

P. E. MYERS & ASSOCIATES
Practice Before The Interstate Commerce Commission
SUITE 348. PENNSYLVANIA BUILDING
PENNSYLVANIA AVENUE AT THIRTEENTH STREET N. W.
WASHINGTON, D. C. 20004

(202) 737-2188

November 26, 1980

Registered Practitioners
PAULINE E. MYERS
MARK D. RUSSELL

RECORDATION NO. 12441 Filed 1425 O-331A050

NOV 26 1980 12:50 PM NOV 26 1980

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

NOV 26 1980

50.00

ATTENTION: Recordation Office
IN RE: Lease Between GWI Rail Management Corp.
And C. K. Industries, Inc.

Dear Mrs. Mergenovich:

Attached hereto for recordation is an original copy of the above noted Lease. Also attached is one duplicate copy for your files.

GWl Rail Management Corporation
3846 Retsof Road
Retsof, NY 14539

C. K. Industries, Inc.
201 N.W. 131 Avenue
Plantation, FL

Your cooperation is greatly appreciated. Check No. 2729 in the amount of \$ 50.00.

Yours very truly,

Pauline E. Myers
Pauline E. Myers

PEM/slt

Attachments

NOV 26 12 44 PM '80
DOCKET FILES
BRANCH

Mark D. Russell
Pauline E. Myers

Interstate Commerce Commission
Washington, D.C. 20423

11/26/80

OFFICE OF THE SECRETARY

Pauline E. Myers
P.E. Myers & Associates
Suite 348, Pennsylvania Building
Pennsylvania Ave., at Thirteenth Street N.W.
Washington, D.C. 20004

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 **11/26/80** at **12:50pm**, and assigned re-
recording number(s). **12441**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

LEASE AGREEMENT NOV 26 1980 12 50 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made as of the 1st day of May, 1980 by and between GWI Rail Management Corporation, with offices at 3846 Retsof Road, Retsof, New York 14539 ("Lessee"), and C.K. Industries, Inc., a Florida corporation with offices at 201 N.W. 131 Avenue, Plantation, Florida ("Lessor").

WHEREAS, Lessor has acquired the right to purchase fifty (50) covered hopper railroad cars to be manufactured by Pullman Standard Division of Pullman, Incorporated and to be identified when delivered in Exhibit A (to be executed by the parties for identification), and attached hereto (such cars purchased by Lessor being hereinafter referred to as the "Cars"); and

WHEREAS, Lessor desires to let the Cars to Lessee and Lessee desires to lease the Cars from Lessor on the terms and conditions set forth herein; and

WHEREAS, it is the intent of Lessee to initially sublease the Cars to Genesee and Wyoming Railroad Company ("GWRR").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, Lessor and Lessee hereby agree as follows:

1. LEASE AND TERM.

(a) Upon delivery from time to time pursuant to Subsection 1(b) hereof, Lessor hereby leases to Lessee the Cars for the term specified in Subsection 1(b) and under the terms and conditions set forth in this Lease Agreement.

(b) This Agreement shall remain in full force and effect until it shall have been terminated as to all of the Cars as provided herein. Subject to any termination rights hereinafter contained, the term of this Lease Agreement shall commence upon delivery of the first Car to Lessee from the lining company as set forth in Section 4 hereof and shall terminate as to all the Cars seven (7) years and six (6) months thereafter, provided, however, that this Agreement shall terminate with respect to any Car withdrawn pursuant to Section 8(c) hereof, lost, sold or destroyed.

(c) Notwithstanding any termination of this Agreement, whether upon the expiration of the term of this Agreement or otherwise, Lessee shall continue to collect all per diem charges, incentive per diem charges (if any), and mileage charges (hereinafter collectively the "car hire payments"), all rental payments and other sums (including insurance benefits or railroad

indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement, Lessor shall continue to be obligated to indemnify Lessee pursuant to Section 9 hereof and Lessee shall be obligated to pay to Lessor its rent as provided herein.

(d) If on the termination date as provided in this Section 1 any of the Cars are subject to leases which terms extend beyond that date, then as to those Cars the term of this Agreement shall be extended to and expire on the termination date or dates of those respective leases.

(e) Upon expiration of the term of this Agreement as set forth in Subsection 1(b) or any one year extension pursuant to this Subsection, this Agreement shall be extended for an additional one year if either party has notified the other party more than ninety (90) days prior to the scheduled termination that it desires to extend and the other party does not object more than sixty (60) days prior to the then scheduled termination.

2. RENT.

The Lessee shall pay to Lessor as rent hereunder (i) ninety-five percent (95%) of the Gross Revenues received as defined in Section 6(b) hereof, less (ii) all Operating Expenses paid as defined in Section 6(c) hereof.

3. INVESTMENT TAX CREDIT.

(a) The Lessor and Lessee hereby elect to have Lessee take the investment tax credit, as provided in Section 48(d)(2) of the Internal Revenue Code, as amended ("IRC"), with respect to all the Cars. It is the intent of the parties that because the useful life of each Car is fifteen years and the term of this Lease Agreement is seven (7) years and six (6) months, Lessor and Lessee shall each take one-half of the investment tax credit available to Lessor with respect to the Cars.

(b) Lessor and Lessee each indemnify the other against any loss or damage (including reasonable attorneys fees) arising out of any affirmative action by one such party which causes the loss and/or recapture of the investment tax credit taken by the other with respect to the Cars, including but not limited to an early disposition by Lessor of the Cars in such a way as to cause them

to cease to be IRC §38 property all within the meaning of IRC §48(a)(1), and related regulations or the termination by Lessor as to any Car or Cars pursuant to Subsection 8(c) or 8(e), but excluding any effect of the length of the term of this Agreement caused by the date of delivery of any Car or Cars; provided, however, neither party indemnifies the other as to the sufficiency of this Agreement, under the IRC and any applicable regulations, to allow either party to take one-half of the investment tax credit as provided in IRC §48(d).

4. DUTIES OF LESSEE.

In partial consideration of the use of the Cars, and subject to the performance by Lessor of its obligations to reimburse Lessee pursuant to Section 8 and indemnify Lessee pursuant to Section 9 hereof, Lessee shall provide and perform the services set forth below during the term of this Agreement:

(a)(i) Immediately upon execution, or as soon thereafter as any of the Cars are ready, Lessee shall from time to time on behalf of Lessor inspect on a preliminary basis each of the Cars tendered by the manufacturer for delivery at the Pullman Standard plant in Butler, Pennsylvania and confirm to Lessor and GWRR in writing that such preliminary inspection has been made and, if such is the case, that the Cars conform to the specifications agreed to by GWRR as described in the Schedule I attached to the GWRR Agreement as defined in Section 4(b) hereof (the "GWRR Agreement"). It is anticipated that GWRR shall inspect the sample Car and, if such is the case, confirm in writing to Lessee that it conforms to the specifications set forth in the Schedule I. Lessee shall send a copy of the confirmation to Lessor. Upon such approval by GWRR and Lessee's subsequent determination that each Car conforms to the specifications agreed to by GWRR, and to all applicable government regulatory specifications, Lessee will accept delivery thereof as agent of Lessor at the manufacturer's facility and shall transmit to Lessor and GWRR a written Certificate of Inspection and Acceptance.

(ii) Lessee, as agent for Lessor, shall then arrange for the Cars to be delivered to the car lining shop designated by Lessor where a lining shall be applied to each Car according to arrangements made by Lessor. It is anticipated that GWRR shall inspect the sample Car at Lessor's expense and, if such is the case, confirm in writing to Lessee that it conforms to the lining specifications described in the Schedule I. Lessee shall send a copy of the confirmation to Lessor. Upon such approval by GWRR and Lessee's subsequent determination that each Car conforms to

the lining specifications, Lessee will accept delivery from Lessor of the Cars under this Lease Agreement at the car liner's facility and notify Lessor and GWRR in writing of such inspection and acceptance.

(iii) Lessee may hire an independent inspector at the expense of Lessor to inspect the Cars at both the Pullman facility and the lining facility and to certify that the Cars conform to the specifications and all applicable government requirements. Prior to the appointment of the inspector, Lessee will consult with Lessor.

(iv) As to any Car not covered by the GWRR Agreement, the inspection procedures and any modification shall be as agreed to between Lessor and Lessee. In any event Lessor shall bear the cost of all inspections at both the Pullman facility and the lining facility.

(b) Unless other utilization as provided in Section 4(c) hereof has been provided, after completion of the UMLER registration set forth in Section 4(f) hereof, Lessee shall arrange for the Cars to be delivered to GWRR which shall cause the Cars to be moved to its track at Retsof, New York as soon after such delivery as may be practicable and consistent with mutual convenience and economy; it being understood that due to the nature of railroad operations in the United States, Lessee can neither control nor determine when the Cars will actually arrive at Retsof, New York. Lessor shall be directly responsible for the cost of all necessary movement of the Cars from Pullman to the car lining shop and from the car lining shop to Retsof, New York and shall reimburse Lessee therefor within fifteen (15) days after the submission of a statement by Lessee to Lessor. Upon arrival at Retsof, it is understood that the Cars shall be placed in salt service pursuant to a certain Sublease Agreement (which has been or will be executed shortly) between Lessee and GWRR dated as of May 1, 1980 (the "GWRR Agreement"), a copy of which is attached hereto as Exhibit B.

(c) Provided it does not conflict with the interests or requirements of GWRR, Lessee, after consultation with GWRR, is obligated to use its best efforts to maximize utilization of the Cars under the GWRR Agreement, including the placement of Cars in general per diem service, assignment to other railroads, or lease to shippers; provided, however, Lessor acknowledges:

(i) the existence of the 1978-1983 Covered Hopper Program (the "1978-1983 Program") pursuant to which Lessee manages 425 covered hopper railroad cars

(ii) in connection with the 1978-1983 Program, the existence of a certain Agreement dated as of November 7, 1978 under which GWRR agrees with Lessee that the 1978-1983 Program cars shall have a loading priority to later acquired cars, including the Cars

(iii) the existence of the 1979-1984 Covered Hopper Program (the "1979-1984 Program") pursuant to which Lessee manages 10 covered hopper railroad cars

(iv) In connection with the 1979-1984 Program, the existence of a certain Agreement dated as of December 10, 1979 under which GWRR agrees with Lessee that the 1979-1984 Program cars shall have a loading priority to later acquired cars, including the Cars.

Lessee warrants that the agreements listed in subparagraphs (i) through (iv) above are the only existing agreements entered into by Lessee or GWRR (other than arrangements with shippers as hereinafter described) which grant any person a loading priority on the GWRR tracks.

GWRR has in the past, and may from time to time in the future, consent to the acquisition of railroad cars by a shipper served by GWRR on its tracks. Lessor acknowledges that such an acquisition has or will have, as the case may be, the effect of granting such shipper a loading priority as to such shipper cars compared to any Car or Cars.

(d) If Lessee shall determine to place Cars other than in salt service, Lessee may, in its sole discretion, reject any opportunities in other service, regardless of the potential income from such service, if Lessee reasonably believes that the commodity or commodities to be carried would cause unreasonable damage or maintenance expenses. Furthermore, Lessee may otherwise restrict the use of the Cars if Lessee believes such restrictions to be in the best interests of the Lessor. This Subsection shall not restrict Lessor's right to terminate pursuant to Subsection 11(a).

(e) In the event the GWRR Agreement is terminated for any reason, Lessee shall use its best efforts to keep the Cars in use for the term of this Agreement by entering into agreements which provide for the use of the Cars by shippers, railroads, or other financially responsible parties on conditions which are customary in the industry and by taking such steps as may be required to insure that all obligations and duties arising under such agreements, whether of lessor or lessee, are performed or complied with in an orderly and timely fashion.

(f) Lessee will use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any deployment agreement, lease or otherwise, including but not limited to entering the Cars in the Universal Machine Language Equipment Register ("UMLER").

(g)(i) Lessee will collect all car hire payments, lease payments, and all other revenue and sums (including insurance benefits or railroad or lessee indemnity payments payable in connection with any damage or loss or total destruction of a Car as provided in Subsection (q) hereof due with respect to the Cars and deposit them in a special bank account (the "special bank account") maintained by the Lessee for the purpose of performing its obligations under this Agreement (and not commingling with the Lessee's own funds and assets or funds arising from any other agreement entered into by Lessee). Lessee will pay expenses arising out of the use of the Cars out of the special bank account including, but not limited to, repairs, maintenance and taxes.

(ii) All records maintained by the Lessee with respect to the Cars shall be open at all times for inspection by Lessor or its agents and representatives. The Lessee will furnish copies of any such records to Lessor promptly upon request.

(iii) Lessee shall promptly pay all bills and expenses properly incurred by Lessee under this Agreement. To the extent that the receipts from the Cars are not sufficient to cover these expenses, Lessor will reimburse Lessee for any such deficiency. It is the intent of the parties hereto that the Lessee shall not be required to employ its own funds in the performance of its duties, other than administrative costs, or the payment of any expenses with respect to the Cars.

(h) Lessee will terminate all deployment agreements and leases and recover possession of Cars and enforce all rights of Lessor or Lessee with respect to third parties, including the payment of all amounts owed under any deployment agreement or lease or otherwise with respect to the Cars as shall be appropriate or necessary after prior written notice to Lessor; and may, as appropriate or necessary, at the Lessor's expense, after prior written notice to Lessor, institute and prosecute legal proceedings as permitted by applicable laws in order to terminate such agreements and/or recover possession of the Cars, and settle, compromise and/or release such actions or suits or reinstate such agreements.

(i) Lessee will establish a preventive maintenance program and will supervise such program for the Cars and will arrange for such maintenance, as well as running repairs, to be performed in accordance with standards generally accepted in the railroad industry, at the Lessor's expense. Maintenance shall be performed in the GWRR's repair shop whenever practicable, provided performance of repairs in the GWRR's repair shop is consistent with maximizing Net Earnings as hereinafter defined. In order to facilitate the continued and immediate use of the Cars, Lessee shall have the right, by this Agreement, to authorize any maintenance either by GWRR or such other facility as Lessee might select at Lessor's expense provided that the costs of such repairs do not exceed the cost of repairs as specified from time to time in the Association of American Railroads Rules for Interchange (if such costs are specified), and otherwise at GWRR's then prevailing rates. Lessee shall use its best efforts to assure that such maintenance shall be performed with the end result of maintaining the Cars in good condition, and shall be of a quality equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, or (ii) any standard set by a deployer or lessee pursuant to a deployment agreement or lease or (iii) any standard set by any insurance policy under which any of the Cars shall from time to time be insured. Lessee shall arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 8(c) shall be made except as provided therein.

(ii) Subject to obtaining acceptable financing, GWI Leasing Corporation ("GWILC"), an affiliate of Lessee, shall purchase from Pullman approximately 50 covered hopper railroad cars

("Affiliate Cars") built substantially according to the same specifications as those of the Cars. It is anticipated that the Affiliate Cars will be delivered to Lessee at approximately the same time as the delivery of the Cars. During the term of this Agreement, the cost of maintenance and repairs of the Cars and the Affiliate Cars shall be pooled to the extent practicable, except where one or more Cars or Affiliate Cars is subject to a net lease or is used in some other way so to make such pooling not feasible. The adjustment to the maintenance and repair accounts of Lessor and GWILC shall be pro rata on a per car basis and shall occur on a monthly basis. Nothing herein is intended (i) to obligate GWILC to participate in any way in the Maintenance Fund as provided in Section 7(a) hereof or (ii) to create or imply any restriction on or obligation concerning the use, lease or deployment of the Affiliate Cars other than the pooling of maintenance and repair costs.

(j) If requested, Lessee will use best efforts to have GWRR name Lessor as an additional insured on its third party liability policy, or any other policy relating to the Cars, with a charge to Lessor only for incremental costs to GWRR. Upon execution of this Agreement, and upon request from time to time, Lessee shall provide insurance information to Lessor including copies of current policies. Upon request of Lessor, Lessee will use its best efforts to obtain for the Lessor in its name, or that of its designee, such insurance as shall be reasonably available to protect the interest of Lessor in the Cars (with Lessee and its agents, sublessees and subcontractors, being named in each such policy of insurance as additional insureds and loss payees), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars; provided, however, that if Lessee determines that the cost of insurance described above is unreasonably high, or cannot be obtained, Lessee need not place or acquire such insurance and shall immediately so notify Lessor. Lessor agrees that any policy it acquires shall name the Lessee, its agents, sublessees and subcontractors as additional insureds and loss payees. The Lessor shall be required to carry such levels of insurance as Lessee shall designate as necessary but such insurance shall in no event exceed such levels as are then carried by owners of other covered hopper railroad cars managed or leased by Lessee.

(k) Lessee will pay in Lessor's name and at Lessor's sole expense all personal property taxes, sales and use taxes, and other taxes, charges, assessments, or levies (other than income, franchise, estate or inheritance taxes) imposed upon or against

the Cars of whatever kind or nature. Such taxes shall include Lessor's portion of ad valorem, gross receipts and other property taxes which are levied against all railroad cars bearing reporting marks then being used by the Cars (it being understood that it may not be possible to make an exact allocation of such taxes but that Lessee will use its best efforts to allocate to the Cars only that portion of the aggregate of such taxes as are attributable to them). In Lessee's sole discretion, or upon direction of Lessor, Lessee will defend against any such charges and seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Lessor and at such Lessor's sole and direct expense. Lessee shall notify Lessor of any such defense or appeal and shall comply with any objection of Lessor.

(l) Lessee will monitor and record movement of the Cars. It is understood that the inter-railroad system of monitoring such Cars is dependent on the use of equipment marks registered with the AAR and that for so long as the Cars are subject to this Agreement they shall carry no marks other than those specifically approved by the Lessee or as provided in Subsection (p) subject only to the limitations imposed by Subsections (c) or (p) of this Section.

(m) Lessor shall have the right to inspect the Cars at such reasonable times as Lessor may request. Lessee will maintain records of all transactions relating to the Cars and make such records available for inspection by Lessor or any of Lessor's representatives during reasonable business hours. Lessee shall file all reports with Federal, State or other regulatory agencies as required.

(n) Lessee will record this Lease Agreement, the GWRR Agreement, and any other lease or other agreement which Lessee in its sole discretion deems appropriate and advisable for recording with the Interstate Commerce Commission as provided in 49 U.S.C. §11303, and shall furnish Lessor evidence of such recording.

(o) Lessee will paint the Cars such colors and with such designs as Lessee may from time to time approve and place such reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR or as shall be necessary to achieve high utilization for the Cars. It is understood that when the Cars are subject to the GWRR Agreement or any subsequent agreement with GWRR, they shall carry the "GNWR" marks; when the Cars are leased as shipper cars, they will carry the marks "GWIX;" and when the Cars are subject to a railroad other than GWRR (other

than by assignment from GWRR), they may carry such railroad marks. Lessee will cause such identification of the holder or assignee as may be required in 49 U.S.C. §11303 of the Interstate Commerce Act or such other governmental regulations as may be applicable. It is understood that when marks are first placed on the Cars, and when the marks are changed at any time, Lessee shall give prior written notice to Lessor, and Lessor's designee, of the marks then placed on the Cars.

(p) Lessee will maintain plaques or markings placed on the Cars by Lessor, or cause such plaques and marking to be placed on the Cars as directed by Lessor at Lessor's expense, to protect its rights and the rights of any holder or assignee (lien holder), and make any additions thereto or changes thereof required by law or reasonably requested by Lessor to protect such rights. Lessee shall replace promptly at Lessor's expense any such markings which may be removed, defaced, or destroyed. Except as provided in this Subsection, Lessee will use its best efforts not to allow the name of any person, association, or corporation to be placed on any Car in such a way as to assert a claim of ownership. This Subsection does not, however, prevent the marking of any Car with the name of a shipper, lessee or de-employing railroad.

(q) Lessee will use its best efforts to collect all sums due from any railroad as the result of damage to, or loss or total destruction of, a Car during the term of this Agreement and to remit all sums due Lessor as hereinafter provided.

(r) Lessee will furnish at Lessor's sole and direct expense factual information not otherwise required under this Agreement reasonably requested by Lessor for use by Lessor in connection with its preparation of its Federal, State and local tax returns.

(s) If Lessor has elected to finance a portion of the purchase price for any of the Cars from borrowings for which any refinancing is needed and Lessor shall have requested in writing that Lessee assist in arranging such refinancing, then Lessee shall use its best efforts to arrange such refinancing. If Lessee arranges such refinancing, then Lessor shall pay to Lessee a refinancing fee equal to three per cent (3%) of the principal amount financed. Neither Lessee nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to such refinancing.

(t) Lessee will perform for Lessor such other services incidental to the foregoing as may from time to time be requested by Lessor and considered reasonably necessary by Lessee in connection with the leasing and operation of the Cars.

(u) If requested by Lessor, Lessee shall at the expiration of this Lease Agreement use its best efforts to assist Lessor in placing the Cars under a lease arrangement or management arrangement; provided, however, any costs incurred by Lessee in connection with such assistance shall be at Lessor's sole and direct expense.

(v) Lessee shall at Lessor's expense use its best efforts to keep the Cars free from any encumbrances or liens which are a cloud upon or otherwise affect Lessor's title and which arise out of a suit or other circumstances involving Lessee or any sublessee or deployer which relates to the Cars and their operation. Lessee shall hold Lessor harmless from encumbrances or liens which are a cloud upon or otherwise affect Lessor's title, if such encumbrances or liens arise out of circumstances relating to Lessee and do not arise from the operation of the Cars hereunder.

(w) In the event the Lessee or its agent shall, directly or indirectly, provide any act which is not among those enumerated above, such additional act shall not create any actual or implied right in the Lessor to require Lessee or its agent to perform such act; and the Lessee or its agent may, at any time, discontinue the performance of such additional act without notice to the Lessor and without liability of any kind by reason of such discontinuance.

5. AUTHORITY AND POWERS OF LESSEE.

(a) Lessee shall not have any authority to make any alterations, modifications, improvements or additions to the Cars of the type referred to in the second paragraph of Subsection 8(c) without the consent of Lessor.

(b) Lessee shall have the authority that is necessary to perform its duties under Section 4 hereof without the need for obtaining Lessor's further consent, except as otherwise specifically provided herein.

(c) After prior written notice to Lessor, which has not been objected to by Lessor within five days of such notice, Lessee shall have the authority to retain the services of attorneys at Lessor's expense in order to enforce or defend any claim resulting from the deployment or recovery of or damage to the Cars, to contest any taxes with respect thereto, to defend itself under any claim covered by Section 9 hereof and to treat the expense thereof as Operating Expenses (as hereinafter

defined) or to charge Lessor directly. Whenever Lessee takes any action or makes any payment at Lessor's sole and direct expense pursuant to this Agreement, then Lessee, after prior written notice to Lessor which has not been objected to by Lessor within five days of such notice, shall have the authority to retain such attorneys as it deems necessary, in connection with such action or payment and the cost of such attorneys' services shall be at the sole and direct expense of the Lessor.

(d) In the event a Car is damaged or destroyed, Lessee shall notify Lessor in writing of the occurrence of such event and have the authority to settle on the Lessor's behalf (after prior written notice to the Lessor), in accordance with AAR Code of Rules or any applicable insurance policy and notice of such action shall be given to Lessor.

6. GROSS REVENUES, OPERATING EXPENSES AND NET EARNINGS.

(a) All accounting calculations and computations in connection with this Agreement shall be accounted for on a cash basis.

(b) As used in this Agreement, the term "Gross Revenues" shall mean all revenues in respect of the Cars (unreduced by any expenses or costs) obtained by Lessee from any source in connection with the ownership, use, deployment, lease and/or operation of the Cars or from investment of excess funds. Gross Revenues include any insurance proceeds paid to cover any loss of rent payments with respect to the Cars. Gross Revenues does not include payment with respect to damage to the Cars.

(c) The term "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use, lease and/or operation of all the Cars (except administrative costs of Lessee) including but not limited to:

- (i) maintenance and repairs, the direct payment of which by Lessor is not otherwise provided herein
- (ii) insurance premiums and charges pursuant to Section 4(j) hereof, the direct payment of which by Lessor is not otherwise provided herein
- (iii) taxes pursuant to Section 4(k) hereof

- (iv) costs of certain inspections
- (v) legal fees incurred in connection with enforcing lease rights or repossessing or other contractual arrangements in connection with the operation of the Cars
- (vi) painting
- (vii) transit and storage costs, the direct payment of which by Lessor is not otherwise provided herein
- (viii) modifications and improvements made pursuant to this Agreement

(d) As used in this Agreement, the term "Net Earnings" shall mean 95% of the Gross Revenues less the sum of (i) the amount of Operating Expenses and (ii) any storage and transit costs due and payable to Lessee in connection with the purchase of the Cars and transporting of the Cars for delivery to GWRR under the GWRR Agreement and not theretofore paid.

7. MAINTENANCE FUND; PRIORITY OF EXPENSES.

(a) Maintenance Fund. Lessee shall maintain an escrow fund, herein referred to as the "Maintenance Fund", to cover anticipated costs for maintenance and repair of the Cars. Such fund may in the Lessee's discretion be used to pay any current maintenance or repair expenses in respect of the Cars. Lessor shall initially place in the Maintenance Fund within fifteen (15) days of the commencement of the term hereof an amount equal to \$50 per Car. On each anniversary date of this Agreement, Lessor and Lessee shall confer and agree on the funding level per Car of the Maintenance Fund for the ensuing year based on an estimate of maintenance needs. Lessor shall place any additional funding in the Maintenance Fund within thirty (30) days thereafter. Within fifteen (15) days of the payment of the rent for every month during the term hereof, Lessor shall replace any moneys expended by Lessee from the Maintenance Fund, thus returning the Fund to the \$50 per Car level, or such other funding level thereafter established.

(b) Investment of Funds. Lessee may, in its discretion, invest amounts in the Maintenance Fund and any interest earned by such investments shall be added to the fund.

(c) Priority of Expenses. In the event that ninety-five percent (95%) of the Gross Revenues are insufficient to pay the Operating Expenses provided for hereinabove, then the Lessee shall apply such revenues to all such expenses in the following priorities: (i) applicable sales or use taxes; (ii) insurance; (iii) miscellaneous operating expenses payable to third parties.

8. PAYMENT OF RENT; PAYMENT OF COSTS AND EXPENSES.

(a) Payment of Rent. Within twenty (20) days after the end of each calendar month, Lessee shall pay to Lessor the rent, as defined in Section 2 hereof, attributable to each month.

(b) Payment of Operating Deficits. Within twenty (20) days after notice and demand from Lessee, Lessor shall pay to Lessee the amount by which Net Earnings for a calendar month shall be or are anticipated to be less than zero.

(c) Payment for Special Improvements. The cost of any alterations, modifications, improvements or additions which are required by the AAR, Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements shall be the direct and sole responsibility of Lessor. Lessee shall have the right to require Lessor to pay the approximate cost thereof to Lessee, upon twenty (20) days prior written notice. Upon completion, Lessee shall notify Lessor of the exact amount of such costs, and in the event that Lessor has already paid more than such cost, Lessee shall promptly refund the difference to Lessor. If the amount already paid by Lessor is less than the exact amount of such costs, Lessor shall promptly pay to Lessee the amount of such difference.

Any such alteration, modification, improvement or addition costing \$1,000 or less per Car may be performed by Lessee without prior notice to or consent of Lessor. If any such alteration, modification, improvement or addition costs more than \$1,000 per Car, Lessee shall give to Lessor ten (10) days notice prior to commencement of the work. If in Lessor's judgment the cost of such alteration, modification, improvement or addition is not economical to expend in view of the estimated remaining useful life of the Car and Lessor elects to permanently remove

such Car from this Agreement, then Lessor shall so notify Lessee in writing prior to commencement of the work and this Agreement shall be terminated as to such Car effective the date of receipt by Lessee of such notice. Failure of Lessor to give such notice prior to the end of the ten day period shall be deemed to be consent of the Lessor to such alteration, modification, improvement or addition.

(d) Payment for Additional Insurance. The cost of insurance on the Cars, other than any non-incremental cost to GWRR for naming Lessor as an additional insured pursuant to Section 4(j), shall be the sole and direct responsibility of Lessor. In the event Lessee places or purchases any insurance on the Cars, Lessee shall give Lessor thirty (30) days notice of the date on which payment for such insurance is due. At least fifteen (15) days prior to such payment date or, in the event Lessee's notice is less than thirty (30) days prior to the payment date, within fifteen (15) days of Lessee's notice, Lessor shall pay to Lessee the cost of any such insurance.

(e) Payment For Certain Property Damage. The cost of repair of damage to any Car, excluding the cost of repairs which Lessee determines constitute maintenance of such Cars, is the direct and sole responsibility of Lessor. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments, unless the Car has been withdrawn from this Lease Agreement) shall be solely for the account and benefit of Lessor (and shall not be included within the term "Gross Revenues"). Lessee shall have the right to require Lessor to pay to Lessee, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Lessor or, at Lessee's election, such portion of such cost as Lessee believes will not be covered by any such payments which may be received by Lessee, as provided in Section 4(q), to cover the cost of such damage; it being understood that Lessee may apply to such cost of such repair any payments so received by Lessee to cover the cost of damage to such Car. Upon completion of such repairs and determination of the payments received by Lessee and applied to payment of the cost of such damage, Lessee shall notify Lessor of the exact amount of such costs and payments, and in the event that Lessor has already paid more than the amount of such costs not paid from such payments received and applied by Lessee to such repair, Lessee shall promptly refund the difference to Lessor. If the amount already paid by Lessor is less than the amount of such costs not paid from such payments received and applied by Lessee to such repairs, the Lessor shall promptly pay to Lessee the

amount of such difference. Lessee shall promptly remit to Lessor any payments to cover such damage to such Car which are received by Lessee and not applied to payment of the cost of repair of such damage. If the cost of repair not covered by insurance or indemnity payments exceeds \$1,000 for any Car, Lessor may withdraw that Car from this Agreement.

(f) Payment of Uninsured Losses. With respect to Lessee, Lessor shall have sole responsibility for losses from liability to a third party for bodily injury or property damage caused by any Car which is not covered by insurance if such loss does not result from the negligence or willful misconduct of Lessee and such loss results from (i) a deductible provision in an insurance policy, (ii) any final judgment rendered by a court in an action in which the Lessor has been given notice of the pendency of such action and the opportunity to defend or (iii) a settlement to which the Lessor has agreed in writing. Within twenty (20) days of notice and demand from Lessee, Lessor shall pay to Lessee the amount of such liability.

(g) Additional Payments at Lessor's Sole Expense. In addition, if Lessee, in its sole discretion, exercises its authority under this Agreement to make any payment or incur any additional cost at Lessor's sole and direct expense, then the Lessor agrees within twenty (20) days of notice and demand from Lessee to pay Lessee the amount of such payment or costs.

9. INDEMNIFICATION.

Lessor shall defend (if such defense is tendered to Lessor or if Lessee does not defend and Lessor so elects), indemnify and hold Lessee harmless from and against any and all claims, actions, judgments, settlements, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against Lessee (either alone or jointly or severally) as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars, including, without limitation, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Lessor shall not defend, indemnify or hold Lessee harmless from and against, and Lessee shall not be exculpated (in the case of claims of a third party or Lessor) from any claim, action, judgment, settlement, damage, expense, loss or liability caused by or arising from negligence or willful misconduct of Lessee. Anything to the contrary herein notwithstanding, Lessor shall not be obligated to indemnify Lessee against any liability of the Lessee to any person arising out of the termination of this Agreement pursuant to Section 12.

10. RIGHT OF FIRST REFUSAL.

(a) During the period when this Agreement is in effect, if Lessor shall have received from a third party ("Offeror") a bona fide offer (the "Offer") for the purchase of any or all of the Cars, and Lessor desires to accept the Offer, Lessor shall first obtain a copy of the Offer in writing signed by the Offeror and forward a true copy thereof to Lessee. In such cases (but no others) Lessee, or any affiliate of Lessee designated by it, shall thereupon have the first option for a period not to exceed fifteen (15) days after receipt of a copy of the Offer from Lessor to purchase the Cars upon the same terms and conditions as set forth in the Offer by written notice posted or delivered not later than the last day of the option period, with the closing to occur within fifteen (15) days thereafter. It is understood, however, that if Lessee, or its affiliate, does not exercise the right of first refusal and any or all of the Cars are sold pursuant to the Offer, they will be sold subject to this Agreement.

(b) Lessor shall have the right to transfer the Cars to any affiliate of Lessor without first offering the Cars to Lessee pursuant to Subsection 10(a), provided such affiliate transferee agrees to be bound by the terms and conditions of this Lease Agreement.

11. TERMINATION BY LESSOR.

The Lessor may terminate this Agreement by written notice in the event that:

(a) After December 31, 1980, off-line utilization of the Cars taken as a group is less than 85% during each of any two consecutive calendar quarters.

(b) The Lessee fails to pay rent to Lessor within twenty (20) days after the date any such payment is due. In the event of termination under this Subsection 11(b), Lessor may proceed by any lawful means to recover its actual damages.

(c) Lessee breaches any other term, covenant or condition of this Agreement which is not cured within twenty days of receipt of written notice thereof.

(d) Such election under Section 11(a) shall be effective only if received by Lessee within thirty (30) days of the date of the report given pursuant to Section 14(a) or (b), as the case

may be, for the last month of the last such consecutive quarter. If any notice of termination is given by the Lessor pursuant to this Section 11, then the termination date shall be the date such notice is received or such later date, not in excess of ninety (90) days after the date such notice is transmitted, as shall be specified in such notice.

12. TERMINATION BY LESSEE.

(a) The breach by Lessor of any term, covenant or condition of this Agreement or the failure of Lessor to pay any sum required herein to be paid Lessee within ten (10) days after the date due shall be an event of default of Lessor.

(b) In the event of default by Lessor, Lessee may at its option (i) terminate this Agreement; or (ii) proceed by any lawful means to enforce performance of this Agreement; and/or (iii) recover its actual damages.

13. RIGHTS ON TERMINATION.

In the event of termination of this Agreement for any reason, Lessee shall deliver the Cars to Lessor at the GWRR tracks in Retsof, New York (or to such other place designated by Lessor). Lessee shall bear the cost of returning the Cars to Retsof, New York. If the Cars are sent to some other place designated by Lessor, then Lessor shall bear the incremental cost above the cost to Lessee and/or GWRR of returning the Cars to Retsof. Lessor shall at its own expense cause the marks on the Cars to be changed, take control of the Cars and arrange for removal of the Cars from the GWRR tracks or any other railroad tracks, and (subject to the following provisions of this Section 13) assume responsibility for any and all storage and transportation charges with regard to the Cars. Lessee shall use its best efforts to load the Cars at Retsof, New York in a direction designated by Lessor and to cause GWRR to provide free storage for the Cars at Retsof, New York for a period of ninety (90) days following the termination of this Agreement. After the date of any termination, Lessee shall continue to pay to Lessor rent based on Gross Revenues attributable to the period prior to the termination date and shall continue to pay Operating Expenses for that period. When Lessee determines that all or substantially all Gross Revenues have been received and all or substantially all Operating Expenses have been paid it shall so notify Lessor, provide Lessor with a final monthly report and pay to Lessor any moneys left in the Maintenance Fund.

14. REPORTS.

(a) Not later than twenty (20) days after the end of each calendar month, Lessee will distribute to Lessor an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses, Net Earnings and rent for such month (all accounted for on a cash basis), including the computation and the allocation of any property taxes and expenditures from the Maintenance Fund. Such reports shall also show the amount of rent, if any, for such month paid to Lessor pursuant to Section 8(a) and set forth the amount of insurance which the Lessee has been able to obtain for the Cars.

(b) Within sixty (60) days after the close of each calendar year, Lessee will distribute to Lessor a report showing for such year the same information reported on the monthly report distributed pursuant to Section 14(a).

15. FOREIGN USE OF CARS.

Unless otherwise directed by Lessor, lessee shall use its best efforts to enforce the obligations of GWRR under the GWRR Agreement so that the Cars will not be used predominantly outside the United States during 1980 or any subsequent calendar year within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. Lessee shall cause each other lease for the Cars entered into, or arrangements for the use of the Cars made to contain provisions similar to that contained in the GWRR Agreement regarding predominant use outside the United States within the meaning of Section 48(a)(2)(A) and shall use its best efforts to enforce the obligations thereunder.

16. NOTICES.

Any notice, statement, objection, offer, acceptance or remittance required or permitted hereunder shall be in writing and shall be valid and deemed to have been given (a) upon delivery, if delivered personally, (b) five days after dispatch, if dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as indicated below, or (c) upon transmission, if transmitted by telegraph or telex (but only if addressee has a telex) to the address indicated below. For purposes of this Section 16, the notices etc., shall be sent, transmitted or delivered to the following addresses:

If to Lessee: GWI Rail Management Corporation
71 Lewis Street
Greenwich, Connecticut 06830

With a copy James B. Gray, Jr., Esq.
(except of a Harter, Secrest & Emery
remittance) to: 700 Midtown Tower
Rochester, New York 14604

If to Lessor: If delivered or telegraphed:

C.K. Industries, Inc.
c/o Claude Bigot
201 N.W. 131st Avenue
Plantation, Florida 33325

If mailed:

C.K. Industries, Inc.
c/o Claude Bigot
P.O. Box 15160
Plantation, Florida 33318

With a copy Robert T. Cole, Esq.
(except of a Cole Corette & Bradfield
remittance) to: 1200 Seventeenth St., NW
Washington, D.C. 20036

and any party may change such address by notice given to the other party in the manner set forth above.

17. SUBLEASES, ETC.

It is understood and agreed that Lessee may sublease or otherwise deploy the Cars, assign all or any part of its rights, and/or subcontract for the performance of any responsibilities and obligations hereunder, including but not limited to any discretionary or judgmental powers it may possess hereunder, to another party who, in Lessee's sole discretion is capable of performing those assigned responsibilities and obligations; provided, however, Lessee may not sublease or otherwise deploy the Cars pursuant to a written agreement for a term which exceeds the lesser of (i) one year or (ii) the then remaining term of this Agreement without the consent of Lessor; provided, further, however, Lessee shall not, without the consent of Lessor, enter into any sublease, assignment, or deployment agreement which by

its terms exculpates any railroad from any liability imposed upon it by operation of law or AAR agreements or regulations for any damage to the Cars while on a railroad's line. It is also specifically acknowledged, but not by way of limitation, that Lessee may assign all of its right and title to the right of first refusal granted pursuant to Section 10.

18. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York.

(b) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) [omitted]

(f) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any Federal, State or local government or any agency thereof provided, however, that nothing contained in this Section 18(f) shall affect the right of the Lessor to terminate pursuant to Section 11 hereof.

(g) Other Customers of Lessee. It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit Lessee from providing the same or similar services to any person or organization not a party to this Agreement. In particular, Lessee shall be entitled to manage cars identical to the Cars under a similar management agreement with another owner; provided, however, that if Lessee owns, or manages

for any other party, railroad cars which are similar to or competitive with the Cars, and the total of such cars (including the Cars) available for lease exceeds the demand for such cars, the Cars shall, subject to factors beyond Lessee's control, be treated no less favorably than any other cars Lessee owns or manages. Lessor recognizes and acknowledges that it is Lessee's intention to give priority to those cars which have been off-lease and available for the longest period of time.

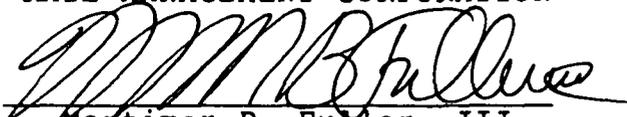
(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

LESSOR:

Date: May 1, 1980

GWI RAIL MANAGEMENT CORPORATION

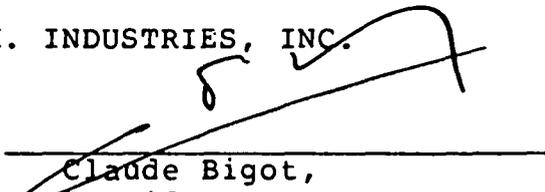
By: 

Mortimer B. Fuller, III,
President

LESSEE:

Date: May 1, 1980

C.K. INDUSTRIES, INC. 

By: 

Claude Bigot,
President

United States of America
~~STATE OF~~)
~~COUNTY OF~~) SS.:
~~CITY OF~~)
District of Columbia

On this 1st day of May, 1980, before me personally came Claude Bigot, who being by me duly sworn, did depose and say: that he resides in Plantation, Florida, that he is the President of C.K. Industries, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed is said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Pauline D. Verdaw

Notary Public

My Commission Expires October 14, 1983

United States of America
STATE OF)
COUNTY OF) SS.:
CITY OF)
District of Columbia

On this 1st day of May, 1980, before me personally came Mortimer B. Fuller, III, who being by me duly sworn, did depose and say: that he resides in Rye, New York, that he is the President of GWI Rail Management Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed is said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Pauline D. Verdau

Notary Public
My Commission Expires October 14, 1983

EXHIBIT A

<u>Quantity</u>	<u>Description</u>	<u>Car Numbers</u>
Fifty (50)	100-Ton, 4750 cfc. covered hoppers manufactured by Pullman Standard, a division of Pullman Incorporated, in accordance with Pullman Standard's Specification No. 1137-A and the "Buyer's" Letter Order dated May 8, 1980 and Pullman Standard's letters dated May 16, 1980 and June 27, 1980.	GNWR 410051 through 410100 inclusive