

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202

ARTHUR M. ALBIN  
General Attorney

214-651-6742

14011  
RECORDATION NO. .... Filed 1425

In reply refer to: 410.043-78  
May 4, 1983

3-230125

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th and Constitution Ave., N.W.  
Washington, DC 20423

MAY 9 1983 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

No. ....  
Date MAY 9 - 1983  
Fee \$ 50.00

Re: Equipment Lease Agreement No. 01-002-00130-01-00101 dated May 3, 1983, between First City Leasing Corporation and Missouri-Kansas-Texas Railroad Company covering Lease of Various Items of Rolling Stock and Equipment ICC Washington, D. C.

Dear Mrs. Mergenovich:

I am enclosing three original counterparts of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is an Equipment Lease Agreement, a primary document, dated May 3, 1983.

The names and addresses of the parties to the document are as follows:

The Lessor is First City Leasing Corporation, 1111 Fannin St.,  
P. O. Box 4517, Houston, TX 77210

The Lessee is Missouri-Kansas-Texas Railroad Company,  
701 Commerce Street, Dallas, TX 75230

A description of the equipment covered by the document follows:

- 2 Fairmont W96B3 Spike Setter-Drivers, having AAR designation "MW;"
- 2 Fairmont W-114 Series C Tie Shears, having AAR designation "MW;"
- 3 Fairmont MT-19 Series A Inspection Motor Cars, having AAR designation "MWG;"
- 3 Fairmont MT-14 Series L Section Motor Cars, having AAR designation "MWG;"
- 12 Fairmont T-14 Series C Push Cars, having AAR designation "MWH;"
- 1 Jackson Model 925 Tie Remover and Inserter with attachments, stenciled RM-1122, having AAR designation "MW;"
- 6 Safetran Model 5000 Portable Track Cars, having AAR designation "MWH;"
- 1 Fairmont Derrick Car, W64 Series A, with 13-ft. boom, having AAR designation "MWH;"

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MAY 9 3 30 PM '83  
I.C.C.  
FEE OPERATION BR.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT

Mrs. Agatha L. Mergenovich

- 2 -

May 4, 1983

- 1 Evans Model 2170 Tie Handler with diesel engine and straight boom, having AAR designation "MW;"
- 1 Fairmont Hydraulic Rail Lifter, W86 Series F, having AAR designation "MW;"
- 1 Fairmont A4 Series D 8-man steel frame Extra Gang Car w/FORD 48 hp 4-cyl., 4-cycle engine, having AAR designation "MWG;"
- 2 100-ton, 50-cu. yd. air-operated side dump Rip Rap Cars, manufactured by Diffco Company, having AAR designation "MWD;"
- 1 Nordberg OMSI one-man Scarifier-Insertter, having AAR designation "MW;"
- 1 Fairmont Dual Spike Puller, W113 Series B, having AAR designation "MW;"

and miscellaneous off-track equipment.

A fee of \$50 is enclosed. Please return any extra copies not needed by the Commission for recordation to the undersigned for distribution to the parties.

A short summary of the document to appear in the index follows:

Equipment Lease Agreement dated May 3, 1983, between First City Leasing Corporation, Lessor, and Missouri-Kansas-Texas Railroad Company, Lessee, covering various rolling stock and other equipment described as follows:

- 2 Fairmont W96B3 Spike Setter-Drivers, having AAR designation "MW;"
- 2 Fairmont W-114 Series C Tie Shears, having AAR designation "MW;"
- 3 Fairmont MT-19 Series A Inspection Motor Cars, having AAR designation "MWG;"
- 3 Fairmont MT-14 Series L Section Motor Cars, having AAR designation "MWG;"
- 12 Fairmont T-14 Series C Push Cars, having AAR designation "MWH;"
- 1 Jackson Model 925 Tie Remover and Insertter with attachments, stenciled RM-1122, having AAR designation "MW;"
- 6 Safetran Model 5000 Portable Track Cars, having AAR designation "MWH;"
- 1 Fairmont Derrick Car, W64 Series A, with 13-ft. boom, having AAR designation "MWH;"
- 1 Evans Model 2170 Tie Handler with diesel engine and straight boom, having AAR designation "MW;"
- 1 Fairmont Hydraulic Rail Lifter, W86 Series F, having AAR designation "MW;"

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
LAW DEPARTMENT

Mrs. Agatha L. Mergenovich

- 3 -

May 4, 1983

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- 1 Nordberg OMSI one-man Scarifier-Insertter, having AAR designa-  
tion "MW;"
- 1 Fairmont Dual Spike Puller, W113 Series B, having AAR designa-  
tion "MW;"

and miscellaneous off-track equipment.

Very truly yours,



Arthur M. Albin  
General Attorney

AMA:vas

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/9/83

OFFICE OF THE SECRETARY

Arthur M. Albine  
General Attorney  
Missouri-Kansas-Texas RR. Co.  
701 Commerce Street  
Dallas, Texas 75202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/9/83 at 3:35pm, and assigned recordation number(s). 14011

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

## EQUIPMENT LEASE AGREEMENT

MAY 9 1983-3 25 PM

No. 01-002-00130-01-00101

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT LEASE AGREEMENT (hereinafter called the "Agreement"), made this 3rd day of May, 1983, by and between

FIRST CITY LEASING CORPORATION, a Delaware corporation (hereinafter called the "Lessor")

and

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (hereinafter called the "Lessee")

## WITNESSETH:

For an in consideration of the mutual covenants and agreements contained herein and of the lease of personal property hereinafter referred to, the Lessor and the Lessee agree as follows:

1. LEASE. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the items or types of equipment, machinery or other property (hereinafter called the "Equipment") described on the Equipment Lease Schedule(s) in the form attached hereto as Exhibit A and executed and delivered by Lessee to Lessor from time to time hereunder (hereinafter called the "Schedules").

2. TERM. Different items of Equipment may be leased for different terms commencing at different dates under this Agreement. The Schedules shall set forth the term for which items of Equipment described thereon shall be leased under this Agreement. The lease term for separate items of Equipment shall commence on the date Lessee executes and delivers to Lessor an Acceptance Certificate with respect thereto in accordance with paragraph 4 of this Agreement. In the event delivery of any items of Equipment are not tendered to Lessee prior to the "Outside Delivery Date" (as specified in the applicable Schedule), or in the event there shall have occurred, in the sole opinion of Lessor, any material adverse change, either in any case or in the aggregate, in the assets, liabilities, financial condition, business operations, affairs or circumstances of the Lessee prior to the Outside Delivery Date, then, in either event, at Lessor's option any such items of Equipment shall not be leased under this Agreement and Lessor shall have no liability with respect to such items of Equipment under this Agreement but, Lessee agrees to bear the risk, if any, of loss, damage or destruction to such Equipment, and to reimburse Lessor for any payments Lessor may have made to the manufacturer or seller of such Equipment.

3. RENT. Each Schedule shall set forth the number and amount of rental payments for items of Equipment scheduled thereon. In the event Lessee defaults in the payment of any sum of money to be paid under this Agreement, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such unpaid sum plus interest thereon from the due date thereof (without regard to any grace period) to date of payment at the rate of ten percent (10%) per annum, or such lesser amount as may represent the maximum amount

permitted by applicable law. Lessee shall pay Lessor rental payments, without deduction or offset, in the amounts and at the time set forth in the appropriate Schedule. All payments by Lessee hereunder shall be payable at the office of Lessor set forth below, or at such other place or to such other person as Lessor may from time to time designate in writing.

4. LESSEE'S INSPECTION. Upon delivery, Lessee shall promptly make all necessary inspections and tests of the Equipment in order to determine whether the Equipment conforms to the purchase order or agreement, if any, with respect thereto and is in good condition and repair. Lessee shall promptly notify Lessor in writing of any defect, breach of the purchase order or agreement, reason for rejection, or other proper objection to the type or condition of the Equipment. Upon Lessee's acceptance of the Equipment as conforming to any purchase order or agreement with respect thereto, and in any event prior to placing the Equipment in service, Lessee shall execute and deliver to Lessor a Certificate of Acceptance, in the form attached hereto as Exhibit B.

5. USE. Lessee shall use the Equipment carefully, in accordance with any manufacturer's manual or instructions and for the use contemplated by the manufacturer, and Lessee shall comply with all laws, ordinances or regulations relating to the use, operation or maintenance of the Equipment, and shall keep the Equipment protected from the elements except during use in the normal manner.

6. LABELS. Lessee shall affix to the Equipment and maintain thereon such labels, plates, or decals as may be provided by Lessor, or conspicuously mark the Equipment with such language as Lessor may reasonably request, to the effect that the Equipment is owned by Lessor.

7. ALTERATIONS. Without the prior written consent of Lessor, Lessee shall not make any alterations, additions or improvements to the Equipment. All alterations, additions and improvements of whatsoever kind or nature (regardless of whether consented to by Lessor) made to the Equipment shall become the property of Lessor upon the expiration or earlier termination of the lease term for such Equipment.

8. LOCATION. The Equipment shall be permanently located at the place described on the Schedule with respect thereto and shall not be moved from such location (except for temporary removal consistent with its normal use) without the prior written consent of Lessor. In no event shall any Equipment be removed to a state other than the state of the location described on the appropriate Schedule until all filings, recordings, registrations or other acts required by the laws of such state to put third parties on notice of Lessor's interest in such Equipment have been made or performed.

9. REPAIRS. Lessee, at its sole cost and expense, shall keep and maintain each item of Equipment in good condition, operating order and repair (and, if a vehicle, in roadworthy condition). Lessor will not misuse, abuse, waste, destroy, endanger, or allow any item of Equipment to deteriorate, except for ordinary wear and tear from its intended use. Lessee will forthwith, or in the case of any loss or damage to any Equipment as required by paragraph 14 of this Agreement, make or cause to be made all repairs,

\*to the extent imposed by the United States or any state or local jurisdiction in which the Lessor has its principal place of business

replacements or other improvements to the Equipment as are necessary or desirable to accomplish the foregoing.

10. LESSOR'S INSPECTION. Lessor shall at any time, and from time to time during normal business hours have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment to insure compliance by Lessee with its obligations under this Agreement.

11. LICENSING, REGISTRATION AND TAXES. Lessee shall obtain such licensing and registration of the Equipment as are required by federal, state and local law or regulation. Lessee shall pay and discharge when due, all license and registration fees, assessments, sales, use, property and other taxes (excluding any franchise tax or tax measured solely by Lessor's net income), together with any penalties or interest applicable thereto, now or hereafter imposed by any state, federal or local government upon any item of the Equipment, or the rentals payable hereunder, whether the same be payable by or assessed to Lessor or Lessee; provided, however, if under local law or custom such payments may be made only by Lessor, Lessee shall promptly notify Lessor and shall reimburse Lessor, upon demand, for all payments thereof made by Lessor. If by law any such registration or license fee or tax is billed to Lessor, Lessee at its expense will do any and all things required to be done by Lessor in connection with the licensing or registration procedure and the levy or assessment of any tax, including the billing or payment thereof. Upon request, Lessee shall provide Lessor with proof of payment of any of the foregoing.

See page 3a

~~12. INSURANCE. Lessee, at its sole cost and expense, shall procure and maintain and pay for (a) insurance against the loss or theft of or damage to the Equipment, for the full replacement value thereof as specified in the Stipulated Loss Value Schedule attached hereto, naming Lessor as a loss payee, and (b) public liability and property damage insurance, naming Lessor as an additional insured. All such insurance shall be in form and amount and with companies satisfactory to Lessor. Lessee shall deliver the policies of insurance or duplicates thereof or certificates of insurance to Lessor. Each insurer shall agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor that it will give Lessor thirty (30) days' written notice before the policy in question shall be materially altered or cancelled. The proceeds of such insurance at the option of Lessor, shall be applied (a) toward the replacement, restoration or repair of the Equipment, or (b) toward payment of the obligations of Lessee hereunder. Lessee hereby appoints Lessor as Lessee's true and lawful attorney-in-fact and agent to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any such insurance policy.~~

13. LESSOR'S PERFORMANCE. In the event Lessee fails to pay any amounts or items required to be paid by Lessee hereunder or fails to perform any covenant or agreement to be performed by Lessee hereunder, Lessor shall have the right, but not be obligated to pay any such amounts or items, or to perform or procure performance of any such covenant or agreement, including, without limitation, paying any tax, fee or assessment without contesting the validity or amount thereof, procuring any license or registration, making any repairs, or procuring any insurance (which may, required hereunder

12. INSURANCE. Lessee, at its sole cost and expense, shall procure and maintain and pay for public liability and property damage insurance, naming Lessor as an additional insured. All such insurance shall be in form and amount and with companies satisfactory to Lessor; provided, however, policies written through Lloyds of London shall be deemed satisfactory as to the company, and policies having limits and deductibles as are generally carried by Class I railroads of the size of Lessee in the United States shall be deemed satisfactory as to amount, except that the deductible shall never exceed \$1,000,000. Lessee shall deliver Certificates of Insurance reflecting such coverage to Lessor. All policies of insurance shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to Lessor.

but need not be, single interest insurance in favor of Lessor), and Lessee hereby appoints Lessor as Lessee's true and lawful attorney-in-fact and agent for purposes of the foregoing. In the event Lessor makes any such payment or performs any such obligation, Lessee shall reimburse Lessor for Lessor's expenses in connection therewith upon demand together with a late charge as provided in paragraph 3 of this Agreement.

The rights and powers conferred upon the Lessor under this Agreement are solely to protect its interest in the Equipment and shall not impose any duty upon it to exercise any such rights or powers. Except for the safe custody of any of the Equipment in its possession and the accounting for monies actually received by it under this Agreement, the Lessor shall have no duty as to any Equipment or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Equipment.

14. LOSS AND DAMAGE. Lessee hereby assumes and shall bear the entire risk of loss, damage to, theft, or destruction of the Equipment for any cause whatsoever ("Loss or Damage") including, without limitation, economic loss through extraordinary or premature wear or obsolescence, or requisition of the Equipment by any government agency and whether or not such Loss or Damage is covered by insurance. No Loss or Damage shall relieve Lessee of any of its obligations under this Agreement. Lessee shall immediately notify Lessor of any accident or any event resulting in Loss or Damage involving the Equipment.

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In the event of Loss or Damage to any Equipment, Lessee, at the option of Lessor, shall: (a) repair or restore the Equipment to good repair, condition and order; or (b) replace the Equipment with similar equipment operating in good repair, condition and operating order; or, (c) pay Lessor in cash the "Stipulated Loss Value" for such Equipment as set forth in the Stipulated Loss Value Schedule attached hereto. Upon payment of Stipulated Loss Value, the lease of that portion of the Equipment for which Lessee has paid such Stipulated Loss Value shall terminate, and Lessee shall become entitled to such Equipment As-Is, Where-Is without any warranty, express or implied, with respect to any matter whatsoever.

15. SURRENDER. Unless Lessee exercises one of its purchase or lease options as set forth in the Schedule at the end of the lease term, upon expiration of the lease term as to any items of Equipment or upon earlier termination of the lease of any items of Equipment under this Agreement, Lessee shall return such items of Equipment to Lessor, at the time and place as may be specified by Lessor, free of all advertising or insignia placed thereon by Lessee, and in good condition, repair and operating order, ordinary wear and tear resulting from proper use thereof excepted, in the following manner: (a) by delivering such items of Equipment at Lessee's sole cost and expense to any location selected by Lessor within ~~the county in which such items of Equipment were delivered to Lessee, or within the county to which such items of Equipment were moved with Lessor's consent,~~ or (b) by loading such items of Equipment on board any carrier designated by Lessor and shipping the same, freight collect, to the destination specified by Lessor.

\*Dallas County or Harris County, Texas;

16. WARRANTIES. LESSOR MAKES NO WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, IT BEING THE INTENTION OF LESSOR AND LESSEE TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE EQUIPMENT OR BY ANY SAMPLE OR MODEL, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE OR EXPENSE CAUSED BY THE EQUIPMENT OR BY ANY DEFECT THEREIN, USE OR MAINTENANCE THEREOF, OR SERVICING OR ADJUSTMENT THERETO AND, AS TO LESSOR, LEASES THE EQUIPMENT AS-IS. Lessee acknowledges that Lessor is not a dealer in equipment of any kind, and that each item of Equipment subject to this Agreement is of a type, size, design and capacity selected solely by Lessee. If any Equipment is not properly installed, does not operate as represented or warranted by the manufacturer thereof, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against the manufacturer or seller and no such occurrence shall relieve Lessee of any of its obligations hereunder. During the term of this Agreement with respect to any Equipment with respect to which Lessee renders faithful performance of its obligations, Lessor hereby assigns to Lessee any factory or dealer warranty, whether express or implied. Notwithstanding such assignment, Lessee shall, upon request of Lessor, make and pursue by appropriate proceedings diligently conducted such claims under any such warranty as Lessor may request Lessee to assert. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery in cash or cash equivalent under such warranty shall be made payable jointly to Lessee and Lessor. At Lessor's option, all cash proceeds or equivalent thereof from such warranty recovery shall be used to repair or replace the Equipment.

17. LESSEE'S REPRESENTATIONS. Lessee represents, warrants and agrees that (a) if Lessee is a corporation or limited partnership, Lessee is duly organized, and legally existing and in good standing under the laws of the state of its incorporation or organization, as the case may be, and if Lessee is a corporation, Lessee is duly qualified in each state where any of the Equipment will be located; (b) the execution, delivery and performance of this Agreement, and of the Schedules, (i) are within Lessee's power, (ii) have been duly authorized by all necessary action on the part of Lessee, including, if Lessee is a corporation, any necessary board of directors or shareholder's action, (iii) do not contravene Lessee's articles or certificate of incorporation or by-laws, if Lessee is a corporation, or certificate and agreement of limited partnership, if Lessee is a limited partnership, (iv) do not contravene any law or contractual restriction (including any contractual restriction arising out of any loan agreement, indenture or mortgage relating to indebtedness or securities of the Lessee) binding on or affecting the Lessee; (v) will not require the consent or approval of any other person, except for such consents as have been disclosed to the Lessor and which have been obtained; and (vi) will not require the creation of any lien or encumbrance (other than pursuant hereto, if any) upon any property of Lessee; (c) all notices, registrations, filings

and other actions with any federal, state or foreign governmental authority or agency, necessary to permit the transactions contemplated by this Agreement have been taken; (d) this Agreement constitutes a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with its terms; (e) there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of Lessee or any of its obligations under this Agreement; and (f) the transactions contemplated by this Agreement will raise no presumption of fraud as against, and will be effective against, all creditors of Lessee under applicable state and federal laws, including, without limitation, laws relating to fraudulent conveyances or bulk transfers. Lessee agrees to provide Lessor, upon Lessor's request, with an opinion of counsel satisfactory to Lessor with respect to the foregoing matters.

18. INDEMNITY. Lessee shall indemnify Lessor against, and hold Lessor harmless from any and all claims, actions, damages, including reasonable attorney's fees, obligations, liabilities and liens (including any of the foregoing arising or imposed without Lessor's fault or negligence, or in connection with latent or other defects, or any claim for patent, trademark or copyright infringement or under the doctrine of "strict liability"), imposed or incurred by or asserted against Lessor or its successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, return or use of any Equipment, or by operation of law. Lessee shall give Lessor prompt written notice of any matter hereby indemnified against and agrees that upon written notice by Lessor of the assertion of such a claim, action, damage, obligation, liability or lien, Lessee shall assume full responsibility for the defense thereof. This section shall survive termination of the lease of the Equipment under this Agreement.

See pages 7a-7d

~~19. INDEMNITY FOR LOSS OF INVESTMENT TAX CREDIT AND DEPRECIATION DEDUCTIONS. Lessee agrees that if Lessor shall not be entitled to a \_\_\_\_\_% investment tax credit based on 100% of the "Original Cost" (as set forth in the Schedules) to Lessor of the Equipment, or shall not be entitled to the most accelerated method of depreciation provided in the Internal Revenue Code of 1954, as amended, including the Economic Recovery Tax Act of 1981, Chapter 2 or such tax credits or depreciation deductions are lost, disallowed, eliminated, reduced, recaptured or otherwise unavailable to Lessor for any reason (the "tax loss"), then Lessee shall pay to Lessor, within thirty (30) days after the date of such tax loss, an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the amount of such tax credits or depreciation deductions so lost plus the amount of interest or penalties (including additions to tax because of underpayment of estimated tax) which may be payable to any federal, state or local government or taxing authority in connection with such tax loss. The amount of such tax loss plus interest or penalties shall be determined by Lessor's independent nationally recognized certified public accountants or independent tax counsel, at Lessee's expense unless Lessee and Lessor otherwise agree.~~

~~For the purposes of this Agreement, the date of any such loss shall be the earliest of (i) the occurrence of any~~

\*within twenty (20) days following written notice by Lessor to Lessee, any other

~~event (such as disposition or change in use of any item of Equipment which may cause such tax loss), or (ii) the payment by Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to the Internal Revenue Service of the tax increase resulting from such tax loss, or (iii) receipt by Lessor from the appropriate taxing authority of any notice of proposed deficiency, statutory notice of deficiency or assessment relating to the tax loss or (iv) a determination by an independent firm of materially recognized certified public accountants or independent tax counsel to the effect that Lessor (or the consolidated federal taxpayer group of which Lessor is a part) is not entitled to such credit or deduction, or (v) the adjustment of the tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to reflect such tax loss. Lessee shall not be required to pay the foregoing amounts if the tax loss results from the occurrence of any of the following events: (i) a disqualifying disposition due to sale of any Equipment or the lease thereof by Lessor prior to any default by Lessee, or (ii) a failure of Lessor to timely claim investment tax credit or depreciation deductions for any Equipment in the appropriate tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part), or (iii) a disqualifying change in the nature of Lessor's business or liquidation thereof.~~

20. EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an event of default by Lessee ("Event of Default") hereunder: (a) failure of Lessee to pay when due any rent or other amounts required herein to be paid to Lessor or to ~~timely~~ perform ~~any~~ covenant, condition or obligation required to be performed by Lessee under this Agreement; or (b) any representation, warranty or statement (including financial statements), certificate or data furnished by or on behalf of Lessee (or any officer, agent, attorney, or accountant of Lessee) to Lessor under this Agreement is untrue in any material respect; or (c) Lessee is generally not paying Lessee's debts as such debts become due or a custodian is appointed or takes possession of any property of Lessee; or (d) any proceeding shall be instituted by or against Lessee seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property; or Lessee shall take any action to authorize any of the actions set forth above in this subparagraph (d); or (e) Lessee shall fail to pay any of its indebtedness, or any interest or premium thereon, when due or fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to such indebtedness if the effect of such failure to perform or observe is to accelerate or to permit the acceleration of (upon notice, or lapse of time, or both), the maturity of such indebtedness, or any such indebtedness, or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or (f) Lessee shall be a party to any merger, consolidation, reorganization or shall sell, transfer or dispose of all, substantially all or any integral portion of its property or assets without the prior written consent of Lessor.

\*\*provided that this subparagraph (e) shall only apply to indebtedness the acceleration of which would be reasonably likely (in Lessor's good faith judgment) to affect Lessee's ability to perform hereunder

19. SPECIAL TAX INDEMNITY.

(a) Lessee covenants and agrees, and, by accepting delivery of the Equipment, shall be deemed to represent and warrant as of the time of such delivery and acceptance, and to the extent applicable, throughout the term of this Agreement, that (i) each item of Equipment will be new and unused, will constitute and throughout the term of this Agreement will continue to constitute "section 38 property" within the meaning of section 48(a) of the Internal Revenue Code of 1954 (the "Code") eligible for an investment tax credit equal to at least 10% of the Original Cost attributable to such item ("Investment Tax Credit"); (ii) each item of Equipment will be treated as placed in service within the meaning of section 48(c) of the Code during the calendar year 1983 and the "original use of such property" within the meaning of section 48(b) of the Code will commence with the Lessor; (iii) Lessee shall not have paid, and shall not pay, any part of the Original Cost of the Equipment or any other cost or expense in respect of the Equipment; (iv) the Fair Market Value (as defined in the Schedule) of each item of Equipment is not less than the Original Cost of such item of Equipment; (v) the estimated useful life of each item of Equipment is equal to at least 125% of the term of this Agreement as to such item of Equipment; (vi) the estimated Fair Market Value of each item of Equipment at the end of the lease term as to such item of Equipment (excluding inflation and deflation) is equal to at least 20% of the Original Cost of such item of Equipment; (vii) each item of Equipment qualifies as "recovery property" within the meaning of section 168(c)(1) of the Code, eligible for cost recovery deductions under section 168 of the Code with respect to the Original Cost of the item of Equipment (as set forth in the Schedules) (less any adjustment to basis under section 48(q) of the Code) commencing in 1983 and using the percentages set forth in section 168(b)(1)(A) of the Code for "5-year property" (the Cost Recovery Deductions); (viii) no severable or nonseverable improvement (within meaning of Rev. Proc. 79-48, 1979-2 C.B. 529) will be required to complete any item of Equipment for its intended use by Lessee; and (ix) no item of Equipment has been or will be designated as "designated leased property" within the meaning of section 168(b)(8)(D) of the Code.

(b) Lessee agrees that if Lessor, by reason of any act or omission, misrepresentation or breach of any covenant or agreement contained herein by Lessee or any successor to Lessee or any affiliate of the Lessee, any sublessee or any user of the Equipment hereunder (regardless of whether any such act or omission is permitted or contemplated by this Agreement), (i) shall not be entitled to, or shall lose, have disallowed, eliminated, reduced, recaptured or otherwise made unavailable to Lessor, all or any portion of the Cost Recovery Deductions or the Investment Tax Credit with respect to any item of Equipment, (ii) Lessor shall be required to treat as income any amount with respect to the transactions provided for in this Agreement or otherwise, with respect to any item of Equipment, other than the rent

payable hereunder, the Stipulated Loss Value, the purchase option price or any Supplemental Rent (as hereinafter defined), or (iii) shall be required to include all or any portion of the rent payable hereunder, the Stipulated Loss Value, the purchase option price or any Supplemental Rent (as hereinafter defined) as income from sources outside the United States (each such event being a "Tax Loss"), then Lessee shall pay to Lessor as Supplemental Rent, within 30 days after receiving written notice from Lessor, an amount that, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the amount of any additional tax plus the amount of interest or penalties (including additions to tax because of underpayment of estimated tax), if any, that may be payable by Lessor from time to time to any federal, state or local government or taxing authority in connection with such Tax Loss. The amount payable with respect to such Tax Loss plus interest or penalties shall be determined by independent certified public accountants or independent tax counsel selected by Lessor, but Lessee shall pay, or shall reimburse Lessor for, the fees and disbursements of such accountants or counsel, unless Lessee or Lessor otherwise agree. In no event shall Lessee be required to make payment to Lessor prior to the earliest of (1) the payment by Lessor to the Internal Revenue Service of the increase in tax resulting from such Tax Loss, or (2) the adjustment of the tax returns or declaration of estimated tax of Lessor to reflect such Tax Loss.

(c) Notwithstanding any other provisions of this paragraph 19, Lessee shall not be required to pay the foregoing amounts if the Tax Loss results from the occurrence of any of the following events: (1) a disqualifying disposition due to sale of any item of Equipment or the lease thereof by Lessor prior to any default by Lessee, (2) a failure of Lessor timely to claim the Cost Recovery Deductions or Investment Tax Credit for any items of Equipment in the appropriate tax return of Lessor, (3) a disqualifying change in the nature of Lessor's business or liquidation thereof, (4) the failure of Lessor to have sufficient tax liability against which to apply the Investment Tax Credit or sufficient income to benefit from the Cost Recovery Deductions, or (5) any subsequent changes in the Internal Revenue Code adversely affecting Lessor's right or ability to make use of the Cost Recovery Deductions or Investment Tax Credit.

(d) In the event the Internal Revenue shall make a claim (by including an adjustment in a 30-day or 90-day letter) against the Lessor that, if successful, would result in payments by the Lessee in respect of a Tax Loss pursuant hereto, the Lessor agrees to promptly notify the Lessee of such claim, and, if the amount of such payment would exceed \$50,000 in the aggregate, shall, upon the request and at the expense of the Lessee, contest such matter as hereinafter provided, subject to the following conditions: (a) the Lessor shall have received an opinion from independent counsel selected by the Lessor and reasonably acceptable to

and compensated by Lessee (Tax Counsel) that there is a basis in law and fact in favor of the original tax treatment of the matter that has been questioned that outweighs the basis in fact and law to the contrary, (b) the Lessee shall have indemnified the Lessor for all liabilities and expenses that may be entailed in such contest and shall have furnished the Lessor such reasonable security therefor as may be requested; and (c) Lessee promptly pays to Lessor the amount required to pay the tax, interest and penalties, if any, and sue for a refund, if Lessor determines to conduct such contest in a manner which required payment of said amounts prior to a Final Determination (as defined below). In addition to the foregoing, Lessor agrees to notify Lessee of any informal proposals of adjustments by the Internal Revenue Service and to afford Lessee reasonable opportunity to make a presentation to the Internal Revenue Service through Lessor as to why such adjustment should not be made.

If the Lessor takes action to contest the claim prior to making the tax payment, such sums payable hereunder need not be paid by the Lessee while such action is pending, but the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination, the Lessor shall notify the Lessee of such computation and the Lessee shall make payment within 30 days.

If the Lessor determines to contest any claim by paying the additional tax and suing for a refund, the Lessee shall pay to the Lessor an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid, within 30 days after receiving notice from Lessor.

If the Lessor sues for a refund after making such tax payment, and if the Final Determination shall be in favor of the Lessor, Lessor shall pay to Lessee the amount of such refund (or an appropriate portion if the Final Determination is partly in favor of and partly adverse to the Lessor) together with any interest recovered by it on such amount.

Lessor, at its sole option, may choose to pursue or to forego any and all administrative appeals, proceedings, hearings and conferences with the relevant taxing authorities with respect to such matter (unless and to the extent that pursuance of any such appeal, proceeding, hearing or conference is required to secure judicial remedies, in which case Lessor shall be required to pursue the same), but will (unless there is a settlement or compromise with the consent of Lessee as hereinafter provided) contest such matter in a court of competent jurisdiction selected by Lessor in its sole discretion and will, upon prompt and timely written request of Lessee, appeal any adverse determination to a court or courts selected by Lessor in its sole discretion, provided Lessor receives a written opinion of Tax Counsel that Lessor has a reasonable likelihood of success with respect to such appeal. Lessee shall not have any right to appear in person or through its representatives in any administrative or judicial proceedings, but Lessee shall

supply Lessor with such information requested by Lessor to pursue the contest required hereunder. Lessor agrees to cooperate in good faith with requests from Lessee concerning such contest, including the advisability of pursuing administrative remedies, the appropriate forum for any judicial proceeding, and the legal and factual basis for the contest.

Lessor shall not enter into a settlement or other compromise with respect to any Tax Loss without the written consent of Lessee, which consent shall not be unreasonably withheld, unless Lessor waives its right to be indemnified with respect to such Tax Loss or unless Lessee fails to satisfy the conditions to Lessor's obligation to contest such matter. In determining whether Lessee shall be considered to have unreasonably withheld such consent, Lessee shall not be required to consider any issue or dispute not related to such Tax Loss.

"Final Determination" for the purpose of this section means a final decision of a court of competent jurisdiction after all allowable appeals that the Lessee has requested to be pursued or contested have been exhausted by either party to the action.

If Lessor shall elect not to contest a claim despite the fact that Lessee shall reasonably have requested the Lessor to contest such claim as above provided and shall have duly complied with all the terms of this section, or elects to discontinue any proceedings previously commenced as a consequence of such request, then the Lessee shall be relieved of all liability for indemnity with respect to the amount of such claim.

(e) For purposes of this Section 19, the term "Lessor" shall include the Lessor, and any affiliated group of which the Lessor or Lessor is or shall become a member, if consolidated, joint, or combined returns are or shall be filed for such affiliated group for federal, state or local income tax purposes.

(f) The Lessee's obligations under the indemnities provided for in this Section 19 shall be those of a primary obligor whether or not any party indemnified hereunder shall also be indemnified with respect to the same matter under the terms of any other document or instrument, and such party may proceed directly against the Lessee without first seeking to enforce any other right of indemnification.

(g) The indemnities payable under this Section 19 shall be computed on an after-tax basis, so that any such indemnity, when reduced by any tax liability arising from the payment of such indemnity, shall be sufficient to compensate the indemnified party for the loss or tax for which the indemnity is given.

(h) The provisions of this paragraph 19 shall survive the termination of the lease of each item of Equipment under this Agreement.

21. REMEDIES. Upon occurrence and during the continuance of any Event of Default, Lessor may exercise any one or more of the following remedies: (a) Take possession of any item of Equipment without demand or notice and without court order or legal process. Taking possession of any or all of the Equipment by Lessor shall not relieve Lessee of any liability or obligation under this Agreement, including, without limitation, liability for payments to be made hereunder unless Lessor gives Lessee written notice of Lessor's election to terminate the lease of the Equipment, or any item thereof, under this Agreement. Lessee agrees to assemble the Equipment and make it available to Lessor at a place to be designated by the Lessor which is reasonably convenient to both parties. (b) Sublease for the account of Lessee any Equipment to such other person or persons at such a rental and for such a period of time (which may extend beyond the lease term for such Equipment) as Lessor shall elect. (c) Sell in one or more sales, lease, or otherwise dispose of, any or all of the Equipment, in its then condition or following any commercially reasonable preparation or processing, in such order as Lessor may elect, and any such sale, lease or disposition may be made either at public or private proceedings, at Lessor's place of business or elsewhere, either for cash or upon credit or for future delivery, and at such price as Lessor may deem fair, and Lessor may be the purchaser of any or all of the Equipment so sold and may hold the same thereafter in its own right free from any claim of the Lessee or right of redemption. No such purchase or holding by the Lessor shall be deemed a retention by the Lessor in satisfaction of Lessee's obligations under this Agreement. All demands, notices and advertisements, and the presentment of the Equipment at any sale, lease or other disposition are hereby waived. If, notwithstanding the foregoing provision, any applicable law requires Lessor to give reasonable notice of any such sale, lease or other disposition, or other action, Lessee agrees five (5) days prior written notice shall constitute reasonable notice. The proceeds of any sublease under subparagraph (b) or of all sale, lease or other disposition under this subparagraph (c) shall be applied to Lessor's expenses of retaking, holding, preparing for sale or lease, leasing and the like, attorneys' fees and legal expenses incurred by Lessor therefore and satisfaction of Lessee's obligations under this Agreement, and, if required by law, any surplus will be remitted to Lessee, but Lessee shall remain liable for any deficiency. (d) Terminate the lease under this Agreement with respect to any or all units of Equipment and recover from Lessee the worth at the time of termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Agreement for the balance of the lease term or any shorter period of time over the then reasonable rental value of the Equipment for the same period. (e) In lieu of taking possession of the Equipment or terminating this Lease in whole or in part, declare the entire amount of rent accrued and, to the extent allowed by law, to accrue over the unexpired portion of the term for any of the Equipment immediately due and payable. If subsequent to Lessor's election of the remedy provided in this subparagraph, Lessor terminates the lease of the Equipment, Lessor shall, at Lessor's option, either (1) refund to Lessee, or (2) set off against any sums due by Lessee to Lessor, or (3) hold as security for the performance of any obligations of Lessee to Lessor which may then be contingent or may become due, the amount of any rent prepaid by Lessee pursuant to Lessor's election of the remedy provided in this

subparagraph minus amounts Lessee is entitled to hereunder upon termination. (f) Terminate this Agreement as to any or all Equipment leased hereunder and recover from Lessee the net profit which Lessor would have realized from this transaction if Lessee had performed all of its obligations hereunder and such Lease had expired with respect to such unit or units on the expiration date referred to in the Schedule, or such lesser amount as may be allowed by applicable law. (g) Pursue any other remedy which Lessor may have.

22. ASSIGNMENT BY LESSEE. Lessee shall not assign, pledge or hypothecate this Agreement in whole or in part, nor any interest therein, nor shall Lessee sublet or lend any item of Equipment to another person without the prior written consent of Lessor,\* Lessee's interest herein may not be assigned or transferred by operation of law.

23. PERSONAL PROPERTY. The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or any improvement thereof. Lessee will not permit any Equipment to become so related to any particular real estate so as to become a fixture on such real estate or to be installed in or affixed to other goods so as to become an accession to such other goods. Lessee agrees to execute all such agreements and other documents, and to obtain the execution thereof by other persons as Lessor may request, in recordable form, by all parties having an interest in any real property to which any of the Equipment is related, with respect to the identity of the Equipment as personal property, and the disclaimer of any interest in the Equipment by such other persons. Lessee consents to the recordation of all such agreements and documents.

24. ASSIGNMENT BY LESSOR. Lessor may assign this Agreement or mortgage the Equipment or both in whole or in part, without notice to Lessee. Lessee shall not assert against any assignee and/or mortgagee any defense, counterclaim, recoupment or offset that Lessee may have against Lessor. If Lessee is given notice of such assignment, it shall acknowledge receipt thereof in writing and, at the request of Lessor or such assignee or mortgagee agree (i) to make payments directly to such assignee or mortgagee, (ii) such assignee or mortgagee shall be entitled to exercise any right of Lessor hereunder, and (iii) this Agreement may not be amended, modified, cancelled or terminated (except as provided by its terms) without the consent of such mortgagee or assignee. Each such assignee or mortgagee shall have all of the rights, but none of the obligations, of Lessor under this Agreement. To facilitate any such assignment or mortgage, even though this Agreement may be printed in multiple counterparts, only the counterpart designated "Lessor's Original Copy" constitutes chattel paper or collateral within the meaning of the Uniform Commercial Code or any other applicable law; accordingly, any assignee or mortgagee of any rights of Lessor in respect of this Agreement cannot either purchase or perfect a security interest in such rights without taking possession of the duplicate counterpart designated "Lessor's Original Copy". Notwithstanding any such assignment, Lessor warrants that Lessee shall quietly enjoy use of the Equipment subject to the terms and conditions of this Agreement. Subject to the foregoing and to paragraph 22 hereof, this Agreement inures to the benefit of and is binding upon the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

\*except that Lessee may sublease Equipment to a subsidiary provided that (a) Lessee shall not be released from any liability hereunder, (b) Lessee shall notify Lessor in writing within 30 days after the occurrence of any such sublease, including all relevant details, and (c) Lessee shall pledge and does hereby pledge all accounts arising under such subleases to Lessor to secure performance of Lessee's obligations hereunder, provided that all payments under such subleases may be made to and retained by Lessee unless and until an Event of Default shall occur hereunder.

several liability of all such persons. Wherever the context permits, the Lessee's representations, warranties and covenants hereunder shall survive the surrender by Lessee of the Equipment leased hereunder.

31. **INVALIDITY.** If any provision of this Agreement is rendered or declared invalid, illegal or unenforceable by reason of any existing or subsequently enacted legislation or by reason of a judicial decision which shall have become final, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

32. **CUMULATIVE RIGHTS.** The rights, powers and remedies of the Lessor under this Agreement shall be cumulative, and the exercise or partial exercise of any such right, power or remedy shall not preclude the exercise of any other right, power or remedy.

33. **EXPENSES.** Lessee agrees to pay to Lessor, upon Lessor's demand, all advances, charges, costs and expenses (including attorneys' fees and legal expenses) incurred by Lessor in connection with the confirming, perfecting and preserving the interest of Lessor in the Equipment, protecting Lessor against the claims or interests of any third person against the Equipment, and in exercising any right, power or remedy conferred by this Agreement or by law.

34. **CONSTRUCTION.** This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, except that Tex. Rev. Civ. Stat. Ann. art. 5069 ch. 15 (which regulates certain revolving loan accounts and revolving triparty accounts) shall not apply hereto.

35. **USURY DISCLAIMER.** It is the intention of the parties hereto to confirm strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the United States of America and the State of Texas), then, in that event, notwithstanding anything to the contrary in this Agreement or in any other agreement entered into in connection with or as security for the obligations of the Lessee under this Agreement, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, charged or received under this Agreement or under any of the other aforesaid agreements or otherwise in connection with the obligations of the Lessee under this Agreement shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the obligations of the Lessee under this Agreement by the Lessor (or, if each obligation shall have been paid in full, refunded to the Lessee); and (ii) in the event that the payment of the obligations of the Lessee under this Agreement is accelerated by reason of an election of the Lessor resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on obligations of the Lessee under this Agreement (or, if such obligations shall have been paid in full, refunded to the Lessee).

36. SCHEDULES. The Schedules attached to, and to be attached to this Agreement are incorporated herein and the terms thereof shall be considered a part of this Agreement for the purposes therein or herein stated.

37. HEADINGS. All headings to paragraphs or other divisions of this Agreement or the Schedules hereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such paragraphs or other divisions, such other content being controlling as to the agreement between the parties hereto.

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

LESSEE  
Name MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
By [Signature]  
Title: Executive Vice President-Financial  
By [Signature]  
Title: Secretary

LESSOR  
Name FIRST CITY LEASING CORPORATION  
By [Signature]  
Title: President  
By [Signature]  
Title: Senior Vice President, Marketing

Address:  
701 Commerce Street  
Dallas, Texas 75202  
Attention: Karl R. Ziebarth,  
Executive Vice  
President -  
Financial

Address:  
1111 Fannin Street  
P. O. Box 4517  
Houston, Texas 77210  
Attention: Brad McDonald,  
Senior Vice President,  
Marketing

STATE OF TEXAS  
COUNTY OF DALLAS

This instrument was acknowledged before me on May 4, 1983 by Karl R. Ziebarth and J. T. Bass, Executive Vice President-Financial and Secretary, respectively, of Missouri-Kansas-Texas Railroad Company, a Delaware corporation, on behalf of said corporation.

[Signature]  
Notary Public in and for  
Dallas County, Texas

My Commission Expires March 24, 1986

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on May 5, 1983 by J. L. Williams and Brad McDonald, President and Senior Vice President, Marketing, respectively, of First City Leasing Corporation, a Delaware corporation, on behalf

of said corporation.

  
Sharon D. Davenport  
Notary Public in and for  
Harris County, Texas

My Commission Expires: 12-22-84

SHARON D. DAVENPORT  
Notary Public, State of Texas  
My Commission Expires December 22, 1984

EXHIBIT A

EQUIPMENT LEASE SCHEDULE NO. \_\_\_\_\_

This Equipment Lease Schedule is hereby incorporated in and made a part of that certain Equipment Lease Agreement (the "Agreement") dated May 3, 1983, Number 01-002-00130-01-00101, between

FIRST CITY LEASING CORPORATION ("Lessor")

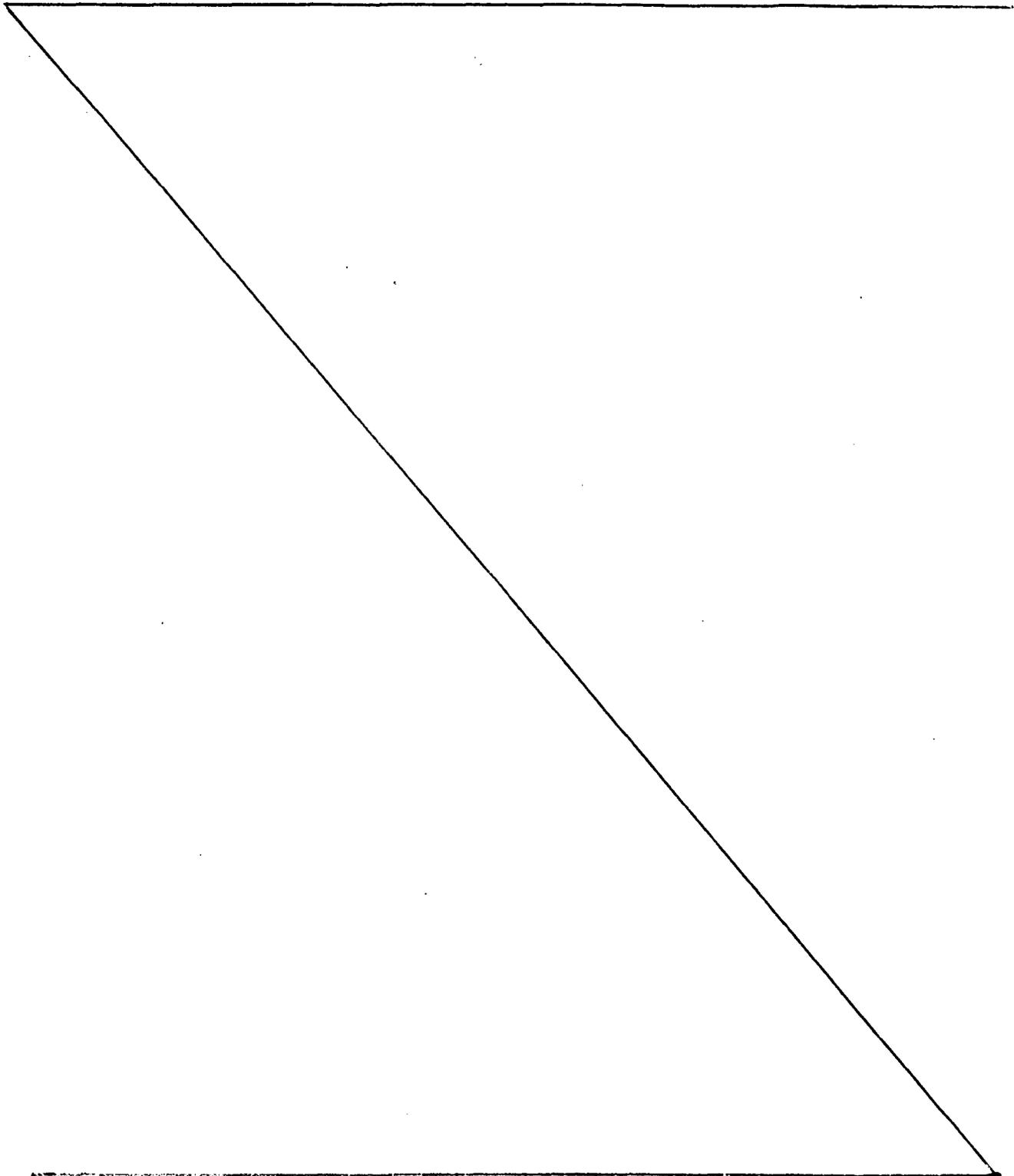
and

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY ("Lessee")

1. Equipment: General railroad equipment as described in Attachment 1. Prior to the Commencement Date for any item of Equipment, Lessee may substitute therefor other general railroad equipment if (but only if) Lessor shall approve such substitution in writing.
2. Location: Missouri, Kansas, Texas and Oklahoma. At any time upon written request from Lessor, Lessee will furnish to Lessor a statement setting forth the then current location of each item of Equipment, including all relevant details.
3. Equipment Cost: Not to exceed \$1,350,000 including applicable sales, use or similar taxes, and any freight and handling charges.
4. Outside Delivery Date: If any item of Equipment is not delivered to and accepted by Lessee on or before December 1, 1983, then Lessor shall have no obligation whatsoever to lease such items to Lessee.
5. Lease Term: The lease term for the Equipment described herein expires 60 months after the later ("Later Date") of (a) the Outside Delivery Date or (b) the date the Certificate of Acceptance is executed with respect to the last item of Equipment subject to the Agreement. The Equipment subject to the Agreement for which the Certificate of Acceptance is executed (a) on June 30, 1983 or earlier, (b) from July 1, 1983 through September 30, 1983 and (c) on October 1, 1983 or later, shall be herein called, respectively, the "Early Equipment", the "Middle Equipment" and the "Late Equipment".

6. Rent:

On the Later Date, Lessee shall make a rental payment equal to the interest cost incurred by Lessor (with Lessor to notify Lessee of such interest cost) with respect to financing the Equipment from the date the Certificate of Acceptance is executed with respect to the first item of Equipment subject to the Agreement through the Later Date. Thereafter, Lessee shall make 60 consecutive monthly payments, commencing one month after the Later Date. Each of such 60 payments shall be the total of three amounts: 2.130% of the Equipment Cost of the Early Equipment, 2.097% of the Equipment Cost of the Middle Equipment and 2.061% of the Equipment Cost of the Late Equipment.



7. Lessee's Options  
Upon Expiration  
of the Lease Term:

In lieu of surrendering the Equipment described above on this Schedule pursuant to Paragraph 15 of the Agreement, or in lieu of a month-to-month hold over pursuant to paragraph 22 of the Agreement, provided the lease of such Equipment has not been earlier terminated pursuant to the Agreement and Lessee is not in default thereunder, Lessee may elect, by written notice delivered to Lessor not less than one hundred twenty (120) days or more than one hundred eighty (180) days prior to expiration of the lease term for such Equipment:

(a) to purchase all, but not less than all, of the Equipment then subject to lease under the Agreement and for which the lease term is expiring at a purchase price equal to the Fair Market Value (as defined herein) of said Equipment upon expiration of the lease term, or

(b) renew the lease for all, but no less than all, of the Equipment then subject to lease under the Agreement and for which the lease term is expiring at its Fair Rental Value (as defined herein) for such period of time and upon terms and conditions mutually acceptable to Lessor and Lessee.

(c) In the event Lessee elects to exercise one of the foregoing options, the Fair Market Value or Fair Rental Value, respectively, of the Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained, assuming the Equipment had not been installed, in an arm's-length transaction between an informed and willing buyer or lessee and an informed and willing seller or lessor under no compulsion to sell or lease and, in such determination, costs of removal from the location or current use shall not be a deduction from such value. If on or before sixty (60) days after Lessee has timely elected to renew the lease or purchase the Equipment, Lessor and Lessee do not agree upon a determination of the Fair Market Value or Fair Rental Value of the Equipment, as the case may be, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser as selected by mutual agreement between Lessor and Lessee, such selection to be made within seventy (70) days after Lessee has timely exercised such election or failing agreement or such selection by a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected. Lessee and Lessor shall select their respective appraisers within ten (10) days of their failure to mutually agree upon an independent appraiser and those two appraisers shall designate the third within ten (10) days of their selection. The appraiser(s) shall be instructed to make such determination within twenty (20) days

following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made by the sole appraiser or by a majority of the appraisers, if there is more than one, shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the appraiser(s) shall be borne by Lessee.

(d) Bill of Sale. If Lessee elects to purchase the Equipment as provided herein upon payment of the purchase price, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's assignee or nominee, a bill of sale without representations or warranties, express or implied, except that such Equipment is free and clear of all claims, liens, security interests and other encumbrances by or in favor of a person claiming by, through or under Lessor for such Equipment, except liens and claims which Lessee assumed or is obligated to discharge under the terms of the Agreement. Lessee agrees to pay or cause to be paid all sales and/or use taxes payable in connection with such sale, and any unpaid property taxes theretofore assessed or levied against said Equipment.

8. Special Conditions: As a condition precedent to the performance of Lessor's obligations hereunder, Lessee shall execute, or cause to be executed and delivered to Lessor:

\*Texas, Kansas, Missouri and Oklahoma

A. Financing Statements: UCC-1 Financing Statement, in form satisfactory to Lessor, for filing with the Secretary of State of \_\_\_\_\_\* and any other office which Lessor may deem necessary and a waiver of interest or release from any person which may have an interest in the Equipment or the real estate where the Equipment is to be located. \*\*

B. Certificates of Title: Such certificates of title and registrations or applications therefore, manufacturer's statements of origin, dealer's report of sales, or other documents as Lessor may reasonably request from the vendor or manufacturers of the Equipment regarding registration and certification thereof under applicable law.

\*\*Lessee's chief executive office is and (unless Lessor is notified in advance to the contrary) shall remain at its address specified in Agreement.

~~G. Guaranty: A guaranty in form and substance satisfactory to Lessor of Lessee's obligations hereunder by \_\_\_\_\_~~

\*

LESSEE

Name MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By \_\_\_\_\_  
Title

By \_\_\_\_\_  
Title

LESSOR

FIRST CITY LEASING CORPORATION

By \_\_\_\_\_  
Title

By \_\_\_\_\_  
Title

\*9. Stipulated Loss Values:

The Stipulated Loss Values are set forth in Attachment 2.

Attachment 1  
to Equipment Lease Schedule

<u>Quantity</u>	<u>Description</u>
2	Fairmont W96B3 Spike Setter-Driver
2	Fairmont W-114 Series C Tie Shear
3	Fairmont MT-19 Series A Inspection Motor Car
3	Fairmont MT-14 Series L Section Motor Car
12	Fairmont T-14 Series C Push Cars
1	Jackson Model 925 Tie Remover and Inserter with attachments, stenciled RM-1122
1	Case Model 1190 Diesel Tractor, 43 PTO HP, Low Profile, equipped with ROPS Structure and Woods B106, 6-ft. mower with 7 gauge deck
1	Case Model 1190 Diesel Tractor, 43 PTO HP, Low Profile, equipped with ROPS Structure and Triumph 2500 Series Hydro-Clipper, 7-ft. sickle mower
6	Safetran Model 5000 Portable Track Cars
2	Case Model 580D Tractor Loader back Hoe w/all Standard Equipment plus power shuttle transmission, 11L x 16 10-ply front tires, 17.5 x 24 6-ply rear tires, canopy ROPS Structure, 82" long lip loader bucket, 24" Trenching Bucket, lockup package, SMV emblem and light group
3	Ottawa Model 50 Ramp Tractors, w/specifications and equipped as per Briggs-Weaver's Quotation No. 510260, dated 2/9/83
1	Fairmont Derrick Car, W64 Series A, with 13-ft. boom
1	Evans Model 2170 Tie Handler with diesel engine and straight boom
1	Model C-50 Clark Forklift
1	Fairmont Hydraulic Rail Lifter, W86 Series F
1	Fairmont A4 Series D 8-man steel frame Extra Gang Car w/FORD 48 hp 4-cyl., 4-cycle engine, generator & battery ignition, air cleaner, oil filter, 4-speed transmission, all gear & propeller shaft drive, reverse gear, 1-15/16" drive axle, and 1-15/16" differential front axle, Timken double row bearing, 16", 5/16 x 4 1/2" demountable wheels, 4-wheel metal lined self-equalized brakes and electric starter

QuantityDescription

2	100-ton, 50-cu. yd. air-operated side dump Rip Rap Cars, manufactured by Diffco Company
1	Nordberg OMSI one-man Scarifier-Insertter
1	Fairmont Dual Spike Puller, W113 Series B
2	Teleweld Welding Machine Model TE400-10D1 with connectors, electrodes, connecting cables, Arc Air Model K-15 with manual arc cutting torch, air hose & connections and related accessories and Quincy HT 340 2-stage air compressor and Teleweld Rail Surface Grinder, electric motor and all accessories

Attachment 2  
to  
Equipment Lease Schedule

The Stipulated Loss Value for any item of Equipment shall be an amount equal to the Equipment Cost attributable to that item multiplied by the percentage in the following table set forth beside the rental payment date next following the date on which the event of Loss or Damage occurred (with the Stipulated Loss Value payment to be made on the earlier of such rental payment date or 30 days after the date of the event of Loss or Damage):

<u>Rental Payment Date</u>	<u>Percentage</u>
Later Date	104.273020%
1	102.647940%
2	104.273020%
3	103.814010%
4	103.331650%
5	102.833860%
6	102.312320%
7	101.774940%
8	101.213380%
9	100.627410%
10	100.024910%
11	99.397550%
12	98.745080%
13	98.075390%
14	94.528280%
15	93.807190%
16	93.060000%
17	92.296710%
18	91.506880%
19	90.700500%
20	89.867130%
21	89.006460%
22	88.128510%
23	87.222800%
24	86.289050%
25	85.337230%
26	81.505030%
27	80.495840%
28	79.457520%
29	78.400030%
30	77.312900%
31	76.206090%
32	75.069110%
33	73.901640%
34	72.713650%
35	71.494640%
36	70.244280%
37	68.972530%
38	64.817010%
39	63.481100%
40	62.112620%
41	60.721480%
42	59.297190%
43	57.849670%
44	56.368380%
45	54.852990%
46	53.313400%
47	51.739090%
48	50.129680%
49	48.495080%
50	43.972910%
51	42.266480%

52	40.523570%
53	38.843760%
54	37.127760%
55	35.475150%
56	33.786630%
57	32.061800%
58	30.400280%
59	28.702740%
60	26.968810%

The rental payment dates in the above table refer to the Later Date (as a rental payment is then due) and to the 60 consecutive monthly rental payment dates thereafter.

EXHIBIT B

FIRST CITY LEASING CORPORATION

CERTIFICATE OF ACCEPTANCE

The Lessee hereby certifies that the Equipment described in Paragraph 1 below (the "Equipment") subject to and covered by that certain Equipment Lease Agreement (the "Lease Agreement", the capitalized terms used herein being used as therein defined) with First City Leasing Corporation dated May 3, 1983, Lease No. 01-002-00130-01-00101, Schedule No. \_\_\_\_\_ conforms to the purchase agreement or order, as the case may be, with the manufacturer thereof, and has been accepted by the Lessee.

1. Description of Equipment:
  
2. Location:
  
3. Equipment Cost:

The Lessee further certifies that it has had a reasonable opportunity to inspect the Equipment, the Equipment is in good order and condition, and the Lessee warrants that the Equipment is new and that no original use thereof has commenced prior to the date hereof.

The execution of this Certificate will in no way relieve or decrease the responsibility of the manufacturer of the Equipment for any warranties it has made with respect to the same.

DATED: \_\_\_\_\_

LESSEE:

MISSOURI-KANSAS-TEXAS  
RAILROAD COMPANY

By \_\_\_\_\_

Receipt is hereby acknowledged  
by First City Leasing Corporation  
this \_\_\_ day of \_\_\_\_\_, 19\_\_

By: \_\_\_\_\_