

 The Crocker Bank

RECORDATION NO. 14578  
FEB 1425

FEB 28 1985 - 10 30 AM  
INTERSTATE COMMERCE COMMISSION

February 25, 1985

Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Room 2303  
Washington, D.C. 20438

Attention: Mildred Lee

Dear Ms. Lee:

Enclosed herewith for immediate recordation are two Railcar Per Diem Agreements, together with \$10.00 check covering your filing fee.

The name and address of the Lessor is:

Crocker Equipment Leasing, Inc.  
201 3rd Street (5)  
San Francisco, Ca 94104

The name and address of the Lessee is:

Brownsville and Rio Grande International Railroad  
P.O.Box 3818  
Brownsville, Texas 78523-3818

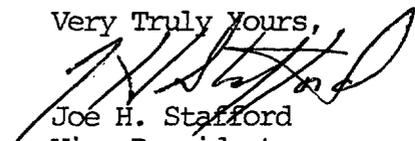
And upon completion of recording, please return the filed document to the following office:

Crocker National Bank  
Risk Management Division  
111 Sutter Street (22)  
San Francisco, Ca 94104

Attention: Joe Stafford

Your prompt attention to this matter is appreciated.

Very Truly Yours,

  
Joe H. Stafford  
Vice-President

JHS/rd

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

2/28/85

OFFICE OF THE SECRETARY

Crocker Natl. Bank  
Risk Management Division  
111 Sutter Street(22)  
San Francisco, Calif. 94104

Attn: Joe Stafford

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/28/85 at 10:30am and assigned re-  
recording number(s). 14578

Sincerely yours,

*James H. Bayne*  
Secretary

Enclosure(s)

FEB 28 1985 - 10 30 AM

RAILCAR PER DIEM AGREEMENT

INTERSTATE COMMERCE COMMISSION

This Agreement is dated this 13TH day of July, 1984, between Crocker Equipment Leasing, Inc., a California corporation and a wholly owned subsidiary of Crocker National Bank ("CELI") and Brownsville and Rio Grande International Railroad, a political subdivision of the State of Texas, hereinafter ("Railroad").

1. Lease. Railroad agrees to carry out its obligations under this Agreement and all of Railroad's rights under the lease shall be subject to the terms and conditions of this Agreement.

2. Cars. CELI agrees to provide, and Railroad agrees to accept, use and place in service to the extent possible under traffic and operating conditions from time to time, 100 - 100-ton mill gondola cars identified and described in Exhibit A attached hereto (the "Cars"). Railroad agrees to use its best efforts to utilize the Cars in such a manner so as to maximize the amount of off-line per diem and mileage payments generated by such Cars.

3. Term. The term of this Agreement as to each Car shall be five (5) years from the Lease Commencement Date indicated on Exhibit A hereof.

4. Repairs and Maintenance; Markings and Reports.

(a) CELI shall be responsible for the cost of routine maintenance of Cars necessary to maintain the Cars in good condition and repair in accordance with all applicable rules and regulations of the Association of American Railroads ("AAR"). Anything herein to the contrary notwithstanding, Railroad shall be responsible for damage (normal wear and tear excepted) to the Cars occurring while such Cars are on Railroad's lines, to the extent that such damage is not covered by insurance.

(b) Prior to the delivery of the Cars to Railroad, CELI shall cause each Car to be plainly marked with Railroad's reporting marks (i.e., "BRG"). Railroad shall not place, nor permit to be placed, upon the Cars any lettering or marking of any kind without CELI's prior written consent except relight weigh and/or repack information required from time to time by AAR. Railroad will instruct the AAR to delivery all reports concerning the Cars, including reports concerning their conditions and their physical structure, and all revenues generated by car hire on the Cars directly to the attention of CELI or to such agent as CELI may designate in writing.

5. Indemnities and Insurance.

(a) Railroad agrees to abide by and comply with all the rules and regulations of the AAR to the extent said rules and regulations apply to the use and movement of Cars. To the extent Railroad is liable under the the rules and regulations of the AAR or at common law, in equity, or otherwise, Railroad agrees to indemnify and hold harmless CELI from and against all losses, damages, injuries, liabilities, claims and demands whatsoever whether as a result of damage to the Cars or injury to persons or property, regardless of the cause thereof, and any expense in connection therewith, including legal fees arising out of, or as a result of, the use or operation of the Cars during the term of this Agreement, to the extent that such losses, damages, injuries, liabilities,

claims and demands are not covered by insurance and except where the Cars are the responsibility, under AAR rules, of rail carriers other than Railroad. In addition, CELI will not be liable for any defect or omission in the construction or manufacture of the Cars or any material incorporated therein by the manufacturer thereof or any component thereof.

(b) CELI shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused or shall result. Railroad agrees to assume responsibility for, to indemnify CELI against, and to hold CELI harmless from any such loss or damage, or claim therefor, and to assume responsibility for any damage caused to the Cars by such commodities, to the extent Railroad is liable for any such loss or damage under the rules and regulations of the AAR or at common law, in equity or otherwise.

(c) Railroad will cause to be carried or maintained at all times during the term of this Agreement property damage and personal injury liability insurance covering the Cars as is commonly maintained on comparable equipment by companies similarly situated. In all events Railroad will cause to be carried and maintained insurance against all risks of physical damage to the Cars as provided under a standard all-risk policy, in an amount calculated according to the Settlement Value set forth in the latest edition of the Interchange Rules.

(d) The policies of insurance required hereunder shall be valid and enforceable policies issued by insurers of recognized responsibility acceptable to CELI and name CELI as additional insured or Loss Payee. Evidence of such insurance shall be delivered by Railroad to CELI. Such insurance may be blanket insurance covering other equipment not covered by this Agreement, provided that any such blanket insurance shall, in an accompanying certificate of insurance or rider, specifically designate the Cars as being included therein and covered thereby to the full extent of the amounts herein required. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least ten (10) days' prior written notice to CELI in the event of nonpayment of premium by Railroad when due or for any other reason.

6. Delivery. The Cars shall be delivered by CELI at Railroad's yard at the Port of Brownsville, Texas at CELI's expense or any other location mutually agreed upon by the parties hereto at the expense of Railroad.

7. Lease Payments. All hourly car hire and mileage payments accruing off Railroad's line generated by the Cars shall be payable to and collected by CELI. CELI shall perform all off-line car hire and mileage accounting for the Cars and shall provide accounting records necessary to substantiate collected and retained amounts. Such collections and Car hire accounting may be performed by XTRA Inc. or such other firm reasonably acceptable to the Railroad. For purposes of movement of Cars bridged by Missouri Pacific Railroad Company to National Railways of Mexico, Railroad's lines will be considered as extending to the National Railways of Mexico at the center of the Brownsville-Matamoros bridge.

8. Taxes. Railroad agrees to pay and to indemnify CELI for, and hold CELI harmless from and against, all taxes, together with any penalties, fines, or interest hereon, imposed on any Car by any federal, state, local or foreign government or taxing authority.

9. Use of Cars by Railroad. The use and holding for load of the Cars by Railroad shall be free of charge to Railroad while such Cars are on Railroad's lines. Railroad agrees that any Cars not in use will be stored at its sole expense. CELI has the option, upon 30 days prior written notice, to terminate this agreement as to any or all Cars if during any consecutive 90 day period car utilization by Railroad generates off-line car hire and mileage payments payable to CELI of less than \$300 per month per Car. Provided, however, CELI has the option any time after two years after the Lease Commencement Date, upon 60 days prior written notice, to terminate this agreement as to any or all Cars, if CELI elect to sell or place such Cars with an alternate user.

10. Disclaimers.

(a) CELI will not be liable to Railroad for unreasonable delay in delivery or loss of use of any Car or Cars. CELI's obligation to furnish Cars shall be contractually excused in the event that any failure to delivery any Car or Cars results from events of factors beyond the control of CELI.

(b) CELI SHALL HAVE NO LIABILITY FOR ANY CLAIM, LOSS, INJURY OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALY AND CONSEQUENTIALLY BY THE CARS, BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, ARISING IN STRICT LIABILITY OR OTHERWISE, OR IN ANY WAY RELATED TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING LIABILITY ARISING FROM ANY ACT OR OMISSION OF CELI OTHER THAN FROM CELI'S GROSS NEGLIGENCE. CELI MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CARS, AND EXPRESSLY DISCLAIMS SAME.

11. Title to Cars.

(a) Railroad acknowledges and agrees that by execution of this Agreement, Railroad shall not obtain, and by payment and performance hereunder Railroad shall not have or obtain any title to the Cars or any of them at any time subject to this Agreement nor any property right or interest therein, legal or equitable, except solely as lessee hereunder and subject to all terms hereof. Railroad shall keep the Cars free from all encumbrances, liens and security interest of all kinds which could adversely affect CELI's or any financing entity's title thereto.

(b) It is understood that some or all of the Cars furnished to Railroad under this Agreement and CELI's rights hereunder, may, at the time of delivery to Railroad or at some future time during the terms of this Agreement, be subject to the terms of a lease to CELI, mortgage, deed of trust, equipment trust, pledge or assignment or similar security agreement. Railroad agrees that this Agreement and Railroad's rights hereunder are, and shall at all times be, subject and subordinated to any and all rights of any primary lessor, mortgagee, pledgee or security holder, and that no claim or defense which Railroad may have against CELI shall be asserted or enforced against any of said parties.

12. Sublease. Railroad will not, without the prior written consent of CELI, sublet or otherwise relinquish possession of any Car or assign any of its rights hereunder. No sublease, other relinquishment of the possession of any Car, or assignment by Railroad of any of its rights hereunder shall in any way discharge or diminish any of Railroad's obligations to CELI hereunder, and all representations, warranties, covenants and conditions of Railroad under this Agreement shall be assumed by and become the obligations of any sublessee or assignee of Railroad.

13. Events of Default. The term "Event of Default" wherever used herein shall mean any of the following events under this Agreement (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Railroad shall fail to perform or observe any covenant, condition or agreement to be performed or observed by Railroad under this Agreement, or any document delivered by Railroad in connection herewith, and such failure continues for more than (ten) 10 days after such failure became known or should have become known to any responsible official of Railroad (in the event CELI has actual knowledge of any such failure by Railroad, it shall promptly send written notice thereof to Railroad); or

(b) Any representation or warranty made by Railroad in this Agreement or any agreement, document or certificate delivered by Railroad in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(c) A petition of bankruptcy or for reorganization or arrangement shall be filed by Railroad; or Railroad shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or a receiver, or a trustee or a receiver shall be appointed for Railroad, for any Car or for a substantial part of Railroad's property without Railroad's consent, and any such trustee or receiver shall not be dismissed within a period of sixty (60) days; or bankruptcy, reorganization or insolvency proceedings shall be instituted against Railroad and shall not be dismissed within a period of sixty (60) days; or

(d) Railroad shall (except as expressly permitted by the provisions of this Agreement) attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet any Car.

Failure or delay of CELI to require full compliance with any one or more of the terms of this Agreement shall not be interpreted as a waiver of those terms or of CELI's right to subsequently insist on full compliance therewith or to take such action as might be lawfully authorized hereunder, either at law or in equity.

14. Remedies. Upon the occurrence of any Event of Default and so long as the same shall be continuing, CELI may, at its option, declare this Agreement to be in default by written notice to such effect given to Railroad, and at any time thereafter, CELI may exercise one or more of the following remedies, as CELI in its sole discretion shall lawfully elect:

(a) Proceed by appropriate court action, either at law or in equity, to enforce performance by Railroad of the applicable covenants of this Agreement and to recover damages for the breach thereof; or

(b) By notice in writing terminate this Agreement, whereupon all rights of Railroad to the use of the Cars shall absolutely cease and terminate, but Railroad shall remain liable as hereinafter provided; and thereupon CELI may cause Railroad at the Railroad expense to store such Cars for CELI and/or promptly to return the Cars to the possession of CELI at Railroad's yard at the Port of Brownsville, Texas, or at such other place as shall be mutually agreed upon by CELI and Railroad, in the condition required upon the return thereof pursuant to and in accordance with the terms of Paragraph 15 hereof or, CELI at its option, may retake the Cars wherever said Cars may be found and irrespective of whether Railroad, any sublessee or any other person may be in possession of such Cars, all without notice to Railroad and without legal process, and for that purpose CELI or its agent may enter upon any railroad or other premises where any Car may be and may take immediate possession of and/or remove such Car.

15. Return of Cars. Upon termination of this Agreement, Railroad, at its sole expense shall return each of the Cars, to the delivery destination at which CELI delivered the Cars to Railroad or at such other place mutually agreed upon by CELI and Railroad, (i) empty and free from residue, (ii) in such order and condition as will permit CELI to immediately sell or release the Cars without repair (other than repairs CELI is required to make under this Agreement and for which Railroad has given appropriate written notice), (iii) in a suitable condition for the hauling of commodities that the Cars are designed, intended and customarily used to transport, and (iv) in such condition as is necessary to have the Cars comply with all applicable laws and regulations normal wear and tear excepted. Notwithstanding anything to the contrary herein, the Railroad further agrees that upon the expiration of the term pursuant to Section 3, and provided that CELI is unable to reemploy the Cars with another user, and further provided the Railroad elects not to continue use of the Cars after the end of the Term under the terms and conditions herein, the Railroad, at CELI's request at CELI's expense, shall store, or arrange to have stored, such Cars for a period of twelve months at a rate no more than \$1 per Car per month and thereafter at a rate of no more than \$15 per Car per month for an additional twelve month period. Railroad shall on demand reimburse CELI for the cost necessary to make any of the Cars comply with the standards of this Paragraph 15. Such Cars, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, claims or other than liens either (a) created or granted by CELI, including any purchase or financing of the Cars, or (b) resulting from claims against CELI not related to CELI's ownership of the Cars. If Railroad shall have affixed or installed any improvement to any Car redelivered pursuant hereto, Railroad will on or before the date of redelivery and at its own expense, remove such improvement if requested to do so by CELI.

16. Holdover. In the event any Car is not redelivered to CELI on or before the date of expiration of the original Term set forth in Paragraph 3 hereof, at CELI's sole option, the Term hereof may be deemed to be extended on a month-to-month basis (hereafter "Holdover Period") and all of the obligations of Railroad under this Agreement, with respect to such Cars shall remain in full force and effect until all Cars are redelivered to CELI. CELI may at any time during the Holdover Period terminate this Agreement and take possession of the Cars upon demand, upon thirty (30) days' written notice to Railroad.

17. Miscellaneous.

(a) CELI and Railroad agree to execute the documents contemplated by this transaction and such other documents as may be reasonably required in furtherance of this Agreement.

(b) This Agreement shall be governed by and construed according to the laws of the State of California.

(c) All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mails, postage prepaid, certified or registered, addressed to the other party at the following address:

If to CELI: Crocker Equipment Leasing Inc.  
c/o Crocker National Bank  
Leasing Group  
One Montgomery Street, West Tower (26)  
San Francisco, California 94104

If to Railway: Brownsville and Rio Grande International Railroad  
P.O. Box 3818  
Brownsville, Texas 78520

The names and addresses of persons to receive notice under this Agreement may be changed by notice given in accordance with this Paragraph 17 (c).

(d) Any agreement hereafter made between CELI and Railroad shall be ineffective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Agreement, in whole or in part, unless such agreement is in writing and signed by a duly authorized officer of the party against whom enforcement of the change, modification, waiver, release, discharge, termination or the effecting of the abandonment is sought.

(e) This Agreement and each and every condition and agreement herein contained shall be binding upon and inure to the benefit of the respective successors in interest and permitted assignees of CELI and Railroad.

(f) In the event that any of the provisions or portions thereof of this Agreement are held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portion thereof, shall not be affected thereby.

18. Should the Interstate Commerce Commission, subsequent to the effective date of this Agreement, extend boxcar deregulation to include Cars covered by this Agreement, Railroad may, upon thirty (30) days' written notice to CELI, terminate this Agreement, and return Cars to CELI except that all portions of the Agreement with respect to condition and storage of Cars upon return on Railroad to CELI and location of return will remain in effect.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be executed and delivered in its corporate name by duly authorized representative, all as of the date first written above.

CROCKER EQUIPMENT LEASING INC.

By: *Edmund P. Wysocki*  
Edmund P. Wysocki

Title: Senior Vice President

Date: July 24, 1984

(Corporate Seal)

Attest:

*Robert S. Lunsford*  
Secretary

BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD

By: *G. A. Gillette*

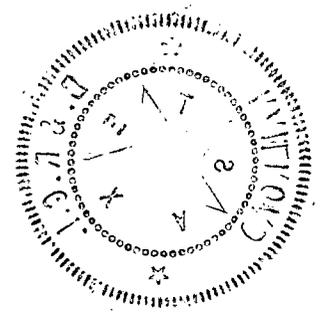
Title: President and C. O. O.

Date: July 13, 1984

(Corporate Seal)

Attest:

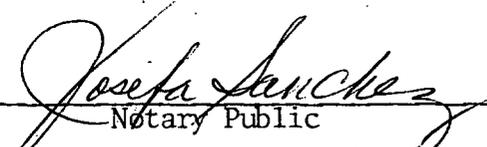
*Wayne A. Gandy*  
Secretary



STATE OF TEXAS  
COUNTY OF CAMERON

)  
)  
) SS

On this 13th day of July, 1984 before me personally appeared G. A. Gillette, to me personally known, who, being by me duly sworn, said that he is the President of Brownsville and Rio Grande International Railroad, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

JOSEFA SANCHEZ

My commission expires 3-31-85

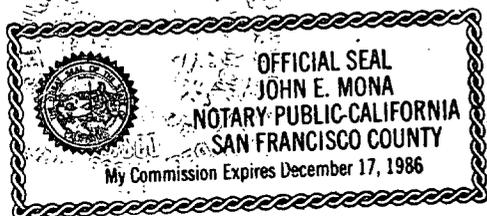
(Notarial Seal)

My commission expires

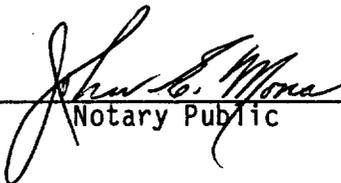
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STATE OF CALIFORNIA     )  
                                  )  
COUNTY OF SAN FRANCISCO)     SS

On this 25<sup>th</sup> day of July, 1984 before me personally appeared Edmund P. Wysocki, to me personally known, who, being by me duly sworn, said that he is the Senior Vice President of Crocker Equipment Leasing Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.



(Notarial Seal)

  
\_\_\_\_\_  
Notary Public

My commission expires

December 17, 1986

EXHIBIT A

To Railcar Per Diem Agreement between CELI and Brownsville and Rio Grande International Railroad Dated \_\_\_\_\_

One Hundred (100) one hundred (100) ton mill gondola railcars, bearing reporting marks and having car numbers as follows:

LEASE COMMENCEMENT DATE

BRG \_\_\_\_\_ - \_\_\_\_\_

CROCKER EQUIPMENT LEASING INC.

By:

*Edmund P. Wysocki*  
Edmund P. Wysocki

Title:

Senior Vice President

Date:

July 24, 1984

BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD

By:

*G. A. Gilette*

Title: President and C. O. O.

Date: July 13, 1984

EXHIBIT A

To RAILCAR PER DIEM AGREEMENT Between CELI and Brownsville and Rio Grande International Railroad Dated July 13, 1984.

One Hundred (100) one hundred (100) ton mill gondola railcars, bearing reporting marks and having car numbers as follows per Schedule A:

CROCKER EQUIPMENT LEASING INC.

By: *Jonas H. Stafford*  
Title: Assistant Treasurer  
Date: January 10, 1985

BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD

By: *G. A. Bellette*  
Title: President and Chief Operating Officer  
Date: January 11, 1985

(CORPORATION ACKNOWLEDGMENT)

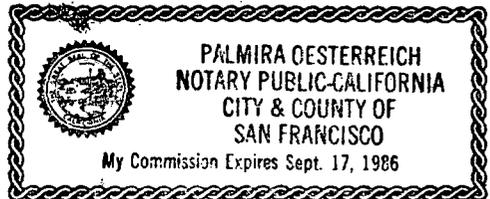
STATE OF CALIFORNIA

County of SAN FRANCISCO } SS.

On this 1ST day of FEBRUARY, in the year 1985, before me, THE UNDERSIGNED, a Notary Public in and for said State, personally appeared JONAS H. STAFFORD

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as ASSISTANT TREASURER or on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my Hand and Official Seal



*Palmira Oesterreich*  
Notary's Signature

SCHEDULE A

Agreement between BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD  
and Crocker National Bank ("CELI").

Schedule of CAR NUMBERS: Total 100 cars

BRG 40206  
BRG 40251  
BRG 40252  
BRG 40254  
BRG 40259  
BRG 40260  
BRG 40261 thru 40263  
BRG 40269 thru 40305  
BRG 40314  
BRG 40321 thru 40325  
BRG 40327  
BRG 40328  
BRG 40329  
BRG 40351 thru 40380  
BRG 40391 thru 40400  
BRG 40402  
BRG 40405  
BRG 40466  
BRG 40476  
BRG 40594

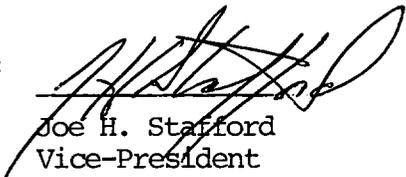
CERTIFICATION

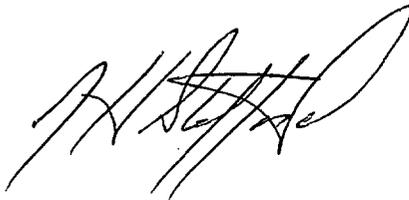
The undersigned, being the person submitting a duplicate original of the RAILCAR PER DIEM AGREEMENT for recording, hereby certifies that the attached copy has been compared with the original and it is a true copy thereof.

Dated this 22nd day of February, 1985.  
~~29th day of January, 1985.~~

CROCKER NATIONAL BANK

By:

  
Joe H. Stafford  
Vice-President



Subscribed and sworn to me this

22nd day of February

1985.



