



**MANUFACTURERS HANOVER LEASING CORPORATION**

270 PARK AVENUE, NEW YORK, N.Y. 10017

PETER A. LOPATIN CORPORATION NO. 12569  
ASSOCIATE COUNSEL

DEC 12 1980-11 22 AM

December 10, 1980

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INTERSTATE COMMERCE COMMISSION

REGISTRATION NO. 12569-A No. 1

Secretary  
Interstate Commerce Commission  
Interstate Commerce Building  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

DEC 12 1980-11 22 AM

DEC 12 1980  
Date.....  
Fee \$ 50.00  
ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

Dear Sir:

I enclose for recordation, pursuant to Section 20(c) of the Interstate Commerce Act, one original executed copy and two certified copies of each of a Loan and Security Agreement and Assignment of Leases and Security Agreement, executed pursuant thereto, between Manufacturers Hanover Leasing Corporation, 30 Rockefeller Plaza, New York, New York, as Secured Party, and Evans Railcar Leasing Corporation, 2550 Golf Road, Suite 1000, The East Tower, Rolling Meadows, Illinois, as Debtor. I enclose also for recordation certified copies of two Railroad Car Lease Agreements dated March 7, 1978 and March 31, 1978 between United States Railway Equipment Co. (the former name of Evans Railcar Leasing Company) and PMA Transportation Co. and Atlantic and Western Financial Corporation, respectively, as Lessees.

The transaction represented by the foregoing agreements is a loan by the Secured Party to the Debtor and the granting of a security interest by the Debtor to the Secured Party in the referenced Leases and the equipment covered thereby, namely:

Ninety-Nine (99) 50'6", 70 ton rebuilt "XL" boxcars, bearing Road Numbers LOAM4300 through 4319, inclusive, and LOAM4321 through 4399, inclusive;

One hundred (100) 40'6", 50 ton "XM" boxcars, rebuilt and stretched to 50'6", 70 ton "XM" boxcars, bearing Road Numbers HN3000 through 3099, inclusive.

DEC 12 11 23 AM '80  
DOCKET FILES  
BRANCH

Very truly yours,

MANUFACTURERS HANOVER  
LEASING CORPORATION

*Peter Lopatin*  
Peter A. Lopatin

*Accountant - John R. Wong*

ASSIGNMENT OF LEASES  
AND  
SECURITY AGREEMENT

RECORDATION NO. 12569-A  
Filed 1425

DEC 12 1980-II 32 AM

INTERSTATE COMMERCE COMMISSION

This Assignment of Leases dated December 10, 1980 between Evans Railcar Leasing Company ("Debtor") and Manufacturers Hanover Leasing Corporation ("MHLC").

WHEREAS, concurrently herewith, MHLC and Debtor are entering into a Loan and Security Agreement (the "Agreement") incorporated herein by reference and made a part hereof; and

WHEREAS, pursuant to the terms of the Agreement MHLC consents to the leasing of the Equipment (as defined therein) to PMA Transportation Co. and Atlantic and Western Financial Corporation (individually a "Lessee" and collectively the "Lessees") pursuant to those two certain Railroad Car Lease Agreements dated March 7, 1978 and March 31, 1978, respectively (the "Leases"); and

WHEREAS, in order to induce MHLC to enter into the Agreement Debtor has expressed its willingness to assign the Leases to MHLC as additional collateral security for the payment and performance of the Obligations (as defined in the Agreement);

NOW THEREFORE, in consideration of the foregoing and the agreements hereinafter contained, Debtor and MHLC agree as follows:

1. As additional collateral security for the payment and performance by Debtor of the Obligations, Debtor hereby assigns the Leases to MHLC including, the right to receive and to retain all rentals and other amounts payable thereunder ("Lease Payments") and to exercise all rights, powers, and remedies thereunder, provided however, that so long as there shall have occurred no Event of Default under the Agreement, Debtor may continue to receive Lease Payments.

2. Upon the occurrence of an Event of Default under the Agreement, and in addition to any other rights and remedies MHLC may have thereunder, MHLC shall have the absolute and irrevocable right to receive and to retain all Lease Payments and to apply the same in partial satisfaction of the Obligations, the Debtor remaining liable for any deficiency.

3. Debtor represents and warrants that (a) the Leases are genuine and each represents the entire agreement between Debtor and the Lessee therein and represents a valid obligation of such Lessee for the amounts shown as owing thereunder; (b) all names, addresses, amounts, dates, and signatures and other statements and facts contained therein are true and correct; (c) the Equipment has been delivered, installed and has been accepted by

the Lessees; (d) the Leases are and will be legally enforceable according to their terms by MHLC as assignee thereof; (e) the Leases are free of any liens, setoffs, counterclaims or defenses; (f) Debtor has not previously assigned to the Leases to any other party; (g) Debtor has delivered to MHLC each and every document and writing constituting or relating to the Leases; and (h) Debtor has not granted to either of the Lessees an option to purchase the Equipment.

4. Debtor further represents, that United States Railway Equipment Co. ("USR") designated as "Lessor" under the Leases, is the Debtor's former corporate name and that Debtor has maintained a continuous corporate existence and is the same corporate entity as USR.

IN WITNESS WHEREOF, Debtor and MHLC have executed this Assignment of Leases and Security Agreement the day and year first above written.

MANUFACTURERS HANOVER  
LEASING CORPORATION

By: [Signature]

Title: [Signature]

EVANS RAILCAR LEASING COMPANY

By: [Signature]

Title: Vice President

STATE OF ILLINOIS  
COUNTY OF COOK

} SS

On this 9th day of December, 1980, before me personally appeared Paul R. Leck to me personally known, who being by me duly sworn, says that he is vice President of Evans Railcar Leasing Company, and \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elfrida M. Rieger  
Notary Public

My Commission Expires Jan-28, 1982

STATE OF ILLINOIS  
COUNTY OF COOK

} SS

On this 10th day of December, 1980, before me personally appeared Philip F. Cronan to me personally known, who being by me duly sworn, says that he is \_\_\_\_\_ President of Manufacturers Hanover Leasing, Inc., and \_\_\_\_\_ to me personally known to be the \_\_\_\_\_ Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Maria Parrish  
Notary Public

30, 1983

CERTIFICATION OF TRUE COPY

I, Barbara J. Slade, a District of Columbia notary public, do hereby certify that I have compared the foregoing copy of an "Assignment of Leases and Security Agreement" with the original, and that the copy is a true, complete, and correct copy of the original in all respects, including dates, signatures, and acknowledgments.

Dated: December 10, 1980

  
Barbara J. Slade  
Notary Public

My commission expires: *July 14, 1981*

CERTIFICATE OF TRUE COPY

I have compared the attached copies of that certain Railroad Car Lease Agreement between United States Railway Equipment Co., and PMA Transportation Co., dated March 7, 1978 with the original thereof, and I certify that such copy is a true and correct copy of the original.

*Christine A. Smith*

Notary Public

**CHRISTINE A. SMITH**  
Notary Public, State of New York  
No. 31-4506345  
Qualified in New York County  
Commission Expires March 30, 1981

UNITED STATES RAILWAY EQUIPMENT CO.  
RAILROAD CAR LEASE AGREEMENT

AGREEMENT made and entered into this 7th day of March, 19 78,  
between UNITED STATES RAILWAY EQUIPMENT CO., an Illinois corporation (hereinafter  
called "United") and PMA TRANSPORTATION CO.  
a(n) Washington corporation, with its principal place of business at  
7409 N. E. Hazel Dell Avenue, Vancouver, Washington  
(hereinafter called "Lessee")

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars; hereinafter specifically  
designated, all upon the rentals, terms and conditions set forth in this Railroad Car Lease Agree-  
ment and the Schedules from time to time made a part hereof (together hereinafter referred to as  
the "Lease").

AGREEMENT

It is Agreed:

1. *Lease of Cars.* United agrees to lease to Lessee and Lessee agrees to and does hereby lease  
from United, railroad cars of the number of units, model, type, construction and such other  
description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and  
by this reference made a part hereof and as set forth in Schedules which may from time to time be  
added to this Lease and thereby made a part hereof. The Lease shall become effective as to any  
Car immediately upon its delivery to and acceptance by Lessee pursuant to Paragraph 3. The  
Schedules added hereto shall be in the form of Schedule 1 hereto, shall contain such other terms  
and provisions as United and Lessee may agree upon and shall, if requested by either party, have  
the signatures thereto acknowledged by a notary public.

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible.  
United's obligations with respect to delivery of all or any of the Cars are hereby made expressly  
subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars  
due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufac-  
turers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties  
or contingencies beyond United's control. Delivery shall be F.O.T. the point specified in the  
applicable Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or  
reimburse United for the payment of all costs, charges and expenses of any kind whatsoever on  
account of or relating to switching, demurrage, detention, storage, transportation or movement of  
a Car, including specifically, but not exclusively, freight and switching charges for movement at  
any time and from time to time to and from repair shops, storage or terminal facilities.

3. *Condition of Cars - Acceptance.* All Cars delivered under this Lease shall be in satis-  
factory condition for movement in the normal interchange of rail traffic and shall otherwise  
comply with the description and specifications contained in the applicable Schedule; but Lessee  
shall be solely responsible for determining that Cars are in proper condition for loading and  
shipment. Within five days after United shall give Lessee notice that Cars are ready for delivery,  
Lessee may have its authorized representative inspect such Cars at the point specified in the notice

and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. At United's request, Lessee shall deliver to United an executed Certificate of Acceptance in the form of Exhibit A with respect to all Cars.

4. *Use and Possession.* Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Interchange Rules; (ii) in compliance with the terms and provisions of this Lease, (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (v) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train."

5. *Term.* This Lease shall be effective as to any Car on the date of delivery by United of such Car, as provided in Paragraph 2 hereof. The lease term with respect to all Cars covered by a particular Schedule shall commence on the Average Date of Delivery of the Cars covered by such Schedule and shall terminate upon expiration of the lease term specified in such Schedule unless sooner terminated in accordance with the provisions of this Lease.

6. *Rental.* (a) Per Car. During the term of this Lease, Lessee shall pay to United for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule subject to adjustment as hereinbelow provided.

(b) Adjustment. The rental provided in Paragraph 6(a) is comprised of the Constant Factor specified in the applicable Schedule plus the initial Service Factor specified in said Schedule. If the Prevailing Labor Rate established and in effect upon the expiration of each month from and after the date of such Schedule shall increase over the Current Labor Rate specified in said Schedule the Service Factor shall be adjusted to be the product obtained by multiplying the Service Factor by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which is the Current Labor Rate; and the per Car rental shall be revised to be the sum of the Constant Factor and the adjusted Service Factor. Any such adjustment shall be instituted by notice from United to Lessee and shall take effect with respect to rents coming due next after the date of such notice.

(c) Mileage Credits. If the Cars bear United's reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of United, but United shall credit time and mileage payments actually received by it during an Accounting Period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease with respect to Cars covered by a particular Schedule during such Accounting Period; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee during such Accounting Period. Any credit unused at the end of such Accounting Period with respect to such Cars shall be cancelled. Upon notice from any railroad, whether received prior to or after termination of this Lease, Lessee agrees to pay United all sums due on account of all excess empty mileage incurred on Cars during the term of this Lease at the rate established by the applicable railroad tariff.

7. *Payment.* Lessee shall make payment of all sums due hereunder to United in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly ~~in advance~~ on or before the 1st day of each month for which such rental is due, except that the first full month's payment shall, in addition, include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** (a) **United.** Except as may otherwise be provided in Paragraph 6(b) or this Paragraph 9(a) and (b), United shall be responsible for all Repair Work. Lessee shall promptly notify United of any Repair Work of which it has knowledge. United shall have no responsibility hereunder until and unless notified of the need for Repair Work. United may require Lessee to deliver Cars to such place as United designates for all Repair Work, and United may terminate this Lease with respect to any Car as to which it deems Repair Work to be unsuitable or uneconomical.

(b) **Lessee.** Except where a railroad or railroads have assumed full responsibility, Lessee shall be responsible for and shall pay all costs and expenses of all Repair Work or other work or materials required (i) by reason of damage or other condition caused by negligence of Lessee or anyone other than United; (ii) by reason of damage or other condition caused by loading, unloading or use other than as permitted under this Lease; (iii) to repair, replace or maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) by reason of loss or damage resulting from any commodity or other material loaded in or on any Car; or (v) by Interchange Rules which have not been adopted or promulgated as of the date hereof.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to the Schedule applicable to such Cars and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights under such Schedule as permitted in Paragraph 19 hereof.

11. **Abatement of Rent.** Rental payments on any Car out of service for Repair Work or other work which is United's responsibility under Paragraph 9(a) hereof shall abate from the fifth day after such Car has been placed in any period out of service until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready for or is returned to service by Lessee. In the event rental is abated, then if United so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease with respect to the Schedule covering such Car shall be extended for a period of time determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to such Schedule on what would otherwise have been the last day of the original term hereof.

-----written notification to United

12. **Taxes.** United shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars except that Lessee shall be liable for and pay such taxes when the Cars bear reporting marks and numbers other than United's. Lessee shall be liable at all times for and shall pay or reimburse United for payment of (i) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

13. **Liens.** Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

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14. *Indemnities – Patent Covenants.* Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from United's negligence. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Lettering – Inventory.* At United's election all Cars may be marked to indicate the rights of United, or an assignee, mortgagee, trustee, pledgee or security holder of United or a lessor to United and may bear the following inscription: "Title to this Car subject to documents recorded under Section 20c of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

16. *Loss, Theft or Destruction of Cars.* In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise United of such occurrence. ~~Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by United, promptly make payment to United in the amount specified in this Paragraph. Where the Casualty Car was a rebuilt car as defined in the Interchange Rules, the amount shall be the same as is prescribed in the Interchange Rules for the loss of such Car. Where the Casualty Car is not a rebuilt car, the amount shall be the higher of (i) the amount prescribed in the Interchange Rules for the loss of such Car or (ii) the total remaining firm rentals, excluding the Service Factor, for such Car discounted at 5% per annum plus the net scrap value for such Car. This Lease shall terminate with respect to a Casualty Car on the date United shall receive notice of a casualty occurrence with respect thereto, and thereafter Lessee shall have no further liability to United under this Lease with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 6(c), 12, 13, and 14 hereof.~~

17. *Return of Cars.* Upon the expiration or termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United at such repair shop, storage or terminal facility as United may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs for which Lessee is liable under Paragraph 9, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars do not bear United's reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as United shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall

continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage, upon the request of United, for any or all of the Cars for a period of ninety (90) days from the date of expiration or termination of this Lease. Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car.

18. **Default.** If Lessee shall fail to make any payment required under this Lease within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part under this Lease, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. United shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 18 in favor of United shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in United's favor existing at law or in equity. The 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.

19. **Sublease and Assignment.** The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease;

(b) all rights of United under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease, chattel

mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. In the event that Lessee receives notice that United has assigned its rights under this Lease with respect to Cars subject to a particular Schedule, Lessee shall, if requested in writing by United or such assignee, make separate payment of rentals and other sums due with respect to such Cars to such place and person as United or such assignee shall from time to time designate. The right of any assignee or any party on behalf of whom such assignee is acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of United under this Lease or by reason of any other indebtedness or liability at any time owing by United to Lessee.

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking under this Lease nor to impose any liability or undertaking under this Lease upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.* Upon the request of United or its assignee, Lessee will deliver to United an opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: 2200 East Devon Avenue  
Des Plaines, Illinois 60018

or at such other addresses as United may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

22. *Warranty.* United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. **United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which**

**Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation.** Lessee represents that all of the matters set forth in Paragraphs 20(a), (b) and (c) shall be and are true and correct at all times that any Car is subject to this Lease.

23. **Governing Law – Writing.** The terms of this Lease and all rights and obligations under this Lease shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. **Counterparts.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. **Severability – Waiver.** If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. **Terminology.** In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. **Past Due Payments.** Any nonpayment of rentals or other sums due under this Lease, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

28. **Definitions.** For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" – all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Average Date of Delivery" – that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car under the applicable Schedule, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car under the applicable Schedule. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the

following: (i) Certificate of Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(c) "Accounting Period" – each consecutive period of 12 months commencing with the date of the applicable Schedule and any period of less than 12 months during which period this Lease with respect to such Schedule shall expire or terminate.

(d) "Prevailing Labor Rate" – the per hour general labor rate established by the Association of American Railroads.

(e) "Repair Work" – all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance as determined by United to keep and maintain the Cars in good working order and repair.

(f) "Withdrawn Cars" – Cars as to which this Lease has been terminated by United because deemed by United to be unsuitable or uneconomical for Repair Work.

(g) "Casualty Cars" – Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(h) "Replacement Cars" – Cars of substantially similar description and specification to that set forth in the applicable Schedule which are substituted for Withdrawn or Casualty Cars.

29. **Benefit.** Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. **Recording.** Upon request by United, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

UNITED STATES RAILWAY LEASING COMPANY  
an Illinois corporation

By *Carl C. Tatham*  
vice President

[CORPORATE SEAL]

ATTEST:  
*Andrew P. Long*  
ASST. Secretary

PMA TRANSPORTATION CO.

a(n) Washington corporation

By *[Signature]*  
vice President

[CORPORATE SEAL]

ATTEST:

*Alice M. Lige*  
ASST. Secretary

Schedule 1

Page 1 of Schedule 1 dated March 7, 19 78 to Lease dated March 7, 19 78 by and between United States Railway/teasing Company ("United") and PMA Transportation Co. ("Lessee")

## TYPE AND DESCRIPTION OF CAR:

50'6" 70-ton Rebuilt "XL" box car having a 10' door opening

NUMBER OF CARS: 100

INTERIOR EQUIPMENT: Minimum DF-2 Belt Rail

SPECIAL LININGS: None

PERMITTED LADING USE: Forest Products

\*REPORTING MARKS AND NUMBERS: LOAM 4300 - 4399 inclusive

SPECIFICATIONS DESIGNATED BY LESSEE: Cars to be painted per lessee's specifications.

INITIAL F.O.T. DELIVERY POINT: St. Louis, MO

\*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations.

Page 2 of Schedule 1 dated March 7, 19 78 to Lease dated March 7, 19 78 by and between United States Railway/Leasing Company ("United") and PMA Transportation Co. ("Lessee")

LEASE TERM: 15 years

MONTHLY RENTAL: 333.00 *BBB*

CONSTANT FACTOR: 283.00 *BBB*

SERVICE FACTOR: 50.00

CURRENT LABOR RATE: 25.47

SPECIAL TERMS:

PMA Transportation Co.

Lessee  
By *[Signature]*  
vice President

[CORPORATE SEAL]  
ATTEST:

*[Signature]*  
ASST. Secretary

UNITED STATES RAILWAY Equipment  
LEASING COMPANY

By *[Signature]*  
President

[CORPORATE SEAL]  
ATTEST:

*[Signature]*  
ASST. Secretary

RIDER 1

Rider consisting of 1 page attached to and made a part of Schedule 1  
dated March 7, 1978 to Lease dated March 7, 1978 by and  
between United States Railway <sup>Equipment</sup> Leasing Company ("United") and P.M.A.  
Transportation Co. ("Lessee").

Material and Labor Cost Escalation Clause

The rental herein is based in part upon the cost of labor and delivered materials incurred by manufacturer in manufacturing the Cars. If, prior to the completion of manufacture of all the Cars, the manufacturer shall incur an increase in such costs of delivered materials or labor or both over such costs prevailing as at the date hereof, the rental provided herein shall be increased as hereinafter set forth. Any increase in the manufacturer's cost of delivered materials or labor or both for any part or all of the Cars effective after the date hereof but prior to the completion of manufacture of all Cars shall be divided by the total number of Cars and the amount so obtained shall be called the "Car Cost Increase". The rental specified in the Schedule shall be increased by \$.0094 per month per Car for each dollar (to the nearest dollar of the Car Cost Increase, and such increased rental shall be retroactively effective as to all Cars from the date hereof. As promptly as reasonably possible after completion of the manufacture of all Cars, United will notify Lessee of the Car Cost Increase and the increased rental (including basis for its computations) as well as of any amounts which are owed to United on account of the retroactive application of the increased rental to all Cars covered by the Lease. Lessee shall make payment of any rental so due with the next monthly rental payment due under the Lease. The "Car Cost Increase" due to labor cost increase shall be determined by increasing the cost of each Car \$9.73 for each one cent (1¢) or fraction thereof increase in the average hourly wage rate occurring prior to or during manufacture of the Cars. The labor rate shall include fringe cost such as, but not limited to, pension plan, vacation and holiday pay, payroll taxes and insurance.

Lessee

Bob M. Bauer

United

Burt C. [Signature]

STATE OF ILLINOIS  
COUNTY OF COOK

} ss

On this 10th day of November, 19 78, before me personally appeared C. Tatham to me personally known, who being by me duly sworn, says that he is President of United States Railway Equipment Co., and ASST. to me personally known to be the ASST. Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jane Purdy  
Notary Public

My Commission Expires April 22, 1981

STATE OF Washington  
COUNTY OF Clark

} ss

On this 7th day of March, 19 78, before me personally appeared Bob R. Barnes to me personally known, who being by me duly sworn, says that he is Vice President of PMA Transportation Co. and Alice M. Agee to me personally known to be the Asst. Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

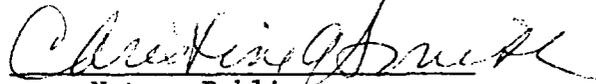
Louis B. McGill

Notary Public

My Commission Expires Aug. 23, 1980

CERTIFICATE OF TRUE COPY

I have compared the attached copies of that certain Railroad Car Lease Agreement between Atlantic and Western Financial Corporation dated March 31, 1978 with the original thereof, and I certify that such copy is a true and correct copy of the original.



Notary Public

**CHRISTINE A. SMITH**  
Notary Public, State of New York  
No. 31-4503346  
Qualified in New York County  
Commission Expires March 30, 1981

1584  
AN 3000-3099

**UNITED STATES RAILWAY EQUIPMENT CO.  
RAILROAD CAR LEASE AGREEMENT**

AGREEMENT made and entered into this 31st day of March, 19 78,  
between UNITED STATES RAILWAY EQUIPMENT CO., an Illinois corporation (hereinafter  
called "United") and ATLANTIC AND WESTERN FINANCIAL CORPORATION  
a(n) Delaware corporation, with its principal place of business at  
P. O. Drawer 580 Sanford, North Carolina 27330  
(hereinafter called "Lessee")

**RECITALS**

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Railroad Car Lease Agreement and the Schedules from time to time made a part hereof (together hereinafter referred to as the "Lease").

**AGREEMENT**

It is Agreed:

1. **Lease of Cars.** United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United, railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof. The Lease shall become effective as to any Car immediately upon its delivery to and acceptance by Lessee pursuant to Paragraph 3. The Schedules added hereto shall be in the form of Schedule 1 hereto, shall contain such other terms and provisions as United and Lessee may agree upon and shall, if requested by either party, have the signatures thereto acknowledged by a notary public.

2. **Delivery of Cars.** United shall deliver the Cars as promptly as is reasonably possible. United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control. Delivery shall be F.O.T. the point specified in the applicable Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse United for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from repair shops, storage or terminal facilities.

3. **Condition of Cars - Acceptance.** All Cars delivered under this Lease shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the applicable Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five days after United shall give Lessee notice that Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice

and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. At United's request, Lessee shall deliver to United an executed Certificate of Acceptance in the form of Exhibit A with respect to all Cars.

4. *Use and Possession.* Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Interchange Rules; (ii) in compliance with the terms and provisions of this Lease, (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (v) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train."

5. *Term.* This Lease shall be effective as to any Car on the date of delivery by United of such Car, as provided in Paragraph 2 hereof. The lease term with respect to all Cars covered by a particular Schedule shall commence on the Average Date of Delivery of the Cars covered by such Schedule and shall terminate upon expiration of the lease term specified in such Schedule unless sooner terminated in accordance with the provisions of this Lease.

6. *Rental.* (a) Per Car. During the term of this Lease, Lessee shall pay to United for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule subject to adjustment as hereinbelow provided.

(b) *Adjustment.* The rental provided in Paragraph 6(a) is comprised of the Constant Factor specified in the applicable Schedule plus the initial Service Factor specified in said Schedule. If the Prevailing Labor Rate established and in effect upon the expiration of each month from and after the date of such Schedule shall increase over the Current Labor Rate specified in said Schedule the Service Factor shall be adjusted to be the product obtained by multiplying the Service Factor by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which is the Current Labor Rate; and the per Car rental shall be revised to be the sum of the Constant Factor and the adjusted Service Factor. Any such adjustment shall be instituted by notice from United to Lessee and shall take effect with respect to rents coming due next after the date of such notice.

(c) *Mileage Credits.* If the Cars bear United's reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of United, but United shall credit time and mileage payments actually received by it during an Accounting Period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease with respect to Cars covered by a particular Schedule during such Accounting Period; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee during such Accounting Period. Any credit unused at the end of such Accounting Period with respect to such Cars shall be cancelled. Upon notice from any railroad, whether received prior to or after termination of this Lease, Lessee agrees to pay United all sums due on account of all excess empty mileage incurred on Cars during the term of this Lease at the rate established by the applicable railroad tariff.

7. *Payment.* Lessee shall make payment of all sums due hereunder to United in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly in advance on or before the 1st day of each month for which such rental is due, except that the first full month's payment shall, in addition, include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** (a) **United.** Except as may otherwise be provided in Paragraph 6(b) or this Paragraph 9(a) and (b), United shall be responsible for all Repair Work. Lessee shall promptly notify United of any Repair Work of which it has knowledge. United shall have no responsibility hereunder until and unless notified of the need for Repair Work. United may require Lessee to deliver Cars to such place as United designates for all Repair Work, and United may terminate this Lease with respect to any Car as to which it deems Repair Work to be unsuitable or uneconomical.

(b) **Lessee.** Except where a railroad or railroads have assumed full responsibility, Lessee shall be responsible for and shall pay all costs and expenses of all Repair Work or other work or materials required (i) by reason of damage or other condition caused by negligence of Lessee or anyone other than United; (ii) by reason of damage or other condition caused by loading, unloading or use other than as permitted under this Lease; (iii) to repair, replace or maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) by reason of loss or damage resulting from any commodity or other material loaded in or on any Car; or (v) by Interchange Rules which have not been adopted or promulgated as of the date hereof.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to the Schedule applicable to such Cars and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights under such Schedule as permitted in Paragraph 19 hereof.

11. **Abatement of Rent.** Rental payments on any Car out of service for Repair Work or other work which is United's responsibility under Paragraph 9(a) hereof shall abate from the fifth day after such Car has been placed in any repair shop for service until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready for or is returned to service by Lessee. In the event rental is abated, then if United so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease with respect to the Schedule covering such Car shall be extended for a period of time determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to such Schedule on what would otherwise have been the last day of the original term hereof.

12. **Taxes.** United shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars except that Lessee shall be liable for and pay such taxes when the Cars bear reporting marks and numbers other than United's. Lessee shall be liable at all times for and shall pay or reimburse United for payment of (i) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

13. **Liens.** Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

**14. Indemnities – Patent Covenants.** Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from United's negligence. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

**15. Lettering – Inventory.** At United's election all Cars may be marked to indicate the rights of United, or an assignee, mortgagee, trustee, pledgee or security holder of United or a lessor to United and may bear the following inscription: "Title to this Car subject to documents recorded under Section 20c of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

**16. Loss, Theft or Destruction of Cars.** In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise United of such occurrence. Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by United, promptly make payment to United in the amount specified in this Paragraph. Where the Casualty Car was a rebuilt car as defined in the Interchange Rules, the amount shall be the same as is prescribed in the Interchange Rules for the loss of such Car. Where the Casualty Car is not a rebuilt car, the amount shall be the higher of (i) the amount prescribed in the Interchange Rules for the loss of such Car or (ii) the total remaining firm rentals, excluding the Service Factor, for such Car discounted at 5% per annum plus the net scrap value for such Car. This Lease shall terminate with respect to a Casualty Car on the date United shall receive notice of a casualty occurrence with respect thereto, and thereafter Lessee shall have no further liability to United under this Lease with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 6(c), 12, 13, and 14 hereof.

**17. Return of Cars.** Upon the expiration or termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United at such repair shop, storage or terminal facility as United may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs for which Lessee is liable under Paragraph 9, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars do not bear United's reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as United shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall

continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage, upon the request of United, for any or all of the Cars for a period of ninety (90) days from the date of expiration or termination of this Lease. Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car.

18. *Default.* If Lessee shall fail to make any payment required under this Lease within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part under this Lease, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. United shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 18 in favor of United shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in United's favor existing at law or in equity. The 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.

19. *Sublease and Assignment.* The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease;

(b) all rights of United under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease, chattel

mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. In the event that Lessee receives notice that United has assigned its rights under this Lease with respect to Cars subject to a particular Schedule, Lessee shall, if requested in writing by United or such assignee, make separate payment of rentals and other sums due with respect to such Cars to such place and person as United or such assignee shall from time to time designate. The right of any assignee or any party on behalf of whom such assignee is acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of United under this Lease or by reason of any other indebtedness or liability at any time owing by United to Lessee.

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking under this Lease nor to impose any liability or undertaking under this Lease upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

**20. Opinion of Counsel.** Upon the request of United or its assignee, Lessee will deliver to United an opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

**21. Notice.** Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: 2200 East Devon Avenue  
Des Plaines, Illinois 60018

or at such other addresses as United may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

**22. Warranty.** United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which

Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 20(a), (b) and (c) shall be and are true and correct at all times that any Car is subject to this Lease.

23. *Governing Law – Writing.* The terms of this Lease and all rights and obligations under this Lease shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. *Severability – Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due under this Lease, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

28. *Definitions.* For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" – all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Average Date of Delivery" – that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car under the applicable Schedule, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car under the applicable Schedule. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the

following: (i) Certificate of Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(c) "Accounting Period" — each consecutive period of 12 months commencing with the date of the applicable Schedule and any period of less than 12 months during which period this Lease with respect to such Schedule shall expire or terminate.

(d) "Prevailing Labor Rate" — the per hour general labor rate established by the Association of American Railroads.

(e) "Repair Work" — all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance as determined by United to keep and maintain the Cars in good working order and repair.

(f) "Withdrawn Cars" — Cars as to which this Lease has been terminated by United because deemed by United to be unsuitable or uneconomical for Repair Work.

(g) "Casualty Cars" — Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(h) "Replacement Cars" — Cars of substantially similar description and specification to that set forth in the applicable Schedule which are substituted for Withdrawn or Casualty Cars.

29. *Benefit.* Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. *Recording.* Upon request by United, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Railroad Car Lease Agreement as of the day and year first above written.

UNITED STATES RAILWAY EQUIPMENT CO.  
an Illinois corporation

By Ralph E Bell  
Vice President

[CORPORATE SEAL]

ATTEST:

[Signature]  
ASST. Secretary

ATLANTIC AND WESTERN  
FINANCIAL CORPORATION

a(n) Delaware corporation

By [Signature]  
President

[CORPORATE SEAL]

ATTEST:

[Signature]  
Secretary

STATE OF ILLINOIS  
COUNTY OF COOK

• } ss

On this ..... day of ....., 19 ....., before me personally appeared ..... to me personally known, who being by me duly sworn, says that he is ..... President of United States Railway Equipment Co., and ..... to me personally known to be the ..... Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
*Notary Public*

\_\_\_\_\_

STATE OF  
COUNTY OF

} ss

On this ..... day of ....., 19 ....., before me personally appeared ..... to me personally known, who being by me duly sworn, says that he is ..... President of ..... and ..... to me personally known to be the ..... Secretary of said corporation, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
*Notary Public*



**EXHIBIT A**

Schedule.....to Lease dated....., 19....., by and between United States  
Railway Equipment Co. ("United") and..... ("Lessee")

**CERTIFICATE OF ACCEPTANCE**

\_\_\_\_\_, 19\_\_\_\_\_

United States Railway Equipment Co.  
2200 East Devon Avenue  
Des Plaines, Illinois 60018

Gentlemen:

The undersigned, being a duly authorized representative of Lessee, hereby accepts  
\_\_\_\_\_ ( \_\_\_\_\_ ) Cars bearing numbers as  
follows:

for the Lessee pursuant to the Lease and certifies that each of said Cars is plainly marked in stencil  
on both sides of each Car with the words

**UNITED STATES RAILWAY EQUIPMENT CO.  
OWNER AND LESSOR**

Title to this Car subject to documents recorded  
under Section 20c of Interstate Commerce Act

in readily visible letters not less than one inch (1") in height; and that each of said Cars conforms  
to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee. If  
the Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the  
Cars are intended for actual use and movement in interstate commerce.

\_\_\_\_\_  
Lessee

Schedule 1

Page 1 of Schedule 1 dated March 31, 19 78 to Lease dated March 31, 19 78 by and between United States Railway Equipment Co. ("United") and Atlantic and Western Financial Corporation ("Lessee")

**TYPE AND DESCRIPTION OF CAR:**

40' 6", 50-ton XM Box Cars, rebuilt and stretched to  
50' 6", 70-ton XM Box Cars

**NUMBER OF CARS:**

One Hundred (100)

**INTERIOR EQUIPMENT:**

None

**SPECIAL LININGS:**

None

**PERMITTED LADING USE:**

Non-corrosive commodities

**\*REPORTING MARKS AND NUMBERS:**

**SPECIFICATIONS DESIGNATED BY LESSEE:**

Cars to be painted per Lessee's specifications

**INITIAL F.O.T. DELIVERY POINT:**

Washington, Indiana

\*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations.

Page 2 of Schedule 1 dated March 31, 19 78 to Lease dated March 31, 19 78, by and between United States Railway Equipment Co. ("United") and Atlantic and Western Financial Corporation ("Lessee")

LEASE TERM: **Fifteen Years (15)**

MONTHLY RENTAL: **\$369.00**

CONSTANT FACTOR: **\$309.00**

SERVICE FACTOR: **\$ 60.00**

CURRENT LABOR RATE: **\$ 25.47**

SPECIAL TERMS: **None**

ATLANTIC AND WESTERN  
FINANCIAL CORPORATION

Lessee

By W. B. Joyce  
President

[CORPORATE SEAL]  
ATTEST:

O. Tracy Park  
Secretary

UNITED STATES RAILWAY  
EQUIPMENT CO.

[CORPORATE SEAL]  
ATTEST:

James B. Long  
ASST. Secretary

By Ralph E Bell  
VICE President

*Transmitted  
copy to [unclear]*

Mike Teruggi

January 13, 1978

John Eber

LOT 1584 - ATLANTIC AND WESTERN

Attached please find a revised Schedule 1 for Lot 1584. The Schedule shows the new f.o.t. point and the car numbers which were not included in the original Schedule.

Please forward this to the A & W for insertion into their lease forms.

If you have any questions, please advise.

JE/jb

Enc.

cc: Larry Prange  
Info Center ✓

C  
O  
P  
Y

UNITED'S LOT NO. 1584

Schedule 1

Page 1 of Schedule 1 dated March 31, 19 78 to Lease dated March 31, 19 78, by and between United States Railway Equipment Co. ("United") and Atlantic and Western Financial Corporation ("Lessee")

TYPE AND DESCRIPTION OF CAR:

40' 6", 50-ton XM Box Cars, rebuilt and stretched to  
50' 6", 70-ton XF Box Cars

NUMBER OF CARS:

One hundred (100)

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

Cars are to have a white epoxy interior lining

PERMITTED LADING USE:

Non-corrosive commodities

\*REPORTING MARKS AND NUMBERS:

HN 3000 - 3099, inclusive

SPECIFICATIONS DESIGNATED BY LESSEE:

Cars to be painted per Lessee's specifications

INITIAL F.O.T. DELIVERY POINT:

St. Louis, Missouri

\*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations.