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RECORDATION NO. 23289-B FILED

DEC 27 '00 3-04 PM

SURFACE TRANSPORTATION BOARD

lgitomer@bjllp.com

December 27, 2000

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423

RECORD New-B

Dear Secretary Williams:

I have enclosed the original and one certified copy of the document described below, to be recorded pursuant to 49 U.S.C. § 11301.

The document is an Assignment of Lease, a secondary document, dated as of December 14, 2000. We request that this document be given the "C" suffix of the Recordation Number assigned to the accompanying Lease Agreement. B

The names and addresses of the parties to the Assignment of Lease are:

Assignee:

Banc of America Leasing & Capital, LLC  
555 California Street, 4<sup>th</sup> Floor  
San Francisco, CA 94104

Assignor:

RailTex, Inc.  
5300 Broken Sound Boulevard, NW  
Boca Raton, FL 33487

A description of the equipment covered by the Assignment of Lease consists of two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

**BALL JANIK LLP**

Honorable Vernon A. Williams  
December 27, 2000  
Page 2

A fee of \$26.00 is enclosed. Please return the original to:

Louis E. Gitomer  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005

A short summary of the document to appear in the index follows: Assignment of Lease between Banc of America Leasing & Capital, LLC, 555 California Street, 4<sup>th</sup> Floor, San Francisco, CA 94104, and RailTex, Inc., 5300 Broken Sound Boulevard, NW, Boca Raton, FL 33487, covering two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

Very Truly Yours,



Louis E. Gitomer

Enclosures

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3-04 PM

ASSIGNMENT OF LEASE

SURFACE TRANSPORTATION BOARD

Reference is made to the Lease Agreement Number 01688-00400 dated December 14, 2000 ("Lease Agreement") between RailTex, Inc., as lessee ("Assignor"), and Banc of America Leasing & Capital, LLC as lessor ("Assignee"), and Schedule No. 001 thereto dated December 14, 2000 (capitalized terms not otherwise defined in this Assignment having the meanings specified in the Lease Agreement).

1. In consideration of and as an inducement to Assignee granting its consent under the Lease Agreement to Assignor, as sublessor, entering into a dated December 14, 2000 Locomotive Sublease [name of lease document] (the "Sublease") with Toledo, Peoria & Western Railway Corporation as sublessee ("Sublessee") relating to certain Units, and to secure the payment and performance of Assignor's obligations under any and all Leases, the repayment of any advances, with interest, made by Assignee on account of any Unit, and all other lease, loan or other obligations owing by Assignor to Assignee, now existing or hereafter arising, Assignor hereby assigns to Assignee and grants to Assignee a security interest in all Assignor's right, title and interest in and to the Sublease, including any chattel paper and other rights to payment relating thereto or arising therefrom, and including all renewals, extensions and modifications of the Sublease, and proceeds thereof.

2. Assignor represents, warrants and agrees: (a) Assignor has delivered to Assignee a true and fully executed counterpart of the Sublease marked "Lessor's Copy," which is the only counterpart so marked and is the only counterpart that constitutes chattel paper within the meaning of the Uniform Commercial Code; (b) Assignor has not previously assigned, pledged or transferred any interest in the Sublease or the equipment subject thereto, and the Sublease and such equipment are free of all liens, security interests, claims and encumbrances; (c) the Sublease is in full force and effect, enforceable against Sublessee in accordance with its terms; Sublessee has no defenses, counterclaims, or rights of setoff against Assignor, and Sublessee has paid no rent for any period subsequent to the date of this Assignment; (d) Assignor shall not modify or amend, or waive any material rights under, the Sublease, nor shall Assignor sell, assign or transfer, or create or suffer to be incurred any lien, claim or security interest on the Sublease, except with the prior consent of Assignee; (e) Assignor shall promptly notify Assignee of any default under the Sublease.

3. Assignee does not assume, and Assignor shall hold Assignee harmless from, the performance of any and all duties and obligations under, and the incurrence of any and all liabilities in connection with, the Sublease.

4. Upon the occurrence of any Event of Default, (a) Assignee may instruct Sublessee to make all payments of rent and other amounts under the Sublease directly to Assignee, and (b) Assignee shall have, in addition to any rights and remedies set out in the Lease Agreement, the rights and remedies of a secured party under the Uniform Commercial Code and other applicable law.

In Witness Whereof, Assignor and Assignee have executed this Assignment as of December 22, 2000.

BANC OF AMERICA LEASING &  
CAPITAL, LLC

By: [Signature]  
Printed Name: MORRIS S. CASEY  
Title: VICE PRESIDENT  
Title: \_\_\_\_\_

RailTex, Inc.

By: [Signature]  
Printed Name: Julie Herbert  
Title: VP  
Title: \*

Notarial Acknowledgment:

State of Georgia  
County of DeKalb ss.:

I hereby certify that on this 22nd day of December, 2000 before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Lauren S. Casey to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he duly executed same.

In Witness Whereof, I have hereunto set my hand and official seal as of the date hereof.

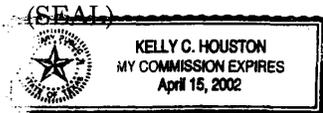
My Commission Expires \_\_\_\_\_, 20\_\_\_\_.

Notary Public, DeKalb County, Georgia  
(Official Seal) My Commission Expires February 17, 2003

  
\_\_\_\_\_  
Notary Public  
In and for said County and State

STATE OF Texas )  
COUNTY OF Bexar )

On this 22 day of December, 2000, personally appeared before me Julie Herbert who being duly sworn by me says that he/she is Vice President of KIIITEX, INC. and that he/she signed, executed and delivered the foregoing instrument on the day and year therein mentioned.



NOTARY PUBLIC

Kelly C. Houston  
Signature

Kelly C. Houston  
Printed Name  
State of TEXAS

My commission Expires 4-15-02

**SUBLESSEE ACKNOWLEDGMENT**

**This Sublessee Acknowledgment** ("Acknowledgment"), dated as of December 18, 2000, by Toledo, Peoria & Western Railway Corporation, a New Jersey corporation ("Sublessee") in favor of Banc of America Leasing & Capital, LLC ("Lessor") relates to that Locomotive Sublease  
[name of sublease document]  
dated December 14, 2000 (the "Sublease") between RailTex, Inc., as sublessor ("Sublessor") and Sublessee.

1. Sublessee acknowledges that the equipment subject to the Sublease is owned by Lessor and leased to Sublessor pursuant to that Lease Agreement Number 01688-00400 dated December 14, 2000 (the "Lease Agreement") between Sublessor as lessee and Lessor, and that the Sublease is and shall be fully subordinated at all times to the Lease Agreement.

2. The Sublease has been duly executed and delivered by Sublessor, is in full force and effect, and enforceable against Sublessor in accordance with its terms.

3. Sublessee is not in default of any of its obligations under the Sublease. No offset, deduction, defense, abatement or counterclaim exists with respect to any rent or other obligation payable by Sublessee under the Sublease, and no rent or other amount under the Sublease has been prepaid by Sublessee.

4. Sublessee acknowledges that Lessor is not obligated to perform any covenant or obligation under the Sublease and agrees to look only to Sublessor for performance thereof. Lessor shall at all times have the right to exercise any and all of the Sublessor's rights and privileges under the Sublease. Sublessee will, upon demand by Lessor, pay and deliver to Lessor all rent and other sums required to be paid by Sublessee to Sublessor under the Sublease.

5. This Acknowledgment has been duly authorized, executed and delivered by Sublessee and is the binding obligation of Sublessee.

6. This Acknowledgment shall be governed by the laws of the State of Georgia.

Toledo, Peoria & Western Railway Corporation

By: Paul M. Sprague  
Title: Senior U.P. + C.O.O.

CERTIFICATION

I, Louis E. Gitomer, have compared this copy to the original Assignment of Lease dated as of December 14, 2000 and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Louis E. Gitomer  
December 27, 2000