

RECORDATION NO. 9266 FILED 1425 *A*
MAR 2 1995 -2 10 PM
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

NATIONAL CITY LEASING CORPORATION

AND

RAILTEX, INC.

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- B. In the event any Unit presented for acceptance to Lessee is not in FRA and AAR interchange condition, then upon written notice of the same by Lessee to Lessor, Lessor, at its option shall either promptly cause said Unit(s) to be repaired (at no expense to Lessee) or exclude such Unit(s) from this Lease.

3. Car Hire Earnings.

- A. Upon delivery of the Units as set forth in Section 2 hereof, with reporting marks on each Unit as set forth in Section 6 and Annex A hereto, Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessor's, Lessor shall not be responsible for the collection of any car hire earnings, and such responsibility shall lie solely with Lessee. If the reporting marks on the Units are Lessor's, Lessor shall collect car hire earnings attributable to the Units and shall forward such car hire earnings to Lessee.
- B. Lessee acknowledges that the Interstate Commerce Commission ("ICC") has significantly altered the manner in which car hire rates are prescribed. Lessee shall not, without Lessor's prior written consent, voluntarily elect to deprescribe any Unit subject to this Lease by designating any Unit a market rate car pursuant to 49 CFR 1033.1(b)(3).

4. Term of Lease.

- A. There shall be an interim term under this Lease with respect to each Unit ("Interim Term") which shall commence on the Delivery Date for such Unit as provided in Section 2 hereof and shall continue until the first day of the month following the Delivery Date for the last Unit (the "Effective Date"), provided, however, that the Effective Date shall be no later than March 1, 1995 at which time the initial term of this Lease ("Initial Term") with respect to each Unit shall automatically commence and shall continue in full force and effect for a period of seventy-two (72) months thereafter.
- B. Upon the expiration of the Initial Term ("Initial Expiration") if no event of default has occurred and is continuing under this Lease, Lessee shall have the option to extend the Term of this Lease (as defined hereinbelow) for any or all Units (the "Extended Term"); provided, however, that (i) Lessee has given written notice to Lessor ninety (90) days prior to the Initial Expiration of Lessee's desire to accept the Extended Term; (ii) the rental rate for the Units shall be based upon the then fair market value for the Units ("Renewal Rate") and (iii) the terms, conditions and Renewal Rate of the Extended Term shall be mutually agreed upon by Lessor and Lessee (unless specified otherwise the Interim Term, Initial Term and

Extended Term shall herein collectively be referred to as the "Term of this Lease").

- C. The obligations of Lessee hereunder (including, but not limited to, the obligations of Lessee under Sections 7, 10 and 12 hereof) shall survive the expiration or sooner termination of this Lease.
- D. Lessee shall have the right to assign the Units to exclusive Canadian domestic service; *provided, however*, that any and all costs of Canadian domestication, including without limitation, Canadian customs duty payable pursuant to such domestication, shall be borne by Lessee.

5. **Rentals.**

- A. Lessee shall pay to Lessor as rental for the Units an amount of four hundred fifty dollars U.S. (\$450.00 U.S.) per Unit per month ("**Rent**"), net of any duties, customs fees and withholding taxes. Rent shall become effective, with regard to each of the Units, upon the Delivery Date for such Unit, and shall continue in effect, with regard to each of the Units, until such Unit is returned to Lessor at the end of the Term of this Lease, as hereafter provided in Section 12. During the Term of this Lease, payment of Rent shall be made on the first day of each month in advance, *provided, however*, Rent shall be prorated for any Unit if (i) the Delivery Date is not on the first day of a calendar month or (ii) such Unit is not returned by Lessee on the last day of a calendar month. If the Delivery Date for any Unit is other than the first day of a calendar month, the pro rata payment for that month will be added to, and paid with the following month's rent. Payment of Rent shall be made to Lessor at the address specified in Section 18.
- B. In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, Lessee shall pay Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by Lessee at a rate equal to eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less. Any costs incurred by Lessor in collecting Rent or any other sum of money due under this Lease wrongfully withheld by Lessee, including, but not limited to, reasonable attorneys' fees, shall be paid by Lessee.
- C. This Lease is a net lease and Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off against Rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any

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defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity or any government authority, the invalidity or unenforceability or lack of due authorization of 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 payments payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever. The rentals and other sums payable by Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever, except as otherwise provided herein.

6. Identification Marks.

- A. Lessee shall, at its expense and as directed by Lessor, (i) remark each Unit to bear the reporting mark and an identifying number as provided in Annex A and (ii) place Automatic Equipment Identification Tags on each Unit. Lessee will cause each Unit to be kept tagged and numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by Lessor, 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 owner and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words 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. Lessee will not permit the identifying number of any Unit to be changed without written consent of Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

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

7. **Taxes.**

- A. All payments to be made by Lessee hereunder will be free of expense to Lessor for collection or other charges and will be free of expense to Lessor with respect to the amount of any United States of America ("U.S.") local, state, or federal taxes (other than the federal income tax payable by Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, charges, fines, penalties or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof) ("**Impositions**"), all of which Impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon Lessee's earnings arising therefrom or upon Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of Lessor or result in a lien upon any such Unit.
- B. Lessee assumes responsibility for and agrees to pay, protect, defend, hold harmless and indemnify Lessor and its successors against any Canadian taxes, levies, impost or duties of any nature including, but not limited, to Canadian withholding taxes, together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (i) the Units, (ii) the lease, sublease or delivery of the Units, (iii) revenue earned by Lessee from the Units, including but not limited to mileage charges and/or car hire revenue, during the Term of this Lease, including all taxes imposed by any local, provincial, state or national government, except property taxes on paid-up capital or taxes on income earned by Lessor.

8. **Loss, Damage or Destruction.**

- A. **Risk of Loss, Damage or Destruction.** As between Lessee and Lessor and any person claiming through Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or

occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor), such risk to be borne by Lessee with respect to each Unit from the Acceptance Date and continuing until such Unit has been returned to Lessor in accordance with the provisions of Section 12 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay Rent.

- B. **Casualty Occurrence.** If, during the Term of this Lease, any Unit shall be or become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of ninety (90) continuous days (such occurrences being hereinafter called "**Casualty Occurrence(s)**"), Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform Lessor in regard thereto. On such date Lessee shall pay to Lessor an amount equal to any accrued rental for such Unit to the date of such payment. Lessee shall also pay Lessor a settlement value payment as specified in the Casualty Schedule attached hereto as Annex C ("**Settlement Value**"). Upon the making of such Settlement Value payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the Term of this Lease as to such Unit shall terminate and, except in the case of the loss, theft or complete destruction of such Unit, Lessee shall be entitled to ownership and possession of such Unit or the remains thereof. Lessor has the right, in its sole discretion, to replace any Unit subject to a Casualty Occurrence and any such replacement Unit will be subject to this Lease as if originally a part thereof.
- C. Except as hereinabove in this Section 8 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after the Acceptance Date for such Unit.

9. **Report, Inspection and Record Keeping.**

- A. On or before March 31 in each year, commencing with the calendar year 1996, Lessee will furnish to Lessor an accurate statement setting forth as of the preceding calendar year end (i) the amount, description and numbers of all Units then leased hereunder, (ii) the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and, (iii) such other information regarding the condition and state of repair of the Units as Lessor may reasonably request.

- B. Lessor or its agent, at its sole cost and expense, shall have the right to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor may request during the Term of this Lease.

10. Warranties; Compliance with Laws and Rules; Maintenance; Insurance; Indemnification; Reports and Financial Information.

- A. Warranties. Lessor warrants that Lessor has the right to lease the Units. Lessor hereby assigns to Lessee for the Term of this Lease the benefit to which Lessor is entitled of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, Lessor leases the Units AS-IS, AND LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.
- B. Compliance with Laws and Rules. Lessee agrees, for the benefit of Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the AAR or any Canadian rules of similar application and with all rules of the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repair of any such Unit, Lessee will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that Lessee may, in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect the property rights of Lessor hereunder.
- C. Maintenance. Lessee shall at all times during the Term of this Lease, at its own cost and expense, in accordance with the AAR Interchange Rules and FRA Railroad Freight Car Safety Standards, cause each Unit to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted.

- (i) Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any Unit without the other party's written consent.
- (ii) Any and all additions to any Unit and any replacements thereto and of parts thereof made by Lessee shall constitute accessions to such Unit and, without cost or expense to Lessor, there shall be immediately vested in Lessor the same interest therein as the interests of Lessor in such Unit.

D. **Insurance.** Lessee shall, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to each Unit in minimum amount equal to the Settlement Value (as defined in Section 8.B.); and (ii) public liability insurance in a minimum amount of twelve million dollars (\$12,000,000.00) per occurrence with respect to third party personal injury and property damage, in each case for such risks and with such insurance companies as are satisfactory to Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. If Lessee fails to place insurance, or that said insurance expires, Lessor has the right to purchase the insurance described above and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

Each policy obtained by Lessee shall be in accordance with the terms and conditions of this Section 10.D., and such terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request.

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- E. Indemnification.** Lessee agrees to indemnify, save harmless and defend Lessor against any charges or claims made against Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which Lessor may incur in any manner (unless resulting from Lessor's sole negligence) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to Lessor in accordance with the terms of this Lease, and to indemnify and save harmless Lessor against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this Section 10.E. shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.
- F. Reports.** Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all mandatory reports of which Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by Lessor, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing of the Units to Lessee. Lessor shall notify Lessee of any such reports of which Lessor has actual knowledge.
- G. Financial Information.** Lessee agrees to furnish to Lessor (i) within one hundred twenty (120) days after the close of each of its fiscal years commencing 1995, its certified consolidated balance sheet as of the end of the fiscal year and the related certified consolidated statements of income, retained earnings and changes in financial position for the fiscal year then ended, each prepared in accordance with U.S. generally accepted accounting principles; (ii) within sixty (60) days after the end of each six (6) month period of each fiscal year, its balance sheets as of such period, all of which shall be certified by the president or chief financial officer to be, in his opinion, complete and correct and to present fairly, in accordance with generally accepted accounting principles consistently applied throughout the period involved, its financial position as of the end of such period and the results of operations for the elapsed portion of the fiscal year ended with the last day of such period, in each case on the basis presented and subject only to normal year-end auditing adjustments; and (iii) promptly from time to time, on request, such other information concerning the business, condition and affairs of Lessee as Lessor shall reasonably request.

(ii) redeliver possession of such Unit to Lessor at an interchange point designated by Lessor ("Redelivery Point"); provided, however, that Lessor shall allow Lessee one (1) final revenue load off-line ("Final Load") for such Unit and that Lessee's cost and expense for the empty redelivery of such Unit to the Redelivery Point does not exceed the empty mileage charges for one thousand five hundred forty-four (1,544) miles at the prevailing rate posted by the Canadian National Railway ("Empty Mileage Charges"). Lessor shall pay all Empty Mileage Charges in excess of one thousand five hundred forty-four (1,544) miles for the redelivery of such Unit to the Redelivery Point.

- B. Rent shall terminate for each Unit on (i) the commencement date of the Free Storage Period for such Unit or (ii) the date upon which such Unit is delivered to Lessor at the Redelivery Point.
- C. Subject to Section 8, Lessee shall return each Unit to Lessor (i) in as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, (ii) in condition suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards, (iii) free of Rule 95 damage, and (iv) reasonably free of accumulations from commodities transported in such Unit while in the service of Lessee.
- D. The movement and storage of such Unit shall be at the expense and risk of Lessee if Lessor has given movement and storage instructions within the Free Storage Period; provided, however, that if Lessor instructs Lessee to store any Unit for a period beyond the Free Storage Period, such additional movement and storage shall be at the expense and risk of Lessor with the exception of any loss, damage or destruction caused by negligence or willful misconduct of Lessee. During any storage period Lessee shall permit Lessor or any person designated by it, to inspect the same at such reasonable time or times as shall be reasonably acceptable to Lessee.
- E. The assembling, delivery, storage and transporting of the Units as provided in this Section 12 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to

- B. The remedies in this Lease provided in favor of 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. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the Rent due hereunder, and agrees to pay Rent regardless of any offset or claim which may be asserted by Lessee or on its behalf except Lessee shall be credited with any present value payments made pursuant to Subsection 13.A.(vii)(a).
- C. The failure of 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.

14. Return of Units Upon Default.

- A. If this Lease shall terminate pursuant to Section 13 hereof, Lessee shall forthwith deliver possession of the Units to Lessor. The condition of the Units upon such return shall be as required pursuant to Section 12 hereof. For the purpose of delivering possession of any Unit or Units to Lessor as above required, Lessee shall at its own cost, expense, and risk:
- (i) forthwith place such Units upon such storage tracks of Lessee as Lessor reasonably may designate or, in the absence of such designation, as Lessee may select,
 - (ii) permit Lessor to store such Units on such tracks for a period not exceeding six (6) months at the risk and expense of Lessee, and
 - (iii) transport the same, at any time within such six (6) month period, to any place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as reasonably directed by Lessor. The assembling, delivery, storage and transporting of the Units as provided in this Section 14 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units.
- B. Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 14, Lessee hereby

irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

15. Assignment; Possession and Use.

- A. Conditioned upon Lessee performing all of the terms, covenants, and conditions of this Lease, Lessor, its successors and assigns will not disturb Lessee's peaceable and quiet possession and use of the Units during the Term of this Lease.
- B. This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. All the rights of Lessor hereunder (including but not limited to the rights under Sections 7, 10 and 13) shall inure to the benefit of Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.
- C. So long as Lessee shall not be in default under this Lease, Lessee may with prior written consent of Lessor sublease any one or more of the Units or assign this Lease to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) Lessee shall provide Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.
- D. Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the Term of this Lease use or fail to use any Unit, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the Term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from,

or allocable to, sources within the U.S.; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

- E. As security for its obligations hereunder, Lessee hereby assigns to Lessor, and grants a security interest in favor of Lessor in and to, all of Lessee's right, title, and interest in and to any and all (i) rents and proceeds from the use of the Units by others, including car hire charges and interline payments made and owed by other railroad companies and rents under subleases permitted by Section 15 hereof, and (ii) proceeds of and recoveries from insurance, interline settlements for destruction, payments and compensation from taking or requisitioning authorities, or similar payments from other parties in respect of loss of or damage to any Unit. If and so long as no Event of Default or event that with the passage of time or giving of notice would become an Event of Default shall have occurred hereunder, Lessee shall be entitled to collect, receive, and apply such amounts, but upon the occurrence of such an Event of Default or event, Lessor shall be entitled to collect and receive such amounts and apply the same to the obligations of Lessee hereunder, and to exercise all rights and remedies of a secured party with respect to such amounts.
- F. Lessee shall execute and file and record this instrument or any evidence hereof or financing statement with respect thereto in such manner and in such public offices as shall be requested and provided by Lessor and shall be necessary or appropriate to perfect and protect the interest of Lessor under this section.
- G. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but Lessee shall not assign or transfer (except as otherwise permitted by this Section 15) or encumber its leasehold interest under this Lease in the Units. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of Section 15.H. below.
- H. Nothing in this Section 15 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in

default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of Lessee hereunder shall not, in the reasonable opinion of Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of Lessee hereunder (including, but not limited to, Section 17 hereof).

I. Lessee agrees that during the Term of this Lease, Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the U.S. and Canada.

16. **Opinions of Counsel.** Concurrently with the execution and delivery of this Lease and at such other times as Lessor shall reasonably request, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, substantially in the form of Annex D attached hereto, and in scope and substance reasonably satisfactory to the Lessor and its counsel or Lessor's assignee, as the case may be, to the effect that:

- A. Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;
- B. this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;
- C. the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon Lessee;
- D. if this Lease has been duly filed and recorded with the ICC under 49 U.S.C. 11303, the Registrar General of Canada and at such other registration offices as counsel for the Lessor may recommend, then no other filing or recording is necessary to protect in the United States of America and Canada the right, title and interest of Lessor in and to the Units;
- E. if the Lease were subject to the laws of Nova Scotia, and if the Lease was duly authorized, executed and delivered by the Lessor, the Lease would constitute a valid, and legal agreement and would be binding on the Lessee.

17. **Recording.** Upon full execution of this Lease by both parties, Lessor will cause a Memorandum of this Lease in the form attached hereto as Annex E to be filed and recorded with the ICC in accordance with 49 U.S.C. 11303 and an original copy of this Lease to be deposited with the Registrar General of Canada (and

notice of such deposit to be given forthwith in the Canada Gazette) pursuant to Section 90 of the Railway Act of Canada. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor, including any documents in connection with any sublease or assignment permitted by Section 15 hereof and any such sublease or assignment, for the purpose of proper protection to the satisfaction of Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

18. **Notices.** Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when transmitted and received via telecopy, sent by overnight air courier or deposited in the U.S. mails certified, first-class postage prepaid, addressed as follows:

If to Lessor: National City Leasing Corporation
 101 South Fifth Street
 Louisville, KY 40202
 FAX: (502) 581-6488
 ATTN: Mr. Ronald L. Johnson
 Vice President

If to Lessee: Railtex, Inc.
 4040 Broadway, Suite 200
 San Antonio, TX 78209
 FAX: (210) 841-7629
 ATTN: Manager Customer Service & Equipment

or if sent by telecopy to the FAX numbers set forth above, or addressed to either party at such other address or telecopy number as such party shall hereafter furnish to the other party in writing.

19. **Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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 provision in any other jurisdiction.
20. **Effect and Modification of Lease.** This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee.

21. **Successors and Assigns.** This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.
22. **Execution.** 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 together shall constitute but one and the same instrument.
23. **Law Governing.** This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the U.S. and the Commonwealth of Kentucky, including but not limited to, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.
24. **Headings.** The headings appearing at the commencement of certain sections or subsections herein are for convenience only, and the content or body of the section(s) or subsection(s) thereunder shall control. The numbering system is also included for convenience only.

IN WITNESS WHEREOF, each party, pursuant to due corporate authority, has caused this Lease of Railroad Equipment dated February 22, 1995 to be executed by its authorized representative, and each of the undersigned hereto declare that the foregoing is true and correct and was executed on the date indicated below its signature.

LESSOR

LESSEE

NATIONAL CITY LEASING
CORPORATION

RAILTEX, INC.

By: J. E. Vittow

By: [Signature]

Title: SENIOR Vice-President

Title: President

Date: 2/28/95

Date: February 22, 1995

STATE OF KENTUCKY)
) S
COUNTY OF JEFFERSON)

On this 28th day of FEBRUARY, 1995, before me personally appeared J.E. VITTITOW, to me personally known, who, being by me duly sworn says that he is SENIOR VICE PRESIDENT of NATIONAL CITY LEASING CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Brenda Smith
Notary Public

Notary Public, State at Large, KY.
My commission expires Feb. 27, 1996

My Commission Expires:

[Notarial Seal]

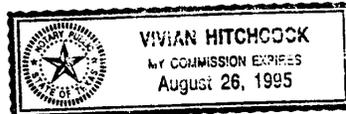
STATE OF TEXAS)
) S
COUNTY OF BEXAR)

On this 2nd day of February, 1995, before me personally appeared Bruce M. Smith, to me personally known, who, being by me duly sworn says that he is President of RAILTEX, INC., that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Vivian Hitchcock
Notary Public

My Commission Expires:

8-26-95



[Notarial Seal]

ANNEX A

To the Lease of Railroad Equipment dated as of February 22, 1995 between National City Leasing Corporation and Railtex, Inc.

Equipment Description:

One hundred forty-five (145), 3,850 cubic foot, 100-ton rapid discharge open top hopper railcars, built by Ortner in 1978, 1980 or 1981.

Reporting Mark:

CBNS

Numbers:

1	78004	43	78213	85	80367	127	80452
2	78007	44	78215	86	80368	128	80454
3	78056	45	78217	87	80371	129	80457
4	78066	46	78218	88	80374	130	80458
5	78070	47	78223	89	80375	131	80459
6	78072	48	78224	90	80376	132	81460
7	78074	49	78225	91	80380	133	81462
8	78075	50	78226	92	80386	134	81465
9	78078	51	78229	93	80387	135	81466
10	78079	52	80231	94	80388	136	81468
11	78081	53	80233	95	80389	137	81470
12	78088	54	80234	96	80390	138	81471
13	78106	55	80237	97	80393	139	81473
14	78110	56	80241	98	80395	140	81474
15	78114	57	80246	99	80398	141	81477
16	78115	58	80251	100	80399	142	81480
17	78128	59	80254	101	80400	143	81482
18	78130	60	80259	102	80401	144	81483
19	78134	61	80260	103	80402	145	81486
20	78135	62	80262	104	80403		
21	78136	63	80267	105	80406		
22	78139	64	80268	106	80408		
23	78141	65	80271	107	80409		
24	78147	66	80274	108	80412		
25	78148	67	80277	109	80416		
26	78155	68	80284	110	80420		
27	78156	69	80288	111	80423		
28	78157	70	80289	112	80427		
29	78160	71	80291	113	80429		
30	78174	72	80299	114	80430		
31	78177	73	80301	115	80431		
32	78179	74	80304	116	80434		
33	78181	75	80311	117	80436		
34	78183	76	80319	118	80437		
35	78186	77	80326	119	80438		
36	78191	78	80327	120	80440		
37	78193	79	80337	121	80442		
38	78194	80	80342	122	80443		
39	78201	81	80347	123	80444		
40	78205	82	80354	124	80445		
41	78206	83	80364	125	80450		
42	78209	84	80365	126	80451		

ANNEX B

To the Lease of Railroad Equipment dated as of February 22, 1995
between National City Leasing Corporation and Railtex, Inc.

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Railtex, Inc. ("Lessee"), does hereby certify that he has caused to be inspected and, on the Acceptance Date set out below, has accepted on behalf of Lessee the following described Units of equipment, which Units are in good order, condition and repair and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as of February 22, 1995 between National City Leasing Corporation and Lessee.

Equipment Description:

_____ (____), 3,850 cubic foot, 100-ton rapid discharge
open top hopper railcars, built by Ortner in 1978, 1980 or 1981.

Reporting Marks:

Acceptance Date:

(To be provided.)

AUTHORIZED REPRESENTATIVE:

By: 
Title: President
Date: February 22, 1995

ANNEX C

To the Lease of Railroad Equipment dated as of February 22, 1995 between NATIONAL CITY LEASING CORPORATION and RAILTEX, INC.

CASUALTY SCHEDULE :

Lease Term Period in Months	Per Unit Settlement Value	Lease Term Period in Months	Per Unit Settlement Value	Lease Term Period in Months	Per Unit Settlement Value
0	\$29,550.00	25	\$25,051.07	50	\$19,134.63
1	29,550.00	26	24,840.01	51	18,868.38
2	29,383.45	27	24,626.12	52	18,598.97
3	29,214.35	28	24,409.39	53	18,328.79
4	29,042.69	29	24,192.23	54	18,055.43
5	28,870.96	30	23,972.21	55	17,781.28
6	28,696.65	31	23,751.74	56	17,503.91
7	28,522.26	32	23,528.38	57	17,223.30
8	28,345.27	33	23,302.12	58	16,941.86
9	28,165.67	34	23,075.37	59	16,657.16
10	27,985.95	35	22,845.70	60	16,369.17
11	27,803.60	36	22,613.08	61	16,080.31
12	27,618.60	37	22,379.94	62	15,788.14
13	27,433.45	38	22,143.84	63	15,492.64
14	27,245.64	39	21,904.75	64	15,193.78
15	27,055.15	40	21,662.65	65	14,893.98
16	26,861.96	41	21,419.98	66	14,590.81
17	26,668.48	42	21,174.28	67	14,286.66
18	26,472.29	43	20,927.97	68	13,979.11
19	26,275.80	44	20,678.61	69	13,668.13
20	26,076.58	45	20,426.19	70	13,356.14
21	25,874.60	46	20,173.11	71	13,040.68
22	25,672.28	47	19,916.95	72	12,721.76
23	25,467.19	48	19,657.68	and thereafter	12,851.76
24	25,259.32	49	19,397.72		

ANNEX D

[LESSEE LETTERHEAD]

RAILTEX, INC.

OPINION OF COUNSEL

To whom it concerns:

As Counsel for Railtex, Inc. (the "**Lessee**"), I have examined and am familiar with that certain Lease of Railroad Equipment dated as of February 22, 1995 (the "**Lease**") between National City Leasing Corporation (the "**Lessor**") and Lessee and the Consent and Agreement executed by the Lessee in connection therewith.

I have also examined and am familiar with the corporate and other proceedings taken by the Lessee in connection with the Lease, as well as such other records and data as I have deemed relevant and necessary as the basis for my opinion set forth herein.

I am of the opinion that:

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into the Lease;

(b) the Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms; and

(c) the execution and performance of the Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee.

(d) if this Lease has been duly filed and recorded with the ICC under 49 U.S.C. 11303, the Registrar General of Canada and at such other registration offices as counsel for the Lessor may recommend, then no other filing or recording is necessary to protect in the United States of America and Canada the right, title and interest of Lessor in and to the Units;

(e) if the Lease were subject to the laws of Nova Scotia, and if the Lease was duly authorized, executed and delivered by the Lessor, the Lease would constitute a valid, and legal agreement and would be binding on the Lessee.

Very truly yours,

000

ANNEX E

To the Lease of Railroad Equipment dated as of February 22, 1995 between National City Leasing Corporation and Railtex, Inc.

MEMORANDUM OF
LEASE OF RAILROAD EQUIPMENT

THIS MEMORANDUM OF LEASE OF RAILROAD EQUIPMENT ("Memorandum of Lease") made as of February 22, 1995 is intended to evidence the Lease of Railroad Equipment, dated as of February 22, 1995 (the "Lease") between NATIONAL CITY LEASING CORPORATION, a Kentucky corporation ("Lessor"), and RAILTEX, INC., a Texas corporation ("Lessee"), for the purpose of satisfying the requirements of recordation with the Interstate Commerce Commission under Section 49 of U.S.C. 11303. Lessor has the right to lease the one hundred forty-five (145) open top hopper railcars, more fully described in Exhibit 1 hereto (the "Units"). Lessee leased from Lessor the Units at the rentals and upon the terms and conditions provided in the Lease.

IN WITNESS WHEREOF, each party, pursuant to due corporate authority, has executed this Memorandum of Lease on the date indicated below its signature.

LESSOR

LESSEE

NATIONAL CITY LEASING
CORPORATION

RAILTEX, INC.

By: J. E. Vittitow

By: [Signature]

Title: SENIOR vice-president

Title: President

Date: 2/28/95

Date: February 22, 1995

ANNEX E – Continued

EXHIBIT 1

To the Memorandum of Lease of Railroad Equipment dated as of February 22, 1995 between National City Leasing Corporation and Railtex, Inc.

Equipment Description:

One hundred forty-five (145), 3,850 cubic foot, 100-ton rapid discharge open top hopper railcars, built by Ortner in 1978, 1980 or 1981.

Reporting Mark: CBNS

Numbers:

1	78004	43	78213	85	80367	127	80452
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40	78205	82	80354	124	80445		
41	78206	83	80364	125	80450		
42	78209	84	80365	126	80451		

ANNEX E - Continued

STATE OF KENTUCKY)
) S
COUNTY OF JEFFERSON)

On this 28th day of FEBRUARY, 1995, before me personally appeared J. E. VITTITOW, to me personally known, who, being by me duly sworn says that he is SENIOR VICE PRESIDENT of NATIONAL CITY LEASING CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Brenda Smith
Notary Public

My Commission Expires: Notary Public, State at Large, KY.
My commission expires Feb. 27, 1996

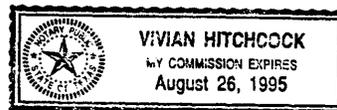
[Notarial Seal]

STATE OF TEXAS)
) S
COUNTY OF BEZAR)

On this 22nd day of February, 1995, before me personally appeared Bruce M. Smith, to me personally known, who, being by me duly sworn says that he is President of RAILTEX, INC., that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Vivian Hitchcock
Notary Public

My Commission Expires: 8-26-95



[Notarial Seal]