

MAY 17 1985 - 1 20 PM

SPECIFIC ASSIGNMENT

INTERSTATE COMMERCE COMMISSION

This ASSIGNMENT dated as of February 8, 1985 (herein called the "Assignment"), between GEORGE B. KELLY, whose address is 6 West 11th Place, Houston, Harris County, Texas 77005 (herein called the "Assignor"), and NORTHWEST BANK & TRUST, whose address is 1716 Mangum, Houston, Texas 77092 (herein called "Assignee").

W I T N E S S E T H :

WHEREAS, the Assignor has requested that the Assignee provide certain financial accommodations and credit to the Assignor; and

WHEREAS, as a condition to the providing of financial accommodations and credit, and in consideration thereof, the Assignor has agreed to assign to Assignee, and to grant Assignee a security interest in, all of the Assignor's right, title and interest in, to and under the contract attached hereto as Exhibit A, for the management, operation and leasing of railway equipment owned by Assignor, and any and all accounts and general intangibles (as defined in Chapter 9 of the Texas Business and Commerce Code) arising out of such management, operation and leasing (the foregoing hereinafter referred to as the "Contract");

NOW, THEREFORE, in consideration of the premises, in order to fulfill such condition and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, intending to be legally bound:

SECTION 1. Assignment; Obligations Secured. For good and valuable consideration and in order to secure the due performance and payment of all obligations of Assignor to Assignee now or hereafter existing, whether direct or indirect, absolute or contingent, due or to become due, and howsoever evidenced or acquired, whether joint or several, including, without limitation, amounts owing pursuant to the promissory note dated February 8, 1985, in the original principal amount of \$27,438 executed by Assignor and payable to the order of Assignee (herein the "Obligations"), Assignor hereby assigns, transfers, delivers and sets over to Assignee, and grants to Assignee a security interest in, the Assignor's right, title and interest in, to and under the Contract, for the management, operation and leasing of railway equipment owned by Assignor, and any and all accounts and

general intangibles (as defined in Chapter 9 of the Texas Business and Commercial Code) arising out of such management, operation and leasing (all of the foregoing hereinafter referred to as the "Contract"), including, without limitation: (i) all moneys and claims for moneys which may arise out of the Contract, (ii) all claims, rights, powers or privileges and remedies of Assignor under the Contract, including, without limitation, all rights of Assignor under the Contract to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to enter into amendments or to give or receive any notice, consent, waiver, acquittance or approval together with the full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing or any property under the Contract and to file any claim or take any action or institute any proceeding with respect thereto which the Assignee may deem necessary or advisable under the circumstances; (iii) all claims of Assignor for damages arising out of or for breach of or default under the Contract; (iv) the right of Assignor to terminate the Contract, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (v) to the extent not included in the foregoing, any and all proceeds of any and all of the foregoing, howsoever constituted or evidenced, including, without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to the Contract, or other proceeds of any or other disposition of the subject of the Contract (all of the above herein sometimes referred to as the "Collateral").

SECTION 3. As Security. This Assignment is being made as security for the payment and performance of the Obligations and shall not relieve Assignor of any of its obligations under the Contract as to which Assignor shall remain liable to the same extent as if this Assignment had not been executed. Assignee assumes, and shall have, no liability to perform any of Assignor's obligations under the Contract and shall have no liability hereunder arising from the failure of Assignor to duly perform any of such obligations. Assignor acknowledges that the security interest hereby granted shall secure all future advances and obligations, as well as any and all other liabilities and obligations of Assignor to Assignee, whether now in existence or hereafter arising.

SECTION 4. Default, Remedies and Application of Proceeds.

(a) Assignor shall be in default under this Assignment upon the happening of any of the following events or conditions (herein sometimes called an "Event of Default"): (i) failure of

Assignor to pay or perform when due any of the Obligations of Assignor to the Assignee; (ii) the occurrence of any event which, under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or similar instrument, permits the acceleration of maturity of any indebtedness of Assignor to the Assignee, or to others than Assignee; (iii) any representation or warranty made by Assignor herein or made in any statement or certificate furnished to Assignee by Assignor pursuant hereto or otherwise proves incorrect in any material respect as of the date of the making or issuance thereof; (iv) default occurs in the observance or performance by Assignor of any provision of this agreement or of any note, assignment or transfer under or pursuant thereto; or (v) the death, incapacity, dissolution, termination of existence, insolvency or business failure of Assignor, or the application for the appointment of a receiver of any part of the property of Assignor, or the commencement by or against Assignor of any proceeding under any bankruptcy arrangement, reorganization, insolvency or similar law for the relief of debtors, or by or against any guarantor or surety for Assignor, or upon the service of any warrant, attachment, levy or similar process in relation to a tax lien or assessment.

(b) Upon the occurrence of an Event of Default, or if Assignee deems payment of Assignor's Obligations to Assignee to be insecure, and at any time thereafter, Assignee, at its option, may declare all Obligations secured hereby immediately due and payable, without presentment, demand, protest, notice of intention to accelerate, notice of acceleration, notice of nonpayment, notice of dishonor or further notice of any kind, all of which are hereby expressly waived by Assignor, and Assignee thereupon shall have the rights and remedies of a secured party under the Texas Uniform Commercial Code and as otherwise granted herein or under any applicable law or in any other agreement executed by Assignor (all of which rights and remedies shall be cumulative), including, without limitation, the right to sell, lease or otherwise dispose of the Collateral and to apply the proceeds thereof toward payment of any reasonable costs, expenses, attorneys' fees and legal expenses thereby incurred by Assignee and toward payment of the Obligations in such order or manner as Assignee may elect. Assignee shall have the right to take immediate possession of the Collateral, with or without process of law, and for that purpose Assignee may enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom. Assignee may require Assignor to assemble the Collateral and make it available to Assignees at a place to be designated by Assignee which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a

type customarily sold on a recognized market, Assignee will send Assignor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending a reasonable notice shall be met if such notice is mailed, postage prepaid, to Assignor at the address designated at the beginning of this Assignment at least 5 days before the time of the sale or disposition, provided, however, that no notice shall be required if the Collateral to be sold is perishable and Assignee reasonably believes that the giving of such notice before taking action would impair the value or salability of the same. Expenses of collection, including but not limited to legal expenses, plus interest thereon at a rate per annum at all times equal to the lesser of 18 percent per annum or the maximum rate permitted by applicable usury laws, shall constitute additional Obligations of Assignor which shall be due on demand and which shall be secured by and entitled to the benefits of this Assignment. If the proceeds of any sale or other lawful disposition by Assignee of the Collateral following its retaking, are insufficient to pay the reasonable expenses of retaking, repairing, holding, preparing the Collateral for sale, selling it and the like, to satisfy the Obligations of Assignor to Assignee, then Assignor agrees to pay any deficiency, but Assignor shall be entitled to any surplus if one results after lawful application of all of such proceeds.

(c) Assignee may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

(d) It is the intention of the parties hereto to comply with applicable usury laws; accordingly, it is agreed that, notwithstanding any provision to the contrary in this Assignment, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by such laws. If any excess of interest in such respect is provided for, or shall be adjudicated to be so provided for, in this Assignment, or in any of the documents evidencing the Obligations or otherwise relating thereto, then in such event (i) the provisions of this paragraph shall govern and control, (ii) neither Assignor, nor its successors or assigns or any other party liable for the payment hereof, shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount permitted by such laws, (iii) any such excess which may have been collected, at the option of the holder of the instrument evidencing the Obligations, either shall be applied as a credit against the then unpaid principal amount thereof or refunded to the maker thereof, and (iv) the effective

rate of interest shall be automatically subject to reduction to the maximum rate allowed under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

(e) The remedies of Assignee hereunder are cumulative, and the exercise of any one or more of the remedies provided herein shall not be construed as a waiver of any of the other remedies of Assignee.

(f) All amounts received by Assignee hereunder shall be applied first to all costs and expenses incurred by the Assignee in connection with such collection and enforcement; thereafter to all other Obligations of the Assignor to the Assignee and thereafter, if any amounts remain, to the Assignor.

(g) All payments (if any) received by Assignor under or in connection with the Contract or otherwise in respect of the Contract shall be received in trust for the benefit of Assignee, shall be segregated from other funds of Assignor and shall be forthwith paid over to Assignee in the same form as so received (with any necessary indorsement).

(h) Without limiting any of the foregoing, Assignee shall have the right, in its own name or in the name of Assignor, at any time, before or after default, to notify any and all account debtors to make payment directly to Assignee and to demand, collect, receive, receipt for, sue for, compound and give acquittal for any and all amounts due or to become due on the accounts and to endorse the name of Assignor on all commercial paper given in payment or part payment thereof, and in its discretion to file any claim or take any other action or proceeding which assignee may deem necessary or appropriate to protect and preserve and realize upon the security interest of Assignees in the Assigned Property; but to the extent Assignee does not so elect, Assignor shall continue to collect the accounts.

#### SECTION 5. Certain Rights and Obligations of Parties.

(a) Anything herein to the contrary notwithstanding, the Assignee shall not have any obligation, liability or responsibility to the Assignor, or any other Person under the Contract or by reason of this Assignment including, without limitation, any obligation to perform any of the obligations or duties of the Assignor under the Contract or to make any payment of amounts payable under the Contract.

(b) The Assignor will at all times remain liable under the Contract, will comply with, be bound by and fully and faithfully

perform all of its obligations under the Contract and will cause all other parties to the Contract to perform their respective obligations thereunder, all as if this Assignment had not been executed.

(c) The Assignor shall deliver to the Assignee a copy of the Contract (including all amendments and other modifications thereof and waivers thereunder) from time to time as entered into, certified by a Responsible Officer of Assignor. The Assignee shall have the right at any time, or from time to time, during business hours, to inspect, and make copies or extracts from, Assignor's documents, books and records. The Assignor will furnish upon request at any time, or from time to time, the originals or copies of all such documents, books and records.

(d) Assignor shall have and maintain insurance at all times with respect to all tangible collateral covered hereby, insuring against risks of fire (including so-called extended coverage), theft and other risks as Assignee may reasonably require, containing such terms, in such form and amounts, and written by such companies as may be reasonably satisfactory to Assignee, all of such insurance to contain loss payable clauses in favor of Assignee as their interest may appear. All policies of insurance shall provide for 15 days' written minimum cancellation notice to Assignee and shall be delivered to and held by Assignee. Assignee hereby is authorized to act as attorney for Assignor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts. Assignee shall be authorized to apply the proceeds from any insurance on Collateral securing Obligations to the Obligations secured thereby, whether or not such Obligations are then due and payable.

(e) As additional security for payment of the Obligations, Assignor hereby grants to Assignee a security interest, and a contractual pledge and assignment of, in and to any and all money, property, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of Assignor, or to which it is a party, now held or hereafter coming within Assignees' custody or control, including, by way of example and not of limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Assignee's rights hereunder results in loss of interest or other penalty on such deposits. By written or telegraphic notice to Assignor pursuant to Section 4 above, Assignee may exercise its rights granted above, as well as any other rights and remedies at law and equity (all of which are cumulative), at any time upon the occurrence and continuance of an Event of Default or if Assignee deems itself insecure.

(f) If Assignee at any time should be of the opinion that the Collateral is not sufficient or has declined or may decline in value, or should Assignee deem payment of Assignor's Obligations to Assignee to be insecure, then Assignee may call for additional Collateral satisfactory to Assignee, and Assignor promises to furnish such additional security forthwith. The call for additional collateral may be oral, by telegram, or United States mail, addressed to Assignor, and shall not affect any other subsequent right of Assignee to exercise the same. Assignor agrees that Assignee shall have no duty or obligation to collect any account, or to take any other action to preserve or protect the Collateral; however, should Assignee elect to collect any account, Assignor releases Assignee from any claim or claims for loss or damage arising from any act or omission in connection with such collection, save for claims arising from the gross negligence or willful misconduct of Assignee.

SECTION 6. As to the Contracts.

(a) Assignor shall, at its expense:

(i) Perform and observe all the terms and provisions of the Contract to be performed or observed by it, maintain the Contract in full force and effect, enforce the Contract in accordance with its terms, and take all such action to such end as may be from time to time reasonably requested by Assignee; or

(ii) Furnish to Assignee promptly upon receipt thereof copies of all notices, requests and other documents received by Assignor under or pursuant to the Contract.

(b) Assignor shall not, without the prior written consent of the Assignee::

(i) Sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Collateral, or create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Collateral to secure indebtedness of any person or entity, except for the assignment and security interest created by this Assignment;

(ii) Cancel or terminate the Contract or consent to or accept any cancellation or termination thereof;

(iii) Amend or otherwise modify the Contract or give any consent, waiver or approval thereunder; or

(iv) Waive any default under or breach of the Contract.

SECTION 7. Designation as Agent. Until the Assignee advises the Assignor in writing to the contrary, the Assignor, as agent for the Assignee, shall exercise all rights and powers assigned and transferred to the Assignee under Section 2 hereof; provided, however, that the Assignor agrees that, without the prior written consent of the Assignee, the Assignor will not act or fail to act in any manner that would cancel or otherwise terminate the Contract, change or modify the Contract in any material respect or otherwise exercise any of such rights in a manner which would have a material adverse effect upon the interests of the Assignee. Whenever the Assignor shall deem it desirable to exercise its rights and powers under this Section 5 in a manner which may reasonably require the prior written consent of the Assignee, the Assignor will provide prompt written notice thereof to the Assignee describing in reasonable and accurate detail the action proposed to be taken or omitted or the manner in which the right or power is proposed to be asserted, enforced, protected, waived or released, setting forth sufficient information to enable the Assignee to evaluate such proposal.

Except for the foregoing, the Assignor shall not act as, or represent itself as, the agent of the Assignee. The parties intend that this limited agency shall render the Assignor an independent contractor for the Assignee and not the Assignee's servant.

SECTION 8. Assignment.

(a) The Assignor agrees that the Assignee may transfer, convey and assign all its respective right, title and interest in and to this Assignment and the Collateral or exercise any other remedy permitted by this Assignment, in connection with any proceeding (whether or not judicial) to realize upon any security under this Assignment, and that such transfer, conveyance, assignment or exercise shall not release the Assignor from its obligations hereunder or under the Contract.

(b) The respective rights and obligations of the Assignee and the Assignor shall inure to the benefit of, and be binding upon, their respective successors and assigns; provided that the Assignor shall not assign any of its rights or obligations hereunder without the prior written consent of the Assignee.

SECTION 9. Further Assurances. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted. Without limiting the generality of the foregoing, Assignor will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Assignee may request, in order to perfect and preserve the assignment and security interest granted or purported to be granted hereby.

SECTION 10. Place of Perfection; Records. Assignor shall keep its chief place of business and chief executive office and the office where it keeps its records concerning the Contract at the location indicated at the beginning of this Assignment.

SECTION 11. Representations and Warranties of the Assignor.

(a) Except for the security interest granted hereby, Assignor is, and, as to the Collateral acquired after the date hereof which is included within the security interest specified in Section 2 hereof, Assignor will be, the owner of all such Collateral, free from any adverse claim, security interest or encumbrance.

(b) There is no financing statement now on file in any public office covering any part of the Collateral, and so long as any amount remains unpaid on all or any part of the Obligations of Assignor to Assignees, Assignor will not execute, and there will not be on file in any public office, any such financing statement or statements.

(c) Subject to any limitation stated therein or in connection therewith, all information furnished to Assignee concerning the Collateral and proceeds thereof, or otherwise for the purpose of obtaining credit or an extension of credit, at the time the same is furnished, is or will be accurate and correct in all material respects.

(d) The Collateral will be used by the Assignor primarily for business use.

SECTION 12. Amendments. Neither this Assignment nor any of the terms hereof may be terminated, amended, supplemented, waived or modified in any manner whatsoever except by an instrument in writing signed by the parties hereto.

SECTION 13. Severability. In case any provision in this Assignment shall be invalid, illegal or unenforceable, to the extent permitted by law, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

SECTION 14. Governing Law. This Assignment shall be governed by and construed in accordance with the law of the State of Texas.

SECTION 15. Headings. The section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 16. Counterparts. This Assignment may be executed in multiple counterparts, each of which is an original, but such counterparts shall together constitute but one and the same instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

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

NORTHWEST BANK & TRUST

By: [Signature]  
Name: JOEL J. LANDIS  
Title: VICE PRESIDENT

By: [Signature]  
George B. Kelly

- ASSIGNEE -

- ASSIGNOR -

THE STATE OF TEXAS       §  
  §  
COUNTY OF HARRIS,       §

On this 13TH day of MAY, 1985, before me, personally appeared George B. Kelly, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

[Signature]  
Signature of Notary Public

My Commission Expires: **BETTY A. HOWARD**  
Notary Public, State of Texas/County of Harris  
My Commission Expires 04-08-87

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