



**GREYHOUND LEASING & FINANCIAL CORPORATION**

Greyhound Tower  
Phoenix, Arizona 85077  
602 248-4900

153A054

June 24, 1980

VIA REGISTERED MAIL

Ms. Mildred Lee  
Interstate Commerce Commission  
12th & Constitution Avenue N.W.  
Room 2303  
Washington, D.C. 20423

RECORDATION NO. 10328 Filed 1425 Date JUL 1 1980  
Fee \$ 10.00  
JUL 1 1980 10:58 AM ICC Washington, D.C.

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

I enclose two counterparts of the instrument described in paragraph (1) hereof, for recordation and return, together with one original counterpart for the Commission's files.

In accordance with 49 CFR Part 316, covering the recordation of documents, I advise you as follows:

- (1) The enclosed document is an Assignment and Agreement dated as of April 11, 1980, between Raitex, Inc., a Texas corporation, 4901 Broadway, San Antonio, Texas 78209, as Assignor, and Greyhound Leasing & Financial Corporation, Greyhound Tower, Phoenix, Arizona 85077, as Assignee.
- (2) The Assignment and Agreement is executed for the purpose of assigning all and every estate, property, right, title, interest and demand, which Raitex, Inc. has under a Railroad Car Lease Agreement dated March 12, 1980, by and between Raitex, Inc., as Lessor, and Texas Utilities Generating Company, a Texas corporation, as Lessee, covering:

Ten (10) Rapid Discharge TM Self-Cleaning Bottom Dump Rail Cars manufactured by Ortner Freight Car Company, Model No. OC 3025 (100 Ton) Specification No. EX-279 having Road Numbers TRAX 1040 through 1049 inclusive, AAR designation HTS/K340.

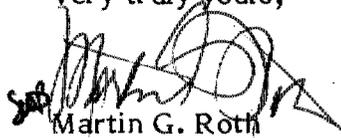
- (3) The Assignment and Agreement was executed pursuant to the terms of the Conditional Sale and Security Agreement dated January 9, 1979, a copy of which was filed and recorded in your office on May 1, 1979, at 1:30 p.m., and was assigned Recordation No. 10328 and 10328A.

RECEIVED  
JUL 31 10 52 AM '80  
FEDERAL  
TRAFFIC

- (4) After recordation, the original document should be returned to Greyhound Leasing & Financial Corporation, Greyhound Tower, Phoenix, Arizona 85077, Attention Martin G. Roth, Vice President - Operations.
- (5) The recordation fee of \$10.00 is enclosed.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,



Martin G. Roth  
Vice President

Enclosures



ASSIGNMENT AND AGREEMENT

(Lease)

THIS ASSIGNMENT AND AGREEMENT ("Assignment") entered into as of this 11th day of April, 1980, between RAILTEX, INC., ("Assignor") and GREYHOUND LEASING & FINANCIAL CORPORATION ("Assignee"), a Delaware corporation having its principal place of business in Phoenix, Arizona.

W I T N E S S E T H:

WHEREAS, Assignor, as purchaser, and Assignee, as seller, did enter into a certain Conditional Sale and Security Agreement (herein called "Agreement"), dated January 9, 1979, providing for the sale of all of the equipment described in said Agreement by Assignee to Assignor; and

WHEREAS, paragraph 18(a) of the Agreement explicitly provides that Assignor under said Agreement shall not let the equipment sold thereunder, without first securing the prior written consent of Assignee to any such lease; and

WHEREAS, Assignor has entered into a Lease Agreement ("Lease") with TEXAS UTILITIES GENERATING COMPANY ("Lessee") for equipment described and listed on Exhibit "A", attached hereto and by reference made a part hereof (hereinafter called the "Equipment"), which Equipment is the subject of the Agreement; and

WHEREAS, Assignee is willing to consent to the aforementioned Lease if, and only if, (1) Assignor will continue to remain responsible and liable under the Agreement for the full and complete performance of all of Assignor's obligations thereunder as Purchaser, and (2) Assignor assigns to Assignee its interest in the Lease and all the payments due thereunder;

NOW, THEREFORE, Assignor and Assignee hereby mutually covenant and agree as follows:

1. Assignor does hereby grant, sell, transfer and assign to Assignee all of the right, title and interest of Assignor in and to the Lease, a copy of which is attached hereto as Exhibit "B" and made a part hereof and all rental, payments, income and profits now due and which may hereafter become due to Assignor by virtue of said Lease and Assignor hereto irrevocably appoints Assignee, Assignor's true and lawful attorney in its name and stead (with or without taking possession of the Equipment), to enforce said Lease and to collect all of said rentals, payments, income and profits.

2. This Assignment is for the purpose of securing:

(a) Payment in full of all sums together with interest thereon becoming due and payable to Assignee under the provisions of the Agreement or hereof; and

(b) Performance and discharge of each and every obligation, covenant, condition and agreement of Assignor contained herein and in said Agreement.

3. Assignor represents and warrants to Assignee that:

(a) Notwithstanding this Assignment, and the exercise by Assignee of any rights assigned hereunder, Assignor will nevertheless, at all times for the duration of the Agreement: (i) remain fully obligated and liable under the Agreement and faithfully abide by, perform and discharge each and every obligation, covenant, condition and agreement to be performed by Assignor as the original party to the Agreement at the sole cost and expense of Assignor; and (ii) use reasonable diligence to enforce or secure the performance of each and every obligation, covenant, condition, and agreement of the Lease to be performed by Assignor as the original party to the Lease at the sole cost and expense of Assignor, and (iii) use reasonable diligence to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Lease to be performed by Lessee at the sole cost and expense of Assignor.

(b) No payment under the Lease has been or will be forgiven, released, reduced or discounted, or otherwise discharged or compromised by Assignor.

(c) Assignor is as of this date entitled to receive said rentals, payments, income and profits and to enjoy all the other rights and benefits mentioned herein and the same have not been heretofore nor will be hereinafter granted, sold, transferred or assigned by Assignor and Assignor has the right to grant, sell, transfer and assign the same and to grant and confer upon Assignee the rights, interest, powers and/or authority herein granted and conferred.

(d) Assignor will not modify, alter or amend the Lease without the written consent of Assignee thereto being first obtained.

(e) (i) Assignor has the full power and legal right to make this Assignment and all corporate proceedings necessary to authorize this Assignment have been taken; (ii) the Lease is in full force and effect and Assignor and/or Lessee is not in default thereunder; (iii) the Agreement is in full force and effect and Assignor is not in default thereunder; (iv) the Lease is and will continue to be valid, binding and enforceable against Assignor and Lessee in accordance with its terms; (v) the Agreement is and will continue to be valid, binding and enforceable against Assignor in accordance with its terms; and (vi) Lessee has acknowledged this Assignment, by the execution of the Acknowledgement, attached hereto as Exhibit "C" and made a part hereof.

(f) Assignor will execute and deliver, immediately upon the request of Assignee, all such further assurances of assignment of the Lease as Assignee shall from time to time require, and will pay all recording and filing fees or other charges that may be incident to or may arise out of the recording of the same or of this Assignment. Assignor will execute upon request any and all instruments requested by Assignee to carry this Assignment into effect or to accomplish any other purposes deemed by Assignee to be necessary or appropriate in connection with this Assignment and for these purposes hereby confers on Assignee the power to execute in Assignor's name and stead all such instruments.

4. Although it is the intention of the parties that this Assignment shall be a present assignment, it is expressly understood and agreed, anything therein to the contrary notwithstanding, that Assignee will not exercise any of the rights and powers conferred upon it herein until and unless a default shall occur in the payment when due of any sums under the Agreement, or if a default in the performance of any obligation, covenant, condition or agreement shall occur hereunder, or under the Agreement, and so long as no such default

occurs, Assignor shall have the right to collect, but not in advance of their due date, all the rentals, payments, income and profits due under the Lease and to retain, use and enjoy the same.

5. In the event of a default in the payment when due of any sums under the Agreement or the occurrence of a default in the performance of any obligation, covenant, condition or agreement hereunder, or under the Agreement, not cured as provided herein and therein, Assignee may, at its option, (i) enforce any and all of Assignee's rights and remedies under the Agreement, and (ii) take such action it deems proper or necessary to enforce the payment of the rentals, payments income and profits under the Lease and in the furtherance thereof may make, cancel, enforce or modify the Lease, and do any acts or things which Assignee deems proper to protect the security hereof, and may in its own name or Assignor's name, sue for or otherwise collect and receive such rentals, payments, income and profits, including those past due and unpaid, and apply the same in accordance with the provisions of this Assignment.

6. Assignee in the exercise of the rights and powers conferred upon it by this Assignment shall have the full power to hold, use and apply all of the rentals, payments, income and profits under the Lease to the payment of or on account of any sums due under the Agreement secured hereby and any cost and expense of collection, including reasonable attorneys' fees, all in such order as Assignee in its sole discretion may determine. The collection of such rentals, payments, income and profits and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or effect notice of default under the Agreement or invalidate any act done pursuant to such notice.

7. This Assignment shall not operate to increase Assignee's obligations or liabilities under the Agreement or decrease Assignee's rights and remedies under the Agreement. In the exercise of the powers herein granted Assignee, no liabilities shall be asserted or enforced against Assignee, all such liabilities being herein expressly waived and released by Assignor unless Assignee acts with gross negligence. Assignee shall not be responsible for any loss, liability or damage under the Lease, or under or by reason of this Assignment. Should Assignee incur any such liability, loss or damage under the Lease or under or by reason of this Assignment, or in the defense of any claims or demands whatsoever asserted against Assignee under the Lease or under or by reason of this Assignment, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional sums secured hereby, shall bear interest at the rate specified in the Agreement and Assignor agrees that it shall reimburse Assignee therefor immediately upon demand.

8. Lessee is hereby authorized to recognize the claims of Assignee hereunder without investigating the reason for any action taken by Assignee, or the validity of the amounts due and owing to Assignee, or the existence of any default in the Agreement or by reason of this Assignment, or the application to be made by Assignee of any amount to be paid to Assignee. The sole signature of Assignee shall be sufficient for the exercise of any rights under this Assignment. Checks for all or any part of the payments collected under this Assignment shall be drawn at Assignee's option to the exclusive order of Assignee.

9. It is understood and agreed that the provisions set forth in this Assignment herein shall be deemed a special remedy giving to Assignee and shall not be deemed exclusive of any other remedies granted in the Agreement, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted. Any right or remedy exercised hereunder by Assignee including, without limitation, the collection of the rentals, payments, income and profits and the application thereof as aforesaid shall not cure, modify or waive any default or any notice thereof under the Agreement or invalidate any act done pursuant to such notice. No delay or failure of Assignee to exercise any right or remedy hereunder or under the

Agreement, or under the Lease, shall be deemed to be a waiver of such right or remedy and the single or partial exercise by Assignee of any right or remedy hereunder or under the Agreement or under the Lease shall not preclude other or further exercise thereof or the exercise of any other right or remedy at any time.

10. Any default by Assignor in the performance of any obligation, covenant, condition or agreement herein contained shall at Assignee's option, constitute and be deemed an Event of Default under the terms of the Agreement entitling Assignee to every and all rights and remedies contained therein.

11. This Assignment and each and every covenant, agreement and other provision hereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

12. This Assignment and all assignments herein contained shall continue in full force and effect until the payment in full of all sums due under the provisions of the Agreement to Assignee and the performance and discharge of each and every obligation, covenant, condition and agreement of Assignor under the Agreement.

13. The unenforceability, illegality or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable, illegal or invalid and this Assignment shall be construed as if such unenforceable, illegal or invalid provision has never been contained herein.

14. Concurrently with the execution of this Assignment, Assignor will deliver to Assignee an opinion of its independent legal counsel substantially in the form attached hereto as Exhibit D and made a part hereof.

15. All notices hereunder shall be in writing and shall be deemed to have been duly given if sent by certified or registered mail, postage prepaid, to the following addresses:

If to Assignor:

RAILTEX, INC.  
~~300 Elizabeth Road~~ 4901 BROADWAY, SUITE 231 *B.M.J.*  
San Antonio, Texas 78209  
Attention: President

If to Assignee:

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

16. This Assignment shall be construed and enforced in accordance with the Uniform Commercial Code in effect from time to time in the State of Texas.

17. Assignee hereby accepts this Assignment and consents to the Lease PROVIDED THAT Assignor remains fully responsible and liable for the full, complete and faithful performance of all of the terms, conditions and covenants in the Agreement, as purchaser, and in the Lease, as lessor, and on the understanding that no (i) further lease of the Equipment or (ii) assignment of Assignor's interest in the Agreement, may be made without Assignee's written consent.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed in their names as of the day and year first above written.

RAILTEX, INC.,  
"Assignor"

GREYHOUND LEASING & FINANCIAL  
CORPORATION, "Assignee"

By Bonnie M. Gish  
Its: PRESIDENT

By [Signature]  
Vice President

By Janet Lennie Flohr  
Its: Secretary

By [Signature]  
Assistant Secretary

EXHIBIT "A"

Ten (10) new Rapid Discharge TM Self Cleaning Bottom Dump Rail Cars manufactured by Ortner Freight Car Company, Model No. OC-3025 (100-Ton), Specification No. EX-279, having Road Numbers TRAX 1040 through 1049 inclusive.

EXHIBIT "B"  
RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT, No. TU-01, made and entered into March 12, 1980, by and between RAILTEX, INC., a Texas corporation with its principal office and place of business in San Antonio, Texas (herein called "LESSOR"), and TEXAS UTILITIES GENERATING COMPANY, a Texas corporation (herein called "LESSEE").

WITNESSETH:

Description  
of Leased  
Cars:

1. LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, the railroad cars shown on the Rider attached hereto and made a part hereof, and such additional Riders as may be added hereto from time to time by agreement of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereby including such facts as: number of cars, car initials and numbers, the Association of American Railroads ("AAR") or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental, term throughout which the cars shall remain in LESSEE's service, and other pertinent information that may be desired by both parties.

Use of  
Cars:

2. LESSEE agrees to use said cars under the following restrictions:

(a) The cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, LESSEE at its expense shall cause said cars to be returned to LESSOR at San Antonio, Texas, or to such other point designated by LESSOR but at no cost to LESSEE greater than the charge for return to San Antonio, Texas.

(c) The cars shall be returned to LESSOR in the same, or as good, condition in which they were delivered to LESSEE except for ordinary wear and tear.

(d) The cars will not be altered by LESSEE in any way without prior written approval of LESSOR.

(e) Mechanical unloading assistance devices, such as a car shaker, shall be operated only for that period of time necessary to dislodge material from the car. Operation beyond the time the material is dislodged from the car shall constitute unnecessary abuse by LESSEE of the car.

(f) LESSEE shall notify LESSOR in writing within five (5) days of each change in routing, origin or destination of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in paragraphs 2(a) and 2(h) hereof.

(g) The cars are intended for use in carrying aggregate type products, with individual rock segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR.

(h) The cars will be operated only within the United States of America.

Rent:

3. LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until the cars are delivered to LESSOR upon expiration of the rental term specified in the Rider applicable to such car. Such rentals shall be paid to LESSOR in San Antonio, Texas, or such other place as LESSOR may hereafter direct in writing. Bills for rentals shall be presented to LESSEE by LESSOR in advance on or about the 1st day of each calendar month

and payment of said rentals shall be made by LESSEE within thirty (30) days thereafter.

Mileage:

4. LESSOR shall collect all mileage earned by the cars and shall credit monthly to the rental amount owing by LESSEE such mileage earned by the cars while in the service of LESSEE, as and when received from the railroads according and subject to all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder. The mileage refund will be the current rate as governed by the applicable tariff.

Term of Lease:

5. This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental term for each car shall be as shown in the Rider covering such car.

Repair, Maintenance and Abatement of Rentals:

6. LESSOR agrees to keep the cars in good operating condition and pay all costs of maintenance which may be necessary while such cars are in LESSEE's possession. LESSOR also agrees to pay for all repairs to the cars, except repairs required due to acts or omissions of LESSEE, its shipper, consignee, agent or sublessee, and repairs occasioned while cars are on a railroad which does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the

AAR, or while on any private siding or track or any private or industrial railroad, for all of which repairs, including transportation costs, LESSEE shall pay LESSOR. LESSOR shall make all contractual arrangements for all repairs, notwithstanding who is responsible for the costs thereof. LESSOR will permit LESSEE to make repairs when requested by LESSEE so long as such repairs meet AAR Interchange Rules. The expenses of LESSEE incurred in connection with such repairs as billed at AAR billing rates will be credited against monthly rental amounts, except with respect to those repairs for which LESSEE is responsible for payment of the costs thereof. LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. When damaged cars have been forwarded to a shop for repair or maintenance, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be retained by LESSOR. When cars are in a "BAD ORDER STATUS" for maintenance or repair in excess of five (5) consecutive days, the rental charges on each car shall be suspended during the excess period they are in such status; provided, however, that rental charges will be suspended immediately for repairs necessitated by accident damage occasioned when the car is under control of a railroad. If any repairs are required as a result of the acts or omissions of LESSEE, its consignee, shipper, agent or

sublessee, the rental charge shall continue unabated during the rental period.

Car  
Modifications:

7. LESSOR has the right to withdraw cars from service for the purpose of making nonsafety related modifications, repairs and/or painting upon five (5) days' written notice to LESSEE. Rental payments will be suspended whenever a car is withdrawn from service for car modifications, unless LESSOR substitutes an equivalent car therefor.

Destroyed  
Cars:

8. LESSEE agrees that if by reason of its acts or omissions or those of its consignee, shipper, agent or sublessee, or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR or on any private siding or track or any private or industrial railroad, any car is completely destroyed or in the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, LESSEE will pay LESSOR in cash the settlement value of such car within ten (10) days following a request by LESSOR for such payment. The term "settlement value" as used herein shall mean the valuation of such cars as provided for by Rule 107 of the Interchange Rules of the AAR. LESSOR shall retain ownership of the car if it rebuilds the car. Otherwise, the title to destroyed cars shall be transferred by

LESSOR to LESSEE upon payment by LESSEE to LESSOR of the settlement value of any such car. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service as determined by LESSOR, then LESSOR at its option may cancel the lease as to such car as of the date on which such event occurred, or may substitute an equivalent car within a reasonable period of time. In the event of such substitution, the substituted car shall be held pursuant to all terms and conditions of this Agreement.

Indemnity:

9. LESSEE will indemnify LESSOR against any loss, damage, claim, expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising directly or indirectly, out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Agreement, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the act or omission of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfies such responsibility. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

Insurance:

10. Unless waived in writing by LESSOR, LESSEE shall, at its own cost and expense, with respect to each car at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed by LESSEE under paragraph 9 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request. LESSEE's obligation to maintain insurance with respect to each car shall commence on the delivery date of such car and shall continue until the lease term thereof terminates and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

Additional Charges by Railroad:

11. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE shall pay LESSOR for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR

against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

Right of  
Entry:

12. LESSOR shall have the right to enter the property of LESSEE or its agent, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs.

Reports:

13. LESSOR shall collect and retain all data necessary for making mileage, per diem and "Bad Order Status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein.

Payment of  
Taxes:

14. During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all use taxes, if any, based on rentals, but excluding all income taxes incurred by LESSOR. LESSEE shall also reimburse LESSOR for all personal property taxes paid by LESSOR on the cars covered by this Agreement. LESSEE at its own expense may contest the amount or validity of the imposition of the taxes described in this paragraph whether imposed against LESSEE or LESSOR. However, LESSEE shall promptly pay such imposition unless such proceeding shall operate to prevent or stay the imposition so contested. LESSOR may, at its option and expense, but shall not be required to, join in any such proceedings by counsel of its own choice. In the event LESSEE shall fail promptly to

defend or contest any tax described in this paragraph, LESSOR shall have the right to defend and, compromise the same and obtain payment from LESSEE of its reasonable costs and expenses (including reasonable legal fees) incurred in connection therewith, and for any judgments recovered against LESSOR or LESSEE or payments made in settlement.

Liens:

15. LESSEE shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect LESSOR's title.

Marking  
of Cars:

16. LESSEE shall keep all cars subject to this Lease free of any markings which might be interpreted as a claim of ownership, nor shall LESSEE change the identifying numbers.

Subleasing:

17. LESSEE will not sublease said cars or assign any of its rights hereunder, without written consent of LESSOR.

LESSOR's  
Remedies:

18. Upon the happening of any of the events of default as hereinafter defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or its assignee, as the case may be, either:

(a) Declare the Agreement terminated, in which event all rights of the parties hereunder shall

cease except only the obligation of LESSEE to pay accrued rentals and other charges to the date of retaking, or;

(b) Relet the cars as agent of LESSEE, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new lessee, then to the payment of the rent and charges due under this Lease.

LESSEE shall remain liable for any rents and charges remaining due after so applying the proceeds so realized, and LESSEE agrees to pay said deficit monthly as the same may accrue. LESSEE shall bear all costs involved in LESSOR retaking the cars, including transportation costs to San Antonio, Texas.

LESSEE's  
Defaults:

19. The happening of any of the following events shall be considered an "event of default":

(a) Nonpayment of LESSEE within thirty (30) days after the same becomes due of any installment of rental.

(b) Failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days after receipt of written notice from LESSOR demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of LESSEE hereunder within thirty (30) days after such appointment.

LESSEE's  
Remedies:

20. In the event LESSOR defaults in the performance of any of the conditions to be performed and observed by LESSOR with respect to any car, and such default continues for a period of thirty (30) days after receipt of written notice from LESSEE demanding performance and observance thereof, LESSEE may, at its option, terminate this Agreement or the lease of such car, and LESSOR shall have the right to repossess such car immediately upon such termination.

Filing:

21. LESSOR intends to cause this Lease to be filed and recorded with the ICC in accordance with Section 11303 of the Interstate Commerce Commission Act. LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and LESSEE will promptly furnish to LESSOR certificates or

other evidences of all such filing, registering and recording in form satisfactory to LESSOR. LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Inspection  
of Cars:

22. Each of the cars shall be subject to LESSEE's inspection before delivery; and the acceptance thereof by LESSEE shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting any commodities then and thereafter loaded therein and (ii) that it is one of the cars described in the Riders.

Disclaimer of  
Warranties:

23. LESSOR LEASES THIS EQUIPMENT, AS IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO: (a) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY CARS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (b) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (c) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Notwithstanding anything to the contrary contained in this paragraph, cars shall conform to the specifications contained in the Riders and must be maintained in accordance with AAR Interchange Rules and any other applicable governmental rules or regulations.

Ownership  
Cars:

24. Certain of the cars leased hereunder and identified on the Rider attached hereto may not be owned by LESSOR. In each such case, the car or cars so identified are owned by third persons who have appointed LESSOR to manage and supervise the operation of such cars, including the leasing thereof, pursuant to Management Agreements entered into by such owners and LESSOR. Notwithstanding the provisions of paragraph 23 hereof, LESSOR warrants and represents that it has the right to lease such cars and that the Management Agreements granting such right are in full force and effect, neither LESSOR nor the respective owners of the cars are in default thereunder and the Management Agreements are valid, binding and enforceable against LESSOR and the respective owners of the cars in accordance with their terms. LESSOR further warrants and represents that it has full right and power to execute and perform this agreement and that LESSEE, on payment of the rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the cars leased hereunder during the full term of this Agreement and any extension or renewal hereof.

Renewal:

25. At the expiration of the initial rental term, LESSEE shall have the option to renew this Agreement covering those cars listed in the Rider for a period of

five (5) years from the date of the initial delivery of the cars in one (1) to five (5) year increments.

Notice of the exercise of this option shall be given, in writing, by LESSEE to LESSOR at least ninety (90) days prior to the expiration of the rental term of the car or cars covered hereunder.

Miscellaneous: 26. It is mutually agreed that the time of payment of rentals is of the essence of this Agreement and that this Agreement and any Rider now and hereafter entered into is subject and subordinate to any Management Agreement described in paragraph 24 of this Agreement, any Security Agreement or Conditional Sale Agreement on the cars heretofore or hereafter leased hereunder, and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by LESSOR; provided, however, that the rights of LESSEE shall remain in full force and effect during the term of this agreement so long as LESSEE shall continue to perform all of the covenants of this Agreement.

Notice: 27. All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given in writing and delivered personally or sent by registered or certified mail, return receipt requested. The respective

addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

Governing Law:

28. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas, in which state it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

RAILTEX, INC. (LESSOR)

(Corporate Seal)

ATTEST:

Saut Lennie Holw  
Secretary

By *Thomas M. Bell*  
President

TEXAS UTILITIES GENERATING COMPANY  
(LESSEE)

(Corporate Seal)

ATTEST:

*R. J. Gray*  
Secretary

By *R. J. Gray*  
Executive Vice President

STATE OF TEXAS

X

COUNTY OF BEXAR

X

X

BEFORE ME, the undersigned authority, on this day personally appeared Bruce M. Flohr, President of Railtex, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this the 11th day of April, 1980.

John J. Gaudin  
Notary Public in and for  
Bexar County, T E X A S

STATE OF TEXAS

X

COUNTY OF Dallas

X

X

BEFORE ME, the undersigned authority, on this day personally appeared R. O. Gray, Executive Vice President and General Manager of Texas Utilities Generating Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this the 28 day of March, 1980.

Edwin D. Miller  
Notary Public in and for  
Dallas County, T E X A S

It is hereby agreed that, effective March 12, 1980, this Rider shall become a part of Master Car Agreement No. TU-01 between RailTex, Inc., and Texas Utilities Generating Company, dated March 12, 1980, and the cars described herein shall be placed in service, subject to the terms set forth below:

CAR INITIAL NUMBERS: TRAX 1040 thru 1049 inclusive

CAR OWNERS MARKS: RailTex, Inc.

CLASS OF CAR: HTS/K340, Ortner "Rapid Discharge" Manual Door Aggregate Car. <sup>R</sup>

NUMBER OF CARS: Ten (10)

CAPACITY OF CARS: 100 ton nominal - 2300 cubic feet

COMMODITY LIMITATION: Free flowing aggregate passing through a 12" screen.

DELIVERY POINT: Clifstone, Texas (ATSF).

TERM: Twelve (12) months from delivery date of last car covered by this Rider.

CERTIFICATION OF INSPECTION AND ACCEPTANCE: Exhibit "A" attached hereto and made a part hereof.

TERMS OF RENT FOR ORIGINAL TERM: \$22.68 per car, per day, for twelve (12) months from date hereof.

TERMS OF RENT FOR EXTENDED TERM: Rent for original term as increased 3.32 cents per car, per day, during the extended term for each one percent (1%) or fraction thereof of the increase of the AAR labor rate as of the date of this Rider as specified in the AAR Office Manual.

(SEAL)  
ATTEST:

Saunt Lennin Flohr  
Secretary

RAILTEX, INC. (LESSOR)

By Ernest M. Alch  
President

(SEAL)  
ATTEST:

19701111  
Secretary

TEXAS UTILITIES GENERATING COMPANY  
(LESSEE)

By R. G. Barry  
Executive Vice President

EXHIBIT "D"

Greyhound Leasing & Financial Corporation  
Greyhound Tower  
Phoenix, Arizona 85077

Gentlemen:

We are counsel to Railtex, Inc., a Texas corporation ("Railtex"), and have acted as such since Railtex's incorporation. We have acted as counsel for Railtex in connection with the execution and delivery of a Conditional Sale and Security Agreement dated January 9, 1979, between Railtex and Greyhound Leasing & Financial Corporation, a Delaware corporation ("Greyhound"), and other related documents including an Assignment and Agreement ("Assignment") dated April 11, 1980, between Railtex, as Assignor, and Greyhound, as Assignee, wherein Railtex assigned to Greyhound a certain Lease between Railtex and Texas Utilities Generating Company ("Lessee").

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

The opinion expressed below is subject to the qualifications that (i) the enforceability of the rights and remedies of the parties to the Assignment and the Lease is subject to the effect of any applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally in the event of the bankruptcy or insolvency of any party or applicability to any party of such other laws affecting creditors' rights generally, and (ii) the opinion expressed below is limited to federal law and the laws of the State of Texas.

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

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

1. To counsel's knowledge and belief, the Lease is in full force and effect, Railtex and Lessee are not in default thereunder, and the Lease is valid, binding and enforceable against Railtex and Lessee in accordance with its terms.

2. The execution and delivery of the Assignment by Railtex have been duly authorized and the Assignment is legal, valid, binding and enforceable against Railtex in accordance with its terms, except that no opinion is expressed with respect to the legality, validity, binding nature or enforceability of the provisions contained in the second sentence of paragraph 7.

3. No consents, authorizations or approvals of third parties including governmental authorities are or will be required as a condition to the validity of the Assignment.

4. The execution, delivery and performance of the Assignment will not contravene any provision of law, statute, rule, regulation, mortgage, indenture, contract, lease, agreement, or other instrument or undertaking, order, decree, judgment, finding, franchise or permit known to counsel applicable to Railtex and to which Railtex is a party or by which it is bound.

Very truly yours,



4901 BROADWAY, SUITE 231 SAN ANTONIO, TX 78209 512/826-2082

RECEIVED

MAR 20 1980

PURCHASING

March 19, 1980

Mr. Sam Cooper  
Purchasing Agent  
Texas Utilities Services, Inc.  
2001 Bryan Tower - Room 1745  
Dallas, Texas 75201

Dear Mr. Cooper:

Please be advised that RailTex has entered into a Conditional Sale and Security Agreement ("Agreement") with Greyhound Leasing and Financial Corporation ("Greyhound"), wherein your Lease with RailTex ("Lease") for the cars listed on the attached schedule was assigned to Greyhound pursuant to the attached Assignment.

We would appreciate that the signator to your Lease with RailTex also acknowledge that the Lease is subject to and subordinate to the Agreement and the rights of Greyhound thereunder, provided however, that your rights as Lessee shall remain in full force and effect during the full term of the Lease as long as you shall continue to perform all covenants of the lease. Should there be a default under the Agreement between RailTex and Greyhound, all rights of RailTex under the Lease, including the rights of your payment under the Lease, shall become the rights of Greyhound, and we are asking you to agree to make all payments under the Lease to Greyhound upon your receipt of such default from Greyhound.

Until such time as RailTex defaults under the Agreement, you are to look solely to RailTex under the Lease and not to Greyhound for performance of the obligations of RailTex thereunder.

Please indicate your acknowledgement of the terms of this letter by signing in the appropriate space below. Thank you.

RAILTEX, INC.

Bruce M. Flohr  
President

ACCEPTED BY:

Title: Ex. V.P. TUGCO

ACKNOWLEDGMENT OF  
GREYHOUND LEASING & FINANCIAL CORPORATION

State of Arizona            )  
                                          ) ss.:  
County of Maricopa        )

BE IT REMEMBERED, that I, Linda L. Ballard, the undersigned officer, a notary public duly qualified, commissioned, sworn and acting in and for said County in said State, hereby certify:

This 7th day of March, A.D. 1980 personally came before me M. G. Roth, Vice President, and Steven W. Bienstock, Assistant Secretary, respectively, of GREYHOUND LEASING & FINANCIAL CORPORATION, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation and that said writing was signed and sealed by them in behalf of said corporation by its authority duly given. And the said M. G. Roth and Steven W. Bienstock acknowledged the said writing to be the act and deed of said corporation.

Linda L. Ballard  
Notary Public

My commission expires:

My Commission Expires Nov 14, 1983

