

NO. 5 RAIL CAR LEASING COMPANY  
P.O. BOX 218, CHICAGO HEIGHTS, ILLINOIS 60411

June 30, 1980

Interstate Commerce Commission  
Recordation Clerk  
Room 1211  
12th & Constitution Ave., N.W.  
Washington, D.C. 20423

RECORDATION NO. 11960 Filed 1425  
JUL 1 1980 - 3 22 PM  
INTERSTATE COMMERCE COMMISSION  
O-183A170  
JUL 1 1980  
50.00  
CC Washington, D.C.

Gentlemen:

Enclosed for recordation under the provision of Section 20 (c) of the Interstate Commerce Act, as amended, are five (5) copies of the following:

Lease Agreement No. Equipment Lease dated 5/28/80  
Rider No. - N/A dated - N/A  
between NO. 5 RAIL CAR LEASING COMPANY and WESTERN RAILROAD COMPANY  
Recordation No. - New  
No. of Cars: Fifty (50)  
Description of Cars: 100-Ton 52'6" Gondola Cars  
Car Numbers: WRRRC 680100 thru WRRRC 680149, both inclusive

The names and address of the parties hereto are as follows:

Lessor:	Lessee:
No. 5 Rail Car Leasing Company P.O. Box 218 Chicago Heights, IL 60411	Western Railroad Company P.O. Box 811 New Braunfels, TX 78130

The undersigned is the Vice President-Finance of No. 5 Rail Car Leasing Company and has knowledge of the matters set forth within the enclosed documents. Kindly record and thereafter give to Alvord & Alvord, the remaining four copies of the enclosed document, marked "Recorded".

Attached hereto is a remittance in the sum of \$50.00 covering the required Recording Fee.

Cordially,

NO. 5 RAIL CAR LEASING COMPANY

*S.D. Christianson*

S.D. Christianson  
Vice President - Finance

/ras

Enclosures

RECEIVED  
JUL 1 3 19 PM '80  
I.C.C.  
FEE OPERATION BR.

*C. J. Kappeler*  
*C. Alvord*

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

7/1/80

OFFICE OF THE SECRETARY

**S.D. Christianson**  
**Vice President-Finance**  
**No.5 Rail Car Leasing Co.**  
**P.O.Box 218**  
**Chicago Height, Illinois 60411**

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 **7/1/80** at **3:30pm**, and assigned re-  
recording number(s). **11960**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

RECORDATION NO. 11960 Filed 1425

JUL 1 1980 - 8 22 PM

INTERSTATE COMMERCE COMMISSION

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**EQUIPMENT LEASE**

**Dated as of May 28, 1980**

**between**

**NO. 5 RAIL CAR LEASING COMPANY,  
as LESSOR**

**and**

**WESTERN RAILROAD COMPANY,  
as LESSEE**

---

**(50 Gondola Cars)**

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ATTACHMENTS TO EQUIPMENT LEASE:

- SCHEDULE A - Description of Items of Equipment
- SCHEDULE B - Certificate of Acceptance Under  
Equipment Lease

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of May 28, 1980 between No. 5 RAIL CAR LEASING COMPANY, an Illinois corporation (the "Lessor") and WESTERN RAILROAD COMPANY, a TEXAS corporation (the "Lessee");

### W I T N E S S E T H:

That for and in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned the parties hereby agree as follows:

#### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

##### 1.01. Lease.

The Lessor has purchased from THRALL CAR MANUFACTURING COMPANY (the "Manufacturer") the items of railroad equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof, built in accordance with the specifications (the "Specifications") referred to in said Schedule A. Upon delivery of each Item of Equipment and the acceptance of such Item of Equipment as provided in Section 1.02 hereof, the Lessor shall lease and let such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

##### 1.02. Inspection and Acceptance.

The Lessor will cause each Item of Equipment to be tendered to the Lessee on the Term Lease Commencement Date referred to in Section 2.01 hereof at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to conform to the Specifications, to accept delivery of such Item of Equipment on said Term Lease Commencement Date and to execute and deliver to the Lessor a Certificate of Acceptance in the

form attached hereto as Schedule B (the "Certificate of Acceptance") with respect to such Items of Equipment.

1.03. Effect of Certificate of Acceptance.

The Lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish, between Lessor and Lessee (but without prejudice to any rights either may have against the Manufacturer), that Lessee has inspected the Items of Equipment covered thereby, that each such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and conforms to the Specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment. The execution and delivery of such Certificate of Acceptance by the Lessee shall constitute a representation by the Lessee that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.01. Rentals for Equipment.

The Lessee agrees to pay the Lessor for each Item of Equipment leased hereunder one hundred fifty (150) installments of rental ("Fixed Rental") payable in arrears in the amount set forth in Schedule A hereto. The Lessee further agrees to pay the Lessor for all Items of Equipment leased hereunder one installment of daily rental ("Interim Rental") in the amount set forth in Schedule A hereto.

The installments of Fixed Rental shall be due and payable commencing on the thirtieth day next following the Term Lease Commencement Date (as defined in Schedule A hereto and hereinafter referred to as the "Term Lease Commencement Date") and on the same such day of each and every calendar month thereafter to and including the same such day of the one hundred fiftieth (150) calendar month following the Term Lease Commencement Date. The installment of Interim Rental shall be due and payable on the Term Lease Commencement Date.

2.02. Place of Payment.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at Post Office Box 218, Chicago Heights, Illinois 60411, or to such other party or such other place as the Lessor or its assigns pursuant to Section 16 hereof shall specify in writing.

2.03. Net Lease.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof, nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from any cause whatsoever, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any governmental body, private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until the Equipment is surrendered pursuant to Section 13 hereof.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 hereof, shall terminate on the date twelve and one half (12½) years following the Term Lease Commencement Date.

SECTION 4. OWNERSHIP AND MARKING OF THE EQUIPMENT.

4.01. Retention of Title.

The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

4.02. Duty to Number and Mark Equipment.

The Lessee will cause each Item of Equipment to be kept numbered with its car number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from NO. 5 RAIL CAR LEASING  
COMPANY, as Lessor, and subject to  
a Security Interest recorded with the  
Interstate Commerce Commission"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the car number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new car numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

**4.03. Prohibition Against Certain Designations.**

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership.

**SECTION 5. DISCLAIMER OF WARRANTIES.**

AS BETWEEN LESSOR AND LESSEE, THE LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT INCLUDING WITHOUT LIMITATION THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) 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. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer pursuant to the Manufacturer's Warranty Agreement, a copy of which is attached hereto as Schedule C.

**SECTION 6. LESSEE'S INDEMNITY.**

**6.01. Scope of Indemnity.**

The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including, without limitation, the design, construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use,

maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims/~~for negligence~~, or strict liability in tort.



made at any time for negligence occurring during the term of the lease.

6.02. Continuation of Indemnities and Assumptions.

The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.01 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, or storing of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation and the Interstate Commerce Commission) and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance should be required to be changed or replaced, or in case any additional equipment is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the United States of America and only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not change, modify or alter any Item of Equipment nor make any additions or improvements to any Item of Equipment without the prior written authority and approval of the Lessor which shall not be unreasonably withheld; provided, that the Lessor in its sole discretion may refuse to approve any change, modification, alteration or installation in or to any Item of Equipment (i) which is prohibited by any governmental law, regulation, requirement or rule, (ii) which impairs the value of such Item or (iii) which impairs the use of such Item in the service for which the Item was originally designed. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligation under this Section 9 shall survive the termination of this Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.01. Filing.

The Lessor will, at its sole expense, cause this Lease, and the first security agreement and/or assignment, if any, executed by the Lessor with respect to the Equipment or this Lease to be duly filed, recorded or deposited with the Interstate

Commerce Commission in accordance with 49 U.S.C. Section 11303 of the Interstate Commerce Act and in such other places within or without the United States as the Lessor or any assignee pursuant to Section 16 hereof determines is necessary or appropriate for the protection of its title or the security interest of the secured party under such security agreement and/or assignment. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or such secured party's security interest in, the Equipment to the satisfaction of the Lessor's or such secured party's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action, except in the case of filings required by the first sentence of this Section 10.01.

10.02. Payment of Taxes.

All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal or state income tax (and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax) payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof,

all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, the Lessor shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of the Lessor and any Assignee in such Items of Equipment or notify the Lessor and such assignee of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and such assignee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.02, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

**SECTION 11. INSURANCE: PAYMENT FOR CASUALTY OCCURRENCE.**

**11.01. Insurance.**

Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Item of Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by Lessee at not less than the full insurable value (actual replacement value less actual physical depreciation) thereof and in any event not less than the Casualty Value (as defined in Section 11.06 hereof) of such Item of Equipment as of the next following Fixed Rental payment date, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$2,000,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by Lessee and may be carried under blanket policies maintained by Lessee so long as such policies otherwise comply with the provisions of this Section 11.01. All such insurance shall cover the interest of Lessor, Lessee and any assignees pursuant to Section 16 hereof in the Equipment or, as the case may be, shall protect Lessor and Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to Lessee and Lessor as their respective interests may appear; provided, however, that upon receipt by Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 16 hereof, Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to the assignee specified in such notice (referred to in this Section 11 as the "Secured Assignee") under a standard mortgage loss payable clause satisfactory to Lessor and the Secured Assignee which shall provide that the insurer thereunder waives all rights of subrogation against Lessor, Lessee and the Secured Assignee, that thirty days' prior written notice of cancellation shall be given to the Secured Assignee and that such insurance as to the interest of the Secured Assignee therein shall not be invalidated by any act or neglect of Lessor or Lessee or by any foreclosure or other remedial proceedings or notices thereof

relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. No such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Equipment against the peril involved, whether collectible or not. The loss, if any, under any policy covering the Equipment shall be adjusted with the insurance companies by Lessee, subject to the approval of Lessor and the Secured Assignee if the loss exceeds \$100,000. The loss so adjusted shall be paid to the Secured Assignee, if any, pursuant to said loss payable clause unless said loss is \$100,000 or less, in which case said loss shall be paid directly to Lessee. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. Lessee shall furnish Lessor and the Secured Assignee, if any, with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 11.01 shall be effected with insurance companies approved by Lessor and the Secured Assignee, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by Lessor or the Secured Assignee on account of or for any loss or casualty in respect of any Item of Equipment shall be released to Lessee either (i) upon a written application signed by the President, any Vice President or the Treasurer of Lessee for the payment of, or to reimburse Lessee for the payment of, the cost of repairing, restoring or replacing the Item of Equipment which has been lost, damaged or destroyed (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair, restoration or replacement), or (ii) if this Lease is terminated with respect to such Item of Equipment pursuant to Section 11.04 promptly upon payment by Lessee of the Casualty Value to such Secured Assignee; provided that, if Lessee is at the time of the application in default in the payment of any other liability of Lessee to Lessor hereunder, such proceeds shall be applied against such liability.

11.02. Duty of Lessee to Notify Lessor.

In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee (as evidenced by a certificate from Lessee's officer charged with such matters and such other evidence as Lessor may reasonably require for verification), irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for a stated period which does not exceed the term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Secured Assignee in regard thereto and shall pay the Casualty Value (as defined in Section 11.06 hereof) of such Item in accordance with the terms hereof.

11.03. Payment for Casualty Loss.

In the event of a Casualty Occurrence with respect to any Item of Equipment, the Lessee shall pay to the Lessor (i) a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment, (ii) the Fixed Rental installment due on such payment date for such Item of Equipment, (iii) interest, if any, due on late payments of rent with respect to such Item of Equipment to the date of payment and (iv) all other unpaid amounts due hereunder solely with respect to such Item of Equipment. The payments required to be made by the Lessee pursuant to this Section 11.03 shall be made to the Lessor on the next succeeding Fixed Rental payment date unless such Casualty Occurrence occurs less than 15 days prior to the next succeeding Fixed Rental payment date, in which case such payments shall be made on either the next succeeding Fixed Rental payment date or the second succeeding Fixed Rental payment date after such Casualty Occurrence.

11.04. Rent Termination.

Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items

of Equipment.

11.05 Disposition of Equipment.

The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is, where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.06 Casualty Value.

The "Casualty Value" of each item of equipment as of the date of the casualty occurrence shall be that amount so determined as the depreciated valuation of such item of equipment as provided for under rule Number 107 of the Interchange Rules of the Association of American Railroads, or any amendment or successor to that rule.

11.07 Risk of Loss.

The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and Fixed Rental installment due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.08. Eminent Domain.

In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 12. REPORTS.

12.01. Financial Reports.

Lessee will furnish to Lessor and any assignee of the Lessor pursuant to Section 16 hereof or to such other person as Lessor shall designate:

(i) as soon as available, but in no event more than ninety days after the close of each fiscal year of Lessee commencing with the year 1980, Lessee's complete annual financial report for the preceding fiscal year, all in reasonable detail, prepared and certified by independent certified public accountants of recognized national standing selected by Lessee;

(ii) as soon as available, but in no event more than forty-five (45) days after the close of each quarterly period for each fiscal year (other than the last quarterly period for such fiscal year) of the Lessee the balance sheet of the Lessee as at the end of such period and an income and retained earnings statement of the Lessee for the portion of such fiscal year ending with such period; and

(iii) such other reports and information as Lessor may reasonably require concerning the Equipment or the financial condition of Lessee, including, but not limited to, the status of the maintenance, use and condition of the Equipment and the compliance by Lessee with the terms and conditions of this Lease.

12.02. Duty of Lessee to Furnish.

On or before January 31 in each year throughout the term of this Lease, commencing with the year 1981, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof an accurate statement, as of the preceding December 31 signed by a duly authorized officer of the Lessee (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.02 hereof shall have been preserved or replaced and (c) stating that all Equipment is on the date of such certificate in operation and is in all respects maintained in accordance with the terms of said Lease, except for such Items of Equipment as are specifically excluded from such statement in said certificate.

12.03. Lessor's Inspection Rights.

The Lessor and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or, as the case may be, such assignee, the existence and proper maintenance thereof during the continuance of this Lease. Lessee shall, whenever requested by the Lessor or any such assignee, promptly advise Lessor or such assignee of the exact location of the Equipment insofar as may be practicable.

**SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.**

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessor may designate in the state of Indiana or Illinois, or in the absence of such designation, as the Lessee may select having given 30 days' prior written notice to the Lessor or the Lessee will immediately upon the expiration of the term of the lease deliver each Item of Equipment to a connecting carrier for shipment, all as directed by the Lessor upon not less than 10 days' written notice to the Lessee. The assembling and delivery of each such Item is to be at the risk and expense of the Lessee. The assembling and delivery of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble and deliver the Equipment.

**SECTION 14. DEFAULT.**

**14.01. Events of Default.**

Any of the following events shall constitute an Event of Default hereunder:

(a) The Lessee shall fail to make when due payment of any part of the rental or other sums provided in Section 2 or 11 hereof and the failure to make any such payment shall continue for more than five days after Lessor mails Lessee written notice of such default. In the event Lessor issues such written notice of default twice during any consecutive twelve (12) month period and the Lessee fails thereafter to make any one or more other payments when due, that failure shall be a default without the necessity of any written notice of default being issued by the Lessor; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(c) The Lessee shall fail to observe or perform any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such failure shall continue for thirty days after written notice thereof has been given by the Lessor to the Lessee; or

(d) Any representation or warranty made by the Lessee herein or in any statement or certificate furnished to the Lessor or its assigns pursuant to or in connection with this Lease is untrue in any material respect as of the date of issuance or making thereof; or

(e) Default or the happening of any event shall occur under any evidence of indebtedness of the Lessee for borrowed money or under any indenture, agreement or similar instrument under which indebtedness of the Lessee for borrowed money may be issued and such default shall continue, in the case of any such indebtedness, beyond the period of grace, if any, allowed with respect thereto; or

(f) The Lessee shall become insolvent or bankrupt or admit in writing its inability to pay its debts as they mature or shall make an assignment for the benefit of its creditors; or

(g) Bankruptcy, reorganization, arrangement or insolvency proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors shall be instituted by or against Lessee; or Lessee shall permit or there shall occur any involuntary transfer of its interest hereunder or of all or substantially all of Lessee's property by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise;

unless in every such case such proceedings (if instituted against the Lessee) shall be dismissed or such assignment, transfer, decree or process shall within 60 days from the filing or other effective date therein be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within 60 days from the date of his appointment adopt and assume this Lease pursuant to due authority of law and of the court appointing him.

14.02. Remedies.

If any Event of Default has occurred and is continuing, the Lessor, at its option, may:

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

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise

have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

**14.03. Cumulative Remedies.**

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

**14.04. Lessor's Failure to Exercise Rights.**

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

**SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.**

**15.01. Lessee's Duty to Return.**

If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith assemble and place such Equipment on such storage tracks in the states of Indiana or Illinois as the Lessor may designate or, in the absence of such designation within a reasonable time, as the Lessee may select;

(b) Provide storage for such Equipment on such tracks for a period not exceeding 180 days after written notice has been given to the Lessor specifying the place of storage and the car numbers of the Items of Equipment so stored; and

(c) Deliver any Items of Equipment at any time within such 180 days' period, to any connecting carrier on tracks at any place within Indiana or Illinois for shipment, all as the Lessor may direct in writing.

**15.02. Specific Performance.**

The assembling, delivery, storage of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Equipment.

**15.03. Lessor Appointed Lessee's Agent.**

At any time while the Lessee is obligated to deliver possession of any item of equipment to the Lessor and without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority to demand and take possession of such Item in the name and on behalf of the Lessee

from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. No such assignee shall be bound by or obligated to perform or see to the performance of any duty, covenant or condition or warranty (express or implied) made by the Lessor or required to be observed or performed by the Lessor under any of the terms hereof, but on the contrary, the Lessee by its execution hereof, acknowledges and agrees that notwithstanding such assignment each and all of such covenants and agreements of the Lessor and all representations and warranties shall survive such assignment and shall be and remain the sole liability of the Lessor. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of such assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in th name of the Lessor for the use and benefit of such assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

**SECTION 17. ASSIGNMENTS BY LESSEE: USE AND POSSESSION.**

**17.01. Lessee's Rights to the Equipment.**

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment except pursuant to and in accordance with the provisions of Section 17.02 hereof. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.02 hereof.

**17.02. Use and Possession by Lessee.**

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to and shall have the exclusive use and possession of the Equipment. The Lessee agrees that the Equipment will be used exclusively within the continental United States. The Lessee agrees that it will not assign this Lease or any of its rights hereunder or sublease any Item of Equipment; provided, however, that nothing contained in this Lease shall be deemed to prevent use of any Item of Equipment by others exclusively in the continental United States in the usual interchange of traffic. Notwithstanding the foregoing sentence the Lessee may sublease the Equipment or any substantial part thereof in the event that the use of such Equipment, in the good faith judgment of the Lessee as determined by its Board of Directors, is no longer economical, provided that (i) no Event of Default under the Lease shall have occurred and be continuing and no event shall have occurred and be continuing which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default under the Lease and (ii) the sublessee shall agree in writing to comply with all the terms and provisions of this Lease during the period of said sublease and to use such Equipment in the same manner and for the same purposes as the Lessee. No such permitted use or sublease shall relieve the Lessee of any of the obligations, liabilities or duties hereunder, which shall be and remain those of a principal and not a surety. The Lessee may receive and retain for its own account such compensation for the use or sublease of the Equipment by others as the Lessee may determine.

17.03. Merger, Consolidation or Acquisition of Lessee.

Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of the Lessee by written instrument delivered to the Lessor) into or with which the Lessee shall have become merged or consolidated or which shall have acquired all or substantially all of the property of the Lessee, provided that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a surety.

SECTION 18. CERTIFICATE OF OFFICERS OF LESSEE AND OPINION OF COUNSEL FOR LESSEE.

18.01. Lessee's Certificate.

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, and upon any assignment by the Lessor to any assignee pursuant to Section 16 hereof, the Lessee will deliver to the Lessor and/or any such assignee a certificate of a Vice President of the Lessee, addressed to the Lessor and/or any such assignee in scope and substance satisfactory to such parties, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Incorporation;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease has been duly authorized, executed and delivered by the Lessee and constitutes the valid, legal and binding agreement of the Lessee enforceable in accordance with its terms except as limited by bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights generally;

(d) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance by the Lessee of the Lease;

(e) The execution and delivery by the Lessee of the Lease does not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except as contemplated and permitted hereby;

(f) Except as heretofore disclosed in writing to Lessor and its assignee pursuant to Section 16 of this Lease, if any, there is no action, suit or proceeding pending nor, to the knowledge of such officer, is there any basis for, or is any such action, suit or proceeding threatened against or affecting, the Lessee at law or in equity before any federal, state or local governmental authority or agency which, if adversely determined, would result in any material adverse change in the property or assets or in the condition, financial or otherwise, of the Lessee or would impair its ability to perform its obligations under this Lease; and

(g) As to any other matters which the Lessor shall reasonably request.

18.02. Opinions of Counsel.

At the commencement of the term of this Lease and upon any assignment by the Lessor to any assignee pursuant to Section 16 hereof, the Lessee will deliver to the Lessor the written opinion of Messrs. \_\_\_\_\_, counsel for the Lessee, addressed to the Lessor and/or to any such assignee under Section 16 hereof, in scope and substance satisfactory to the Lessor, covering the matters referred to in paragraphs (a) through (f), inclusive, of Section 18.01 and as to any other matters which the Lessor shall reasonably request. With respect to paragraph (f), the opinion will relate only to items known to Counsel.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 12% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. MISCELLANEOUS.

20.01. Limitations of Liability.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no liability or responsibility is assumed by nor shall at any time be asserted or enforceable against any incorporator or any past, present or future subscriber to the capital stock of, the Lessor, on account of this Lease or on account of any representation, covenant, undertaking or agreement of the Lessor in this Lease contained, either express or implied, all such liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Equipment for satisfaction

of the same subject to the rights of Nationwide Life Insurance Company or its assignee under the Loan Agreement.

20.02. Notices.

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: NO. 5 RAIL CAR LEASING COMPANY  
P.O. BOX 218  
CHICAGO HEIGHTS, ILLINOIS 60411  
ATTN: VICE PRESIDENT - FINANCE

If to the Lessee: WESTERN RAILROAD COMPANY  
P.O. BOX 107  
HOUSTON, TEXAS 77001  
ATTN: PRESIDENT

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

20.03. Right of Lessor to Perform.

If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as additional rent hereunder, with interest at the rate of 12% per annum.

20.04. Execution in Counterparts.

This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.05. Law Governing.

This Lease shall be construed in accordance with the laws of the State of Texas; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.06. Headings and Table of Contents.

All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.07. Severability.

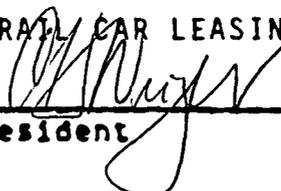
Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

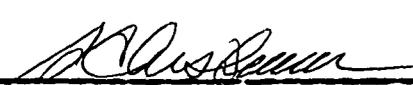
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

[CORPORATE SEAL]

NO. 5 RAIL CAR LEASING COMPANY

ATTEST:

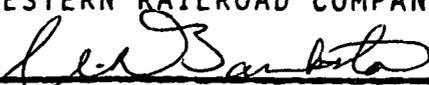
By   
Vice President Lessee

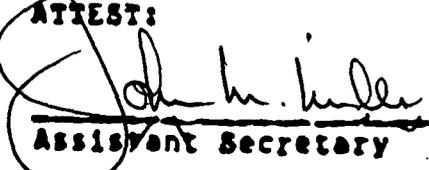
  
Assistant Secretary

[CORPORATE SEAL]

WESTERN RAILROAD COMPANY

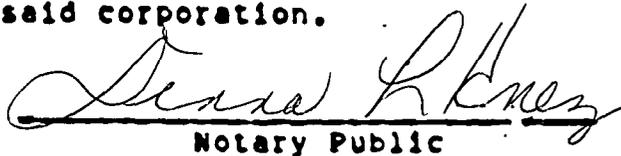
ATTEST:

By   
Vice President Lessor

  
Assistant Secretary

STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK )

On this 30th day of June, 1980 before me personally appeared C. H. Wright, to me personally known, who being by me duly sworn, says that he is a Vice President of NO. 5 RAIL CAR LEASING COMPANY, that one of the seals affixed to the foregoing is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

(SEAL)

My commission Expires:

1-11-81

STATE OF )  
                          ) SS.  
COUNTY OF )

On this 24th day of June, 1980 before me personally appeared W. D. Bamkston, to me personally known, who being by me duly sworn, says that he is a Vice President of WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

J. W. COLBURN

(SEAL)

My Commission Expires:

JULY 31, 1980

SCHEDULE A  
(EQUIPMENT LEASE DATED AS OF MAY 28, 1980)

DESCRIPTION OF ITEMS OF EQUIPMENT

MANUFACTURER: THRALL CAR MANUFACTURING COMPANY

PLANT OF MANUFACTURER: CHICAGO HEIGHTS, ILLINOIS

DESCRIPTION OF EQUIPMENT: 50 - 52'6" GONDOLA CARS

SPECIFICATIONS: For Items 1-40: Thrall-GN 100-52-204  
For Items 41-50: Thrall-GN 100-52-211

CAR NUMBERS: WRRC 680100 thru WRRC 680149, both inclusive

LESSOR'S COST PER ITEM OF EQUIPMENT: \$25,743 per item (\$1,287,150 for 50 items)

PLACE OF DELIVERY: FOT Stonetown, Texas

ESTIMATED DELIVERY DATE: July, 1980

OUTSIDE DELIVERY DATE: August, 1980

TERM LEASE COMMENCEMENT DATE: The earlier of the date on which the 50th item of equipment is delivered to and accepted by the Lessee or \_\_\_\_\_, 1980.

FIXED RENTAL PAYMENTS: THREE HUNDRED AND 00/100 DOLLARS (\$300.00) for each item of equipment for each calendar month of the 150 calendar month Lease Term.

INTERIM RENTAL: TEN AND 00/100 DOLLARS (\$10.00) per day for each item of equipment accepted hereunder by the Lessee, commencing on and including the day following acceptance of the item of equipment to the Term Lease Commencement Date.

DELIVERY COSTS: Lessee will pay Lessor all freight and switching costs relative to each item of equipment from its place of storage to the "Place of Delivery".

SCHEDULE B  
(Equipment Lease dated as of

CERTIFICATE OF ACCEPTANCE

TO: NO. 5 RAIL CAR LEASING COMPANY ("Vendee")

THRALL CAR MANUFACTURING COMPANY ("Manufacturer")

I, a duly appointed inspector and authorized representative of WESTERN RAILROAD COMPANY ("Lessee") and of the above named Vendee, do hereby certify that I have inspected, received, approved and accepted delivery on behalf of the Lessee and under the Equipment Lease dated as of May 28, 1980, between the Vendee and the Lessee, and on behalf of the Vendee of the following Items of Equipment ("Equipment"):

TYPE OF EQUIPMENT: 52'6" GONDOLA

MANUFACTURER: THRALL CAR MANUFACTURING COMPANY

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF ITEMS:

CAR NUMBERS:

I do further certify that the foregoing Equipment is in good order and condition and conforms to the Specifications applicable thereto, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Item of Equipment the following legend in letters not less than one inch in height:

"Leased from NO. 5 RAIL CAR LEASING COMPANY,  
as Lessor, and subject to a security interest  
recorded with the Interstate Commerce  
Commission."

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

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Inspector and Authorized  
Representative of Lessee  
and Vendee