall immediately place the same in good repair. If lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, lessee at the option of the lessor shall:

(a) replace the same with like equipment in good repair in which event title to such equipment shall vest in the lessor, or

(b) pay forthwith in cash all amounts owed by lessee to lessor under this lease whether such sums have accrued or not and in addition, an amount equal to ten per cent (10%) of the invoice price of the equipment. Upon satisfactory receipt of payment as set forth herein, lessee shall be entitled and shall receive title to the equipment in its then condition and location, without warranties expressed or implied.

15. INSURANCE; LIENS; TAXES. Lessee shall provide and maintain insurance against loss, theft, damage or destruction of the equipment in an amount not less than the total lease payments payable hereunder and with companies satisfactory to lessor, with loss payable to lessor. Each policy shall expressly provide that said insurance as to lessor and its assigns shall not be invalidated by any act, omission, or neglect of lessee. Lessor may apply the proceeds of said insurance to replace or repair the equipment and/or to satisfy lessee's obligations hereunder. At lessor's request, lessee shall furnish proof of said insurance. Failure to supply such proof within (10) days from date of request shall constitute a breach of the terms of this lease. Lessee shall keep the equipment free and clear of all levies, liens and encumbrances. Lessee shall pay all charges and taxes (local, state, federal and personal property) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the equipment (excluding however, all taxes on or measured by lessor's income) whether such taxes become payable during the initial term of this lease or thereafter. For Insurance, see letter dated February 5, 1974.

16. INDEMNITY. Lessee shall indemnify lessor against, and hold lessor harmless from, any and all claims, actions, proceedings, expenses, damages and liabilities, including attorneys' fees, arising in connection with

the equipment, including without limitation, its manufacture, selection, purchase, delivery, possession, use, operation, abandonment or return and the recovery of claims under insurance policies thereon.

17. ASSIGNMENT. Without lessor's prior written consent, lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest therein, or (b) sublet or lend the equipment or permit it to be used by anyone other than lessee or lessee's employees.

Lessee agrees that lessor may assign its interests under this lease, and grant a security interest in the equipment, consents thereto and, in consideration of an assignee having advanced funds to lessor to finance the purchase of the equipment or otherwise, agrees as follows:

(a) that lessee's obligations to pay directly to the assignee the amounts (whether designated as rentals or otherwise) which become due from lessee as set forth herein shall be absolutely unconditional and shall be payable whether or not the lease is terminated by operation of law, any act of the parties or otherwise, and lessee promises so to pay the same and not to assert against the assignee any claim or defense whatsoever, whether by reason of breach of the lease or otherwise, which it may or might now or hereafter have as against lessor (lessee reserving its right to have recourse directly against lessor on account of any such claim or defense); and

(b) that, subject to lessee's right of use thereof, lessee holds and will hold said equipment and the possession thereof as bailee for the assignee to the extent of the assignee's aforesaid interests therein and will not surrender possession thereof to lessor until said interests are satisfied, discharged and terminated.

Subject to the foregoing, this lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, survivors and assigns of the parties hereto.

18. LATE CHARGES. Should lessee fail to pay any part of the lease payments herein reserved or any other sum required to be paid to lessor by lessee within ten (10) days after the due date thereof, lessee shall pay unto lessor a late charge of ten per cent (10%) of the total lease payment for each month or other payment period or part thereof for which said lease payments or other sum shall be delinquent.

19. DEFAULT. If lessee fails to pay any lease payments or any other amount herein provided within ten (10) days after the same is due and payable, or if lessee fails to perform any other provision hereof within ten (10) days after lessor shall have demanded in writing performance thereof, or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against lessee or its property, or if lessee makes any assignment for the benefit of its creditors, or if a meeting of creditors is called by lessee to discuss its financial obligation, or if judicial liens have been secured against the lessee and/or its property and not released within a period of fifteen (15) days, or if the lessor shall reasonably feel that lessee is no longer financially responsible, lessor shall have the right but shall not be obligated to exercise any one or more of the following remedies:

(a) to accelerate the terms of this lease and declare the full amount of lease payments immediately due and payable and to sue for and recover all payments and other amounts then due or thereafter accruing under this lease;

(b) to take possession of any or all of the equipment, wherever it may be located, without demand or notice, without any court order or other process of law, and without incurring any liability to lessee for any damages occasioned by such taking of possession;

(c) to sell any or all of the equipment at public or private sale for cash or on credit and to recover from lessee all costs of taking possession, storing, repairing and selling the equipment and the unpaid balance of the

total lease payments of the initial term of this lease attributable to the equipment sold, less the net proceeds of such sale;

(d) to terminate this lease as to any or all items of equipment;

(e) in the event lessor elects to terminate this lease as to any or all items of equipment, to recover from lessee as to each item subject to said termination the worth at the time of such termination, of the excess, if any, of the amount of lease payments reserved herein for said item for the balance of the term hereof over and then reasonable lease value of said item for the same period of time; and

(f) to pursue any other remedy now or hereafter existing at law or in equity.

Notwithstanding any such action that lessor may take including taking possession of any or all of the equipment, lessee remains liable for the full performance of all its obligations hereunder, lessee waives as to lease payments or other amounts due hereunder, the benefit of all exemptions under any homestead, bankruptcy or similar laws.

In addition, lessee shall pay lessor all costs and expenses, including an attorney's fee of fifteen per cent (15%) of any amount demanded if this lease is placed in the hands of an attorney for collection, in exercising any of its rights hereunder.

20. OWNERSHIP. The equipment is, and shall at all times remain, the property of lessor; and lessee shall have no right title or interest therein or thereto except as expressly set forth in this lease.

21. NOTICES. Any written notice or demand under this agreement may be given to a party by mailing it to the party at its address set forth above, or at such address as the party may provide in writing from time to time. Notice or demand so mailed shall be effective when deposited in the United States mail, duly addressed and with postage prepaid

22. MULTIPLE LESSEES. If more than one lessee is named in this lease, the liability of each shall be joint and several.

23. LAW TO BE APPLIED: SEVERABILITY. This contract shall not be binding upon the parties until fully executed by the Lessor at its registered office or principal place of business in the State of North Carolina, the laws of which State shall be used to govern and construe this lease. Without limiting the right of service of process upon others as allowed by law, Lessee hereby designates the Secretary of State of North Carolina, Raleigh, North Carolina, as agent for the purpose of accepting service of any process within the State of North Carolina. In the event any provision hereof shall be held invalid by any Court of competent jurisdiction, the invalidity of such provision shall not affect any other provision hereof.

24. FURTHER DOCUMENTATION. The lessor may at its option, at reasonable intervals, request the lessee or any guarantor of this lease to submit current financial statements or other documents as proof of continued financial responsibility. Failure to submit current financial statements or other documents as requested by lessor within fifteen (15) days from demand shall constitute a breach of the lease upon which lessor may avail itself of any of the options set forth in this lease.

Lessee shall be required to execute such additional documents, including but not limited to guarantees and financing statements as may reasonably be requested by the lessor to perfect its interest in the equipment, to establish continued financial responsibility, or to correct a document which does not accurately set forth the agreement between the parties.

Lessor is hereby irrevocably appointed the Lessee's attorney-in-fact to execute and file in the Lessee's name any financing statements and amendments thereto required to perfect Lessor's interest in the equipment.

13 A.

OPTIONAL PROVISIONS FOR EQUIPMENT SCHEDULES

ECONOMIC OBSOLESCENCE. Notwithstanding any provision herein contained to the contrary, in the event that Lessee shall in its reasonable judgment determine that the Equipment as a whole or any item of the Equipment having an invoice cost (as designated on the appropriate Equipment Schedule) in excess of Five Thousand Dollars (\$5,000.00), shall become obsolete or surplus to Lessee's requirements, then Lessee may, at its option, upon not less than one hundred twenty (120) days prior written notice to Lessor, terminate this Lease with respect to such Equipment on the rent payment date of the ~~Sixtieth~~ (60th) installment or on any rent payment date thereafter provided that no Default shall have occurred and be continuing.

During the period from the giving of such notice until the effective date of termination, Lessee shall use its best efforts to obtain bids for the disposition (whether by sale, lease, or otherwise) of such Equipment. Lessee shall certify to Lessor in writing the amount of each bid received by Lessee and the name and address of the party (who shall not be Lessee or any person, firm, or corporation affiliated with Lessee) submitting such bid.

Lessor may, but shall be under no duty to, solicit bids or otherwise take any action in connection with arranging such disposition of the Equipment.

Effective on the termination date, Lessor shall dispose of such Equipment to the bidder named in the highest bid certified by Lessee to Lessor or otherwise obtained by Lessor. The proceeds of such disposition shall be to the account of Lessor. Also effective on such termination date, Lessee shall pay to Lessor, in cash, the Termination Value of such Equipment as of such date.

The "Termination Value" of such Equipment shall mean the value specified for the Equipment and for each rent payment date in the schedule attached hereto.

OPTION TO PURCHASE. Provided that the Lessee is not in default, Lessee shall have an option to purchase, upon the expiration of the full term of this Lease, or of any subsequent renewal term, if applicable, all but not less than all of the Equipment subject to this Lease upon the following terms and conditions:

If Lessee desires to exercise this option it shall at least one hundred eighty (180) days before expiration of the full term of this Lease, give Lessor written notice of its election to purchase and shall, upon the expiration of

the full term of this Lease, pay to Lessor in cash the purchase price for the Equipment so purchased, determined as hereinafter provided.

The Purchase Price of the Equipment shall be an amount equal to its then Fair Market Value; together with all taxes and charges upon sale. If the parties are unable to agree on the Fair Market Value of the Equipment, then the Lessor and Lessee shall at Lessee's expense obtain appraisal values from three independent appraisers (one to be selected by Lessor, one by Lessee, and the other by the two selected by Lessor and Lessee) and the average Fair Market Value as determined by such appraisers shall be binding on the parties hereto.

Notwithstanding any election of the Lessee to purchase, the provisions with regard to Loss and Damage provided in the Equipment Lease Agreement referred to above shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by Lessee upon the date of purchase.

OPTION TO RENEW. Provided that the Lessee is not in default, Lessee shall have the option to renew this Lease, at the expiration of the full term of this Lease or at the expiration of any subsequent renewal term provided for hereby, with respect to all but not less than all of the

Equipment, on the terms and conditions of this Lease, for One (1) consecutive additional renewal terms of one (1) year each at a negotiated monthly rent based on the Fair Market Value of such Equipment determined at the time of renewal.

If the parties are unable to agree on the Fair Market Value of the Equipment then the Lessor and Lessee shall at Lessee's expense obtain appraisal values from three independent appraisers (one to be selected by Lessor, one by Lessee, and the other by the two selected by Lessor and Lessee) and the average Fair Market Value as determined by such appraisers shall be binding on the parties hereto.

If Lessee desires to exercise this option it shall at least one hundred eighty (180) days before expiration of the full term or any renewal term of this Lease, give Lessor written notice of its election to renew; and shall engage in negotiations with Lessor to determine the monthly rent to be paid during the renewal term.

THIS IS A NON-CANCELABLE LEASE FOR
THE TERM INDICATED ABOVE

Full Legal Name of Lessee Laurinburg & Southern Railroad Company (SEAL)

The undersigned affirms that he is a duly authorized corporate officer,
partner or proprietor of the above named lessee.

By: E. Hervey Evans Pres Feb 6-74
Lessee's signature in ink Title Date

E. Hervey Evans, President
Print or type name of individual signing

DATE Feb 8, 1974

PEOPLES BANK & TRUST COMPANY

By: D. D. Kelley
Lessor VP

LESSEE'S ACKNOWLEDGMENT

State Of North Carolina

County Of Scotland, SS:

On this 6th day of February, 1974, before me personally appeared E. Hervey Evans, to me personally known, who being by me duly sworn, says that he is the President of Laurinburg & Southern Railroad Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Mary J. McLa
Notary

My commission expires Aug 6, 1975

LESSOR'S ACKNOWLEDGMENT

State Of North Carolina

County Of Wake, SS:

On this 11th day of February, 1974, before me personally appeared R. B. Hobbs, to me personally known, who being by me duly sworn, says that he is the Vice President of Peoples Bank & Trust Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Nancy Emily Bass
Notary

My commission expires May 28, 1978