

2-008A001

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ALLEN H. HARRISON, JR.

DIRECT LINE (202)

663-6093

17659
REGISTRATION NO. FILED 1423

JAN 8 1992 -9 05 AM

INTERSTATE COMMERCE COMMISSION

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17659-A
REGISTRATION NO. FILED 1423

JAN 8 1992 -9 05 AM

INTERSTATE COMMERCE COMMISSION

January 8, 1992

\$32.00 filing fee

Dear Mr. Strickland:

On behalf of General Electric Capital Corporation, we submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, executed counterparts of a primary document and a related secondary document, neither previously recorded, entitled respectively, Lease of Railroad Equipment ("Lease," the primary document) and the related Assignment of Lease ("Assignment," secondary document).

JAN 8 1992
00 AM '92
REGISTRATION NO. FILED 1423

The parties to the enclosed Lease are:

NEMLC Leasing Associates No. 1 - Lessor
28 State Street
Boston, Massachusetts 02109

Gateway Western Railway, Inc. - Lessee
15 Executive Drive
Fairview Heights, Illinois 62208

The said Lease, among other things, leases from Lessor to Lessee certain railcars as identified therein.

The units of equipment covered by the Lease are those identified in ANNEX A thereto.

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

"Covers 50 hoppers."

The parties to the enclosed Assignment are:

New Number and A
Counterparts - A. H. Harrison

Federal Deposit Insurance Corporation - Assignor
(as Receiver for New Bank of New England, N.A.,
who was assignee of the above-mentioned Lease,
among others, from NEMLC Leasing Associates No. 1)
124 Grove Street
P. O. Box 9104
Franklin, Massachusetts 02038

General Electric Capital Corporation - Assignee
44 Old Ridgebury Road
Danbury, Connecticut 06810

The said Assignment, among other things, assigns from Assignor to Assignee the above-mentioned Lease.

The units of equipment covered by the Assignment are those forty-nine (49) 4750 cubic feet, 100-ton hopper cars identified therein.

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

"Covers 49 hoppers."

Enclosed is a check in the amount of thirty-two dollars (\$32.00) in payment of the filing fees.

Once the filings have been made, please return to bearer the stamped counterparts of the documents not required for filing purposes, together with the fee receipt, the letter 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 General Electric
Capital Corporation for the
purposes of this filing.

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20231

Enclosures

BY HAND

Interstate Commerce Commission

Washington, D.C. 20423 1/8/92

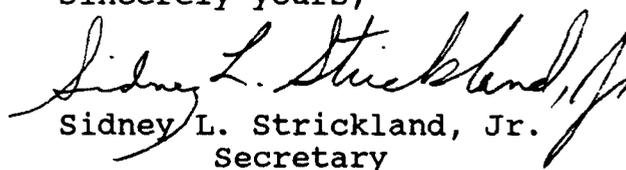
OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC. 20037-1420

Dear
Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/8/92 at 9:05AM, and assigned recordation number(s). 17659, 17659-A.

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

ICC File Copy

~~COMMON~~ **17659** ~~NEWS~~

JAN 8 1992 -9 05 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

NEMLC LEASING ASSOCIATES NO. 1

AND

GATEWAY WESTERN RAILWAY, INC.

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of October 1, 1990, between NEMLC LEASING ASSOCIATES NO. 1, a Massachusetts Limited Partnership, (hereinafter called the "Lessor") and GATEWAY WESTERN RAILWAY, INC., an Illinois corporation (hereinafter called the "Lessee").

WHEREAS, the Lessor hereby represents that it has the right to lease the covered hoppers more fully described in Annex A hereto (hereinafter called the "Units");

WHEREAS, the Lessee desires to lease from the Lessor all the Units at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Delivery and Acceptance of Units. Lessor will deliver the Units to Lessee (at no expense to Lessee) at the Kansas City Southern Railway Company interchange point located in Kansas City, MO (hereinafter called "Delivery Point") and Lessee agrees to accept such delivery.

The Lessor agrees to furnish the Units in compliance with the FRA and AAR rules of interchange in effect at the time of delivery. Acceptance of the Units by the Lessee shall be evidenced by a "Certificate of Acceptance" in the form set forth in Annex B attached hereto, the execution of which shall constitute conclusive evidence of delivery and acceptance of the Units therein identified. The Lessee agrees to be responsible for any transportation cost associated with moving the Units from the Delivery Point.

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

2. Car Hire Earnings. Upon acceptance of the Units as set forth in Section 1 hereof, with reporting marks on each Unit as set forth in Section 5 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. Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

3. Rentals. Lessee shall pay to Lessor as rental for the Units an amount of Three Hundred Fifty Dollars (\$350.00) per Unit per month ("**Lease Charges**"). Rent shall become effective, with regard to each of the Units, upon the date of the delivery and acceptance of each as provided in Section 1 hereof, and shall continue in effect, with regard to each of the Units, until returned to Lessor at the end of the term of this Lease, as hereafter provided in Section 11. Payment of Rent during the Interim Term with respect to each Unit shall be made on the first day of each month in advance, except that the first Interim Term Rent payment with respect to each Unit shall be made in advance upon Delivery and shall be pro-rated on a daily basis if the Unit is delivered other than on the first day of any month. Payment of Rent during the Fixed Term shall be made on the first day of each month in advance with the first month's Fixed Term Rent payment due on the Effective Date. Payment of Rent shall be made to Lessor at the address specified in Paragraph 18. Rent for any Unit for any partial month shall be pro-rated on a daily basis. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney's fees, will be paid by Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the 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 the Lessee at a rate equal to 18% per annum.

This Lease is a net lease and the 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 the Lessee against the Lessor under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any 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, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the 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, the 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 the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

4. Term of Lease. The interim term of this Lease with respect to each Unit ("**Interim Term**") shall commence on the date of delivery and acceptance of each Unit as provided in Section 1 hereof and shall continue until the first day of the month following the delivery of the last Unit ("**the Effective Date**") provided that the Effective Date shall be no later than November 1, 1990 at which time the fixed term ("**Fixed Term**") of this Lease with respect to each Unit shall automatically commence and shall continue in full force and effect for a period of twenty four (24) months thereafter (the Interim Term and the Fixed Term herein collectively the "**Term of this Lease**".)

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Sections 6, 9 and 11 hereof) shall survive the expiration or sooner termination of this Lease.

5. Railroad Markings and Record Keeping.

a) The Lessor will cause each Unit to be numbered with the identifying number as set forth in Annex A hereto and the Lessee will maintain such identifying numbers. The Lessee 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 lease agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the 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 the Lessor under this Lease. The 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 the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the 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.

b) At no cost to Lessor, Lessee shall during the

term of this Agreement cause to be prepared for Lessor's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include (i) appropriate AAR documents including an application, if applicable, for relief from AAR Car Service Rules; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such other reports as may be required from time to time by the ICC and/or other regulatory agencies.

c) Each Car leased hereunder shall be registered by Lessee at no cost to Lessor in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee shall, at its own expense and on behalf of Lessor, perform all record keeping functions relating to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Any agent Lessee might employ to perform and function must meet with Lessor's approval.

d) All record keeping performed by Lessee hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular Lessee business hours. Lessee shall supply Lessor with such information regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the 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 the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments 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), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part

of such Unit free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Unit.

7. 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 date of its delivery and acceptance as provided in Section 1 hereof and continuing until such Unit has been returned to Lessor in accordance with the provisions of Section 11 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. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title thereto shall be requisitioned, or the use of any Unit shall be requisitioned for a period of ninety (90) continuous days (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the 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 (hereinafter called "Settlement Value Payment") pursuant to Rule 107 of the Field Manual of the AAR Interchange Rules and Car Hire Agreement Code. Upon the making of such payment by the Lessee in respect of a 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) the 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 and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

Except as hereinabove in this Section 7 provided, the 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 delivery to and acceptance thereof by the Lessee hereunder.

8. Report and Inspection. On or before March 31 in each year, commencing with the calendar year 1991, the Lessee will furnish to the Lessor an accurate statement setting forth as of the preceding calendar year end (a) the amount, description and numbers of all Units then leased hereunder, (b) the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and; (c) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request. The Lessor or its agent, at its sole cost and expense, shall have the right to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

9. Compliance with Laws and Rules; Insurance and Indemnification. 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.

The Lessee agrees, for the benefit of the 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 Association of American Railroads and with all rules of the Interstate Commerce Commission 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 of any such Unit, the Lessee will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the 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 the Lessor, adversely affect the property rights of the Lessor hereunder.

Lessee shall at all times during the term of this Lease at its own cost and expense, cause each of the Units 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 the Lease, ordinary wear and tear excepted.

Lessor recognizes that the fiber glass hatch covers may need to be replaced during the term of this Lease. Lessee will notify Lessor when renewal is required and Lessor will determine the material required and pay for the material ordered per Lessor's specifications. Lessee shall assume responsibility for installing the hatch covers and paying all labor charges incurred.

Subject to Section 7, the Lessee agrees it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in good order and repair, including gates and hatch covers, ordinary wear and tear excepted, 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.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessee shall, at all times while this Agreement 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 7b); and (ii) public liability insurance in a minimum amount of \$15,000,000 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 the 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. 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 the Lessee.

Each item obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subparagraph. 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. Lessee shall be permitted to self-insure for physical loss or damage insurance provided that the Lessee warrants to place Lessor in the same position as if the related insurance had been affected.

The Lessee agrees to indemnify save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the 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 the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the 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 paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by the Lessor, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

10. Liens. Lessee will not directly or indirectly

create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this Lease or any Lease supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no material danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no material danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor (and any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor (and any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

11. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor restencil and deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate. The condition of the Units upon such return shall be as required, pursuant to Section 9 hereof. The Lessee shall permit the Lessor to store such Unit on its own tracks free of charge for a period not exceeding ninety (90) days after such expiration and shall load and transport the same to any connecting carrier for shipment, all as reasonably directed by the Lessor. The movement and storage of such Unit shall be at the expense and risk of the Lessee if the Lessor has given movement and storage instructions within the above ninety (90) day period; provided, however, that if the Lessor instructs the Lessee to store such Unit for a period beyond ninety (90) days after the expiration of this Lease with respect to such Unit, such additional storage shall be at the expense and risk of the Lessor with the exception of any loss, damage or destruction caused by gross negligence or willful misconduct of Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, to inspect the same at such reasonable time or times as shall be reasonably acceptable to the Lessee.

The restenciling, delivery, storage and transporting of the Units as provided in this Section 11 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances arising by or through Lessor.

12. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur;

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten (10) days after the same shall be due and payable;

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

(c) the Lessee shall fail to carry the insurance required by Section 9 of this Lease;

(d) the Lessee shall fail to return the Units in accordance with Section 11 of the Lease;

(e) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(f) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee

or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(g) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made.

13. Remedies. If an Event of Default hereunder shall occur and be continuing, Lessor may exercise any one or more of the following remedies:

(a) Termination of Agreement. Terminate this Lease and Lessee's rights hereunder.

(b) Specific Performance or Damages. Proceed, by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this lease or to recover damages for the breach thereof, or both.

(c) Repossession. Subject always to any mandatory requirements of applicable law then in effect:

(1) Personally, or by agents or attorneys, retake possession of the Equipment, or any Unit, from Lessee.

(2) Retake possession of the Equipment, or any Unit thereof, without liability to return to Lessee any Rental Payment or other payments theretofore made and free from all claims by Lessee, by directing Lessee to assemble the Equipment and deliver the same to Lessor at the place designated by Lessor in Chicago, Illinois or at such other place that Lessor shall have designated, in which event Lessee shall, at its own expense, forthwith cause the same to be moved to the place so designated and there delivered to Lessor; its being understood that Lessee's obligations so to deliver the Equipment are of the essence of this Lease and that, accordingly, upon application to a court of equity having jurisdiction, Lessor shall be entitled to a decree requiring specific performance by Lessee of such obligations.

Lessor may, without charge, pending further action by Lessor as hereinafter provided, keep any of the Equipment repossessed by Lessor on the premises of Lessee or track provided by Lessee; provided, however, that if the storage of the Equipment thereon materially interferes with the efficient operation of such premises, the Equipment shall be removed to and stored (at the expense of Lessee) at any other location mutually agreed upon by Lessor and Lessee.

(3) In the event Lessor repossesses the Equipment, Lessor shall, (i) lease the Equipment, or any portion thereof, in such manner, for such time and upon such terms as Lessor may reasonably determine, (ii) sell the Equipment, or any portion thereof, at one or more public or private sales, in such manner at such time or times and upon such terms as Lessor may reasonably determine, or (iii) otherwise dispose of, hold, use, operate or keep idle any Unit of Equipment as Lessor in its sole discretion may determine.

(d) In the event that Lessor shall enter into a lease or leases ("New Lease") to an unrelated third party of any Units that have been repossessed by Lessor from Lessee pursuant to this Lease, Lessee shall (i) pay to Lessor an amount equal to (aa) the net present value of the Rental Payments remaining on the Lease, plus (bb) expenses incurred by Lessor pursuant to Section 1 and Section 5 of the Lease, less the Net Present Value of the Rental Payments of the New Lease, if any. The Net Present Values described herein shall be calculated using a six percent (6%) annual discount rate, and Lessee shall also pay to Lessor an amount equal to the sum total of (ii) any and all expenses and fees (including attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and leasing such Units, (iii) the costs and expenses incurred by Lessor, if any, in repairing such Units to the state of repair required by Section 9 of this Lease, (iv) all Rental Payments then due and unpaid under this Lease and (v) any and all other sums then owing to Lessor by Lessee pursuant to this Lease.

(e) In the event that Lessor shall sell or otherwise dispose of (other than pursuant to a lease) any Unit, the proceeds shall be applied to the payment of (i) any and all expenses and fees (including attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and selling or otherwise disposing of such Unit, (ii) the costs and expenses incurred by Lessor, if any, in repairing such Unit to the state of repair required by Section 9 of this Lease (iii) the Rental Payments accrued under this Lease but unpaid up to the time of such sale or other disposition, (iv) any and all other sums

(other than Rental Payments) then owing to Lessor by Lessee under this Lease and (v) the appropriate Settlement Value Payment (pursuant to Section 7b) of such Unit. The remaining balance of such proceeds, if any, shall be retained by Lessor. Lessee shall remain liable to Lessor to the extent that the aggregate amount of the sums offered to in clauses (i) through (v) above shall exceed the aggregate proceeds received by Lessor in connection with the sale or disposition of the Equipment.

(f) The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf except the Lessee shall be credited with any present value payments made pursuant to subparagraph 12 (e)(ii)(a).

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

14. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Section 9 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Units on such tracks for a period not exceeding six (6) months at the risk of the Lessee, and

(c) restencil, load and transport the same, at any time within such six (6) month period to any connecting carrier for shipment, all as reasonably directed by the Lessor. The assembling, delivery, storage and transporting of the Units as provided in this Section 13 are of the essence of this Lease, and upon application to any court of equity having jurisdiction

in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the 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. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon such notice of assignment, Lessee will pay rent, without offset, reductions or counterclaims directly to assignee unless otherwise directed by Lessor. Lessee shall waive against assignee, any defenses it may have against Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Sections 6, 9 and 12) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may with prior written consent which shall not be unreasonably withheld of the 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) the Lessee shall provide the 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 the 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.

The 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 United States; 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.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the 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. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing in this Section 15 shall be deemed to restrict the right of the 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 the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the 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 the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Section 17 hereof).

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America and that operation of any Unit outside the United States of America will be limited to incidental and temporary use in Canada without adverse tax or other consequences to Lessor.

16. Opinions of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect 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 this Lease;

(b) this 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;

(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 the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303 and no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Units.

17. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Section 15 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The 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 the Lessor for the purpose of proper protection to the satisfaction of the 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 deposited in the United States mails certified, first-class postage prepaid, addressed as follows:

If to the Lessor: NEMLC Leasing Associates No. 1
c/o BOT Financial Corporation,
its attorney in fact
125 Summer Street, 2nd Floor
Boston, Massachusetts 02110-1625
Attn: Senior Vice President -
Portfolio Management

If to the Lessee: Gateway Western Railway, Inc.
15 Executive Drive
Fairview Heights, IL 62208
ATTN: Vice President - Finance

or addressed to either party at such other address 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 the Lessor and the 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 the Lessor and the 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 Commonwealth of Massachusetts; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

NEMLC LEASING ASSOCIATES NO. 1

By: NEMLC Leasing Corporation
(General Partner)

By: BOT Financial Corporation,
attorney in fact,

By: Richard L. Brown MMA

Title: Vice President

Date: 10/17/90

GATEWAY WESTERN RAILWAY, INC.

By: [Signature]

Title: VP Finance & CFO

Date: 10/18/90

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF SUFFOLK)

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)

On this 17th day of October, 1990, before me personally appeared Richard F. Quinn Jr to me personally known, who, being by me duly sworn, says that he is a Vice President of BOT Financial Corporation, attorney in fact for NEMLC Leasing Corporation, general partner of NEMLC LEASING ASSOCIATES NO. 1, the limited partnership named as Lessor in the foregoing instrument; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said attorney in fact and said limited partnership that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mark A. Johnson

Notary Public

My Commission Expires: 7/14/92

[Notarial Seal]

STATE OF Illinois)

COUNTY OF St. Clair) S

On this 9th day of October, 1990, before me personally appeared Thomas King, to me personally known, who, being by me duly sworn says that he is Vice President of Stewy Western Log Co, 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.

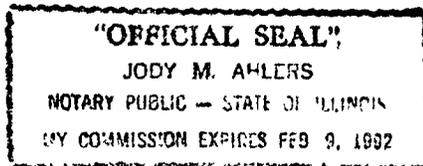
Jody M. Ahlers

Notary Public

My Commission Expires: 2-9-92

[Notarial Seal]

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ANNEX A

to

Lease of Railroad Equipment

Dated as of October 1, 1990

<u>Equipment Description</u>	<u>Equipment Numbers</u>
Fifty 100-ton, roller bearing, 4,750 cubic foot, triple pocket, covered hopper railcars equipped with through hatches.	GWR 2125 - 2150 2157, 2160 2166, 2173 2180, 2183 2186, 2188 2191, 2196 2198, 2203 2207, 2221 2222, 2232 2235, 2240 2242 - 2244 2247 - 2249

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Gateway Western Railway, Inc. (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the 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 October 1, 1990 between NEMLC Leasing Associates No. 1 and Lessee.

<u>Equipment Description</u>	<u>No. of Cars</u>	<u>Car Number</u>	<u>Date Accepted</u>
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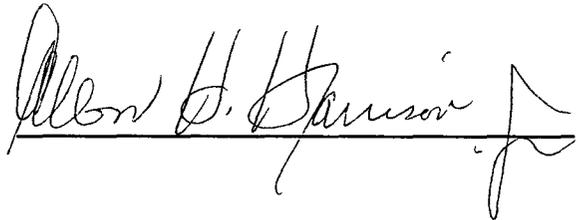
Authorized Representative

DISTRICT OF COLUMBIA) SS.:

CERTIFICATE OF TRUE COPY

I, Allen H. Harrison, Jr., a member of the Bars of the District of Columbia and the Commonwealth of Virginia, do hereby certify that I have compared the attached copy of the document entitled "Lease of Railroad Equipment" executed by NEMLC Leasing Associates No. 1 and Gateway Western Railway, Inc., with an executed original counterpart thereof and find the said attached copy to be in all respects a true, correct and complete copy of the aforesaid executed original counterpart.

IN WITNESS WHEREOF, the undersigned has hereto affixed his signature this 7th day of January, 1992.



Subscribed and sworn to before me
this 7th day of January, 1992


Notary Public, D.C.

My Commission expires: My Commission Expires June 30, 1992