

0100862015

19724

NOV 2 1995

AND DONELAN, CLEARY, WOOD & MASER, P.C.

19724-A

NOV 2 1995 AM

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE (202) 371-9500

TELECOPIER: (202) 371-0900

November 22, 1995

New Recordation No. and -A

RECORDED
NOV 22 1995

Counterparts - C. H. Hamann

Dear Mr. Williams:

On behalf of Industrial Investment Corporation, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, executed counterparts of two documents not previously recorded. The first of the two documents (to be filed under a new Recordation No.) is entitled Railcar Equipment Lease ("Lease"), dated as of October 29, 1995. The second of the two documents (to be filed under the new Recordation No. -A) is entitled Chattel Paper and Equipment Purchase Agreement ("Assignment"), dated as of November 15, 1995.

1. The parties to the first document, the enclosed Lease (to be recorded under a new Recordation No.) are:

Industrial Investment Corporation — LESSOR
Unit 101A
2401 Pennsylvania Avenue
Wilmington, Delaware 19806

Western Ash Company, Inc. — LESSEE
5020 North 8th Place
Phoenix, AZ 85014

The said Lease, among other things, acts to lease by the Lessor to the Lessee five (5) covered hopper cars as identified in the Lease.

A short summary of the Lease to appear in the ICC Index is as follows:

"Lease of 5 covered hopper cars, DLFX 34500-34504".

2. The parties to the second document, the enclosed Assignment, (to be recorded under new Recordation No. -A) are:

Industrial Investment Corporation — ASSIGNOR/SELLER
Unit 101-A
2401 Pennsylvania Avenue
Wilmington, Delaware 19806



Interstate Commerce Commission
Washington, D.C. 20423-0001

11/22/95

Office Of The Secretary

Allen H. Harrison, Jr.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW., Ste. 750
Washington, DC., 20005-3934

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 11/22/95 at 11:00AM, and assigned recordation number(s). 19724 and 19724-A,

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

(0100862015)

\$ 42.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

19724

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1995

AM

RAILCAR EQUIPMENT LEASE

DATED AS OF OCTOBER 29, 1995

INDUSTRIAL INVESTMENT CORPORATION, LESSOR

WESTERN ASH COMPANY, INC., LESSEE

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RAILCAR EQUIPMENT LEASE

THIS RAILCAR EQUIPMENT LEASE ("Lease"), dated as of the 29th day of October, 1995, is made and entered into by and between INDUSTRIAL INVESTMENT CORPORATION ("IIC"), and WESTERN ASH COMPANY, INC. ("WESTERN ASH").

1. Capitalization and Titles. Capitalized words are used herein for the convenience of the parties. The specific definitions or uses of such words are contained in the body of the Lease. All titles to the paragraphs are for the information and convenience of the parties and are not substantive.

2. Cars. IIC agrees to furnish and WESTERN ASH agrees to accept the 5 railcars ("Cars") described on Schedule A to this Lease and now in the possession of WESTERN ASH.

3. Term. The term of this Lease is seven (7) years (84 months), beginning on October 29, 1995 and terminating on October 28, 2002.

4. Transfer and Use. WESTERN ASH is in possession of the Cars, so no delivery is necessary. At the termination of this Lease, WESTERN ASH agrees to return the Cars to IIC, at WESTERN ASH's sole cost and expense, to any car shop, storage facility, Lessee or any railroad designated by IIC.

5. Rental. WESTERN ASH shall pay to IIC a monthly lease rental ("RENTAL") as set forth below:

a. for the first (1st) full year (12 months) of the Lease, \$450 per Car, per month; total monthly Lease RENTAL of \$2,250.00; and

b. for the remaining six (6) years (72 months) of the Lease, \$420.00 per Car, per month; total monthly Lease RENTAL of \$2,100.00.

In the event any Car is damaged or destroyed beyond economic repair, RENTAL payments shall continue until payment for said damaged or destroyed Car has been received by IIC, as set forth in Paragraph 9 hereof.

6. Maintenance and Repair. During the first year (first 12 months) of this Lease, IIC shall be responsible, at IIC's sole expense, for the maintenance of all air work, brake work, wheel and truck work and work on the coupler assembly on all of the Cars, which shall collectively be termed "Running Maintenance." During that same first year (first 12 months) of this Lease, WESTERN ASH shall be responsible, at WESTERN ASH's sole expense, for all maintenance on the Cars not falling within the term "Running Maintenance," which shall collectively be termed "All Other Maintenance." Commencing with the 13th month of this Lease

(Page 1. IIC, Lessor; Western Ash, Lessee)

and continuing until this Lease is terminated, the Cars shall be leased to WESTERN ASH on a "net" basis, during which time WESTERN ASH shall perform or have performed all required maintenance, both Running Maintenance and All Other Maintenance and repairs to the Cars without cost to IIC. At the end of the Lease term the Cars shall be returned to IIC in the same condition as they were at the outset of the Lease, ordinary wear and tear excepted.

7. Inspection. The Cars are in the possession of WESTERN ASH, and WESTERN ASH has inspected the Cars. Said inspection has listed in detail and with specificity all repairs, if any, required by WESTERN ASH at the outset of this Lease and to place the Cars in interchange condition. IIC agrees to have said repairs performed as soon as WESTERN ASH makes the Cars available. Each of the Cars will be jointly inspected by both WESTERN ASH and IIC at the termination of this Lease. Should either party waive the inspection, the records of the other party will control. At the end of the Lease term the Cars shall be returned to IIC in the same condition as they were at the outset of the Lease and in Interchange Condition, ordinary wear and tear excepted. If a Car is in need of repair prior to return to IIC, a separate inspection will be held after the repairs have been made (see Paragraph 15) to insure the repairs are satisfactory.

8. Car Hire Charges. WESTERN ASH shall collect and retain the car hire charges (time and mileage) earned by the Cars, subject to all appropriate tariffs, circulars and contracts.

9. Destruction of Car. Any Car that is damaged or destroyed beyond economic repair will be deleted from this Agreement as of the date IIC has received payment under the attached casualty schedule, if such destruction occurs on the lines/property of WESTERN ASH, or under Rule 107 of the AAR Interchange Rules if destruction occurs on rail lines other than WESTERN ASH. In the event any Car is damaged or destroyed beyond economic repair, RENTAL payments shall continue until payment for said damaged or destroyed Car is received by IIC. No replacement Car will be furnished unless agreed upon both parties.

10. DICLAIMER OF WARRANTIES. IIC, NOT BEING THE MANUFACTURER OF THE CARS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO WESTERN ASH NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. IIC HEREBY ACKNOWLEDGES THAT ANY MANUFACTURER'S WARRANTIES ARE FOR THE BENEFIT OF BOTH IIC AND WESTERN ASH.

11. Lettering. WESTERN ASH, at its expense, shall apply its own reporting marks and numbers, or the marks and numbers that will be used on the Cars, and AEI tags to all the Cars. IIC, at its expense shall remove said marks, numbers and AEI tags once this Lease has terminated and after the Cars have been

delivered to their ultimate destination.

12. Sublease. WESTERN ASH shall not sublease the Cars or loan the Cars to any other party without the express written permission of IIC.

13. Default. If WESTERN ASH shall fail to perform any of its obligations hereunder, IIC shall provide written notice to WESTERN ASH specifying the alleged failure. If such failure has not been substantially corrected within: (A) ten (10) days for payment of RENTAL or (B) thirty (30) days for any other alleged failure, IIC, at its sole election, may terminate this Lease upon three (3) days written notice, such notice, however, will not relieve WESTERN ASH of its obligations for the RENTAL payments on such Cars.

14. Assignment of Lease. This Lease shall be assignable by IIC and by its assigns without the consent of WESTERN ASH, but WESTERN ASH shall not be obligated to any assignee of IIC except upon written notice of such assignment from IIC or such assignee. Notwithstanding anything to the contrary contained herein, the obligation of WESTERN ASH to pay all RENTAL installments to such assignee shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, WESTERN ASH is required to make all such RENTAL payments without interruption or abatement notwithstanding any event or circumstance whatsoever, including, without limitation, the late delivery, non-delivery, destruction or damages of or to the Cars, the deprivation or limitation of the use of the Cars, and notwithstanding any defense, set-off, recoupment or counterclaim or any other right whatsoever, whether by reason of breach of the Lease or otherwise, which WESTERN ASH may now or hereafter have against IIC, and whether any such event shall be by reason of any act or omission of IIC or otherwise.

15. Return Tender. WESTERN ASH shall gather the Cars at the end of the term of this Lease and shall notify IIC that the Cars are available for inspection. The aforementioned notice shall: (A) constitute the return tender of the Cars; and (B) terminate any RENTAL payments. IIC and WESTERN ASH shall jointly inspect the Cars within 30 days following IIC's receipt of the aforementioned Notice. If it is determined at said inspection that repairs to the Cars are needed, WESTERN ASH shall have such repairs performed at WESTERN ASH's sole expense. A second inspection will then be held to determine that the needed work has been performed satisfactorily. When the Cars are in the condition required by this Lease, IIC will give written directive to WESTERN ASH to move the Cars, at WESTERN ASH's sole expense, to any car shop, storage facility, Lessee or any railroad designated by IIC.

16. Taxes. WESTERN ASH agrees to assume responsibility for and to pay any applicable sales, use or similar taxes resulting
(Page 3. IIC, Lessor; WESTERN ASH, Lessee)

from this Lease or use of the Cars. WESTERN ASH may protest or otherwise contest against the taxes for which it is responsible for payment to the taxing authority, and agrees to pay any penalty or interest if unsuccessful. Notwithstanding any other provisions of this Lease, IIC is solely responsible for the payment of all income taxes assessed against it for any RENTAL payments of other income received or deductions taken by it in connection with this Lease.

17. Title, Possession and Assignment. IIC is aware of and acknowledges the importance of WESTERN ASH's right to sole possession and quiet enjoyment of the Cars for the entirety of this Lease. IIC represents: (A) that it is either the sole owner of the Cars or has the sole right and authority to lease the Cars as provided herein; (B) that WESTERN ASH is entitled to receive all car hire charges and /or mileage allowance payments that accrue when such Cars are off the lines of WESTERN ASH; and (C) no other party has any rights that might affect WESTERN ASH's rights to possession and quiet enjoyment of the Cars under this Lease as long as WESTERN ASH is in compliance with its obligations hereunder.

18. Depreciation. WESTERN ASH agrees that IIC has the sole right to take all depreciation for the Cars.

19. Notices. Any notice sent pursuant to this Lease must be in writing and sent 1st Class U.S. Mail or confirmed telefax and addressed as follows:

TO IIC: INDUSTRIAL INVESTMENT CORPORATION
2401 Pennsylvania Avenue
Unit 101-A
Wilmington, Delaware 19806

TO WESTERN ASH: WESTERN ASH COMPANY, INC.
5020 North 8th Place
Phoenix Arizona 85014

If either party changes its address, it shall promptly notify the other party of same.

20. Non-Waiver. The failure of either party to enforce any provisions of this Lease or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

21. Insurance. WESTERN ASH will at all times during the term of this Lease, and until return of the Cars to IIC, at WESTERN ASH's expense, cause to be carried and maintained insurance or self-insurance retention in respect to its obligations assumed under this Lease in amounts and against such risks customarily insured against by comparable companies

WESTERN ASH will annually furnish IIC with a schedule of such coverage.

22. UMLER. WESTERN ASH will be shown as the Lessee of the Cars in the AAR UMLER File.

23. Casualty Statement. The amounts contained in the attached casualty schedule will apply when WESTERN ASH is responsible for payment of a Car that is destroyed or damaged beyond economic repair, as described in Destruction of Car Paragraph (Paragraph 9 hereof).

24. Entire Understanding. This Lease constitutes the entire understanding of the parties and shall be construed under the laws of the State of Delaware, and shall be binding upon the parties, their respective successors, assigns and legal representatives. It shall remain in full force and effect until all Cars have been returned to IIC at the termination of this Lease. Any modifications to this Lease must be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed in six (6) counterparts by their authorized officials.

INDUSTRIAL INVESTMENT CORPORATION, LESSOR,

By: Philip S. Hesby, Pres
Philip S. Hesby, President

WESTERN ASH COMPANY, INC., LESSEE,

By: David P. Allen
David P. Allen, Vice President

STATE OF OHIO)

COUNTY OF CRAWFORD) SS

Before me this date personally appeared PHILIP S. HESBY, who being first duly sworn, says that he is the President of INDUSTRIAL INVESTMENT CORPORATION, the Lessor named in the foregoing Lease, that said Lease was signed by him as President and he acknowledged that the execution of the foregoing Lease was his free act and deed and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Galion, Crawford County, Ohio, this 1st day of November, 1995.


Notary Public

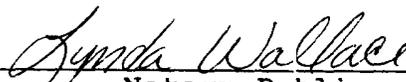
DARON S. MCGUIRE
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Jan. 26, 1998

STATE OF ARIZONA)

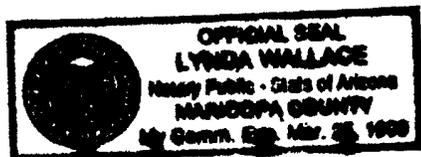
COUNTY OF MARICOPA) SS

Before me this date personally appeared DAVID P. ALLEN, who being duly sworn, says that he is the Executive Vice President of WESTERN ASH COMPANY, INC., the Lessee in the foregoing Lease: that said Lease was signed on behalf of WESTERN ASH COMPANY, INC. by him as Executive Vice President, and he acknowledged that the signing of foregoing Lease was his free act and deed and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Phoenix, Maricopa County, Arizona, this 7th day of November, 1995.



Notary Public



(Page 7. IIC, Lessor; WESTERN ASH, Lessee)

SCHEDULE A

Five (5) pressure differential covered hopper railcars,
AAR Type Code C612, Manufactured by Union Tank Car. Nominal
Capacity 3,000 cubic feet; Light Weight 59,300 pounds;
Capacity 203,700 pounds; 100 Ton Roller Bearing Trucks.
Having Road Numbers #DLFX34500 thru and
including 34504

CASUALTY SCHEDULE

<u>Casualty Value</u> <u>After Pmt. No.</u>	<u>Casualty Value</u> <u>After Pmt. No.</u>	<u>Casualty Value</u> <u>After Pmt. No.</u>
1. \$27,000	29. \$22,800	57. \$13,600
2. 26,850	30. 22,650	58. 13,450
3. 26,700	31. 22,500	59. 13,300
4. 26,550	32. 22,350	60. 13,150
5. 26,400	33. 22,200	61. 13,000
6. 26,250	34. 22,050	62. 12,850
7. 26,100	35. 21,900	63. 12,700
8. 25,950	36. 21,750	64. 12,550
9. 25,800	37. 21,600	65. 12,400
10. 25,650	38. 21,450	66. 12,250
11. 25,500	39. 21,300	67. 12,100
12. 25,350	40. 21,150	68. 11,950
13. 25,200	41. 21,000	69. 11,800
14. 25,050	42. 20,850	70. 11,650
15. 24,900	43. 20,700	71. 11,500
16. 24,750	44. 20,550	72. 11,350
17. 24,600	45. 20,400	73. 11,200
18. 24,450	46. 20,250	74. 11,050
19. 24,300	47. 20,100	75. 10,900
20. 24,150	48. 19,950	76. 10,750
21. 24,000	49. 19,800	77. 10,600
22. 23,850	50. 19,650	78. 10,450
23. 23,700	51. 19,500	79. 10,300
24. 23,550	52. 19,350	80. 10,150
25. 23,400	53. 19,200	81. 10,000
26. 23,250	54. 19,050	82. 9,850
27. 23,100	55. 18,900	83. 9,700
28. 22,950	56. 18,750	84. 9,550

Charter Financial, Inc.
55th Floor
153 E. 53rd Street
New York, New York 10022

— ASSIGNEE

The said Assignment, among other things, acts to assign to the Assignee the right, title and interest as specified therein of the Assignor as lessor in the above Lease and should be recorded as "-A" under the same Recordation No. as the said Lease.

The equipment covered by the instant Assignment is the equipment covered in the above-mentioned Lease.

A short summary of the Assignment to appear in the ICC Index is as follows:

"Assignment of interest in above lease."

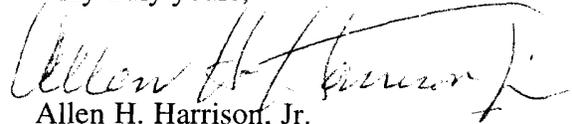
→ Please index separately the name of the above-mentioned Assignee in the ICC "Vendee/Assignee" Index Book ("white pages") as follows:

→ Index under Charter Financial, Inc. saying, "See Recordation No/9724-A."

Enclosed is a check in the amount of forty two dollars (\$42.00) in payment of the filing fees.

Once the filings have been made, please return to bearer the stamped counterpart(s) of the documents not required for filing purposes, together with the letter/fee receipt from the ICC acknowledging the filings, and the two extra copies of this letter of transmittal.

Very truly yours,



Allen H. Harrison, Jr.
Attorney for Industrial Investment
Corporation for the purposes of
this filing.

The Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Enclosures

BY HAND

8376-020