

MARATHON LEASING COMPANY

EQUIPMENT TRUST, SERIES 3

BILL OF SALE.

RECORDATION NO. 5004 A Filed & Recorded

OCT 4 1971 - 10 10 AM

INTERSTATE COMMERCE COMMISSION

THIS CONTRACT dated as of the 1st day of October, 1971, by and between MARATHON LEASING COMPANY, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Seller"), and BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, a national banking association incorporated and existing under the laws of the United States, as Trustee (hereinafter called "Buyer").

In consideration of \$950,000, in hand paid, receipt of which is hereby acknowledged, Seller does hereby sell and convey to Buyer the railroad tank cars described in Exhibit "A" attached as an exhibit hereto and made a part hereof for all purposes.

Seller hereby warrants that it has title to the described property and that the described property is free from all liens and encumbrances (including any leasehold interest) other than the lease to The Dow Chemical Company attached as Exhibit "B"; and Seller further agrees to forever warrant and defend the title to the described property unto Buyer, its successors and assigns, against all lawful claims.

MARATHON LEASING COMPANY

By *C. Taylor* President

[SEAL]

ATTEST:

*James E. O'Hara*  
Assistant Secretary

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C. T. Carolan, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of MARATHON LEASING COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 28 day of September, 1971.

CONNIE WAITMAN  
Notary Public in and for Harris County, Texas  
My Commission Expires June 1, 1973

Connie Waitman  
NOTARY PUBLIC in and for  
Harris County, T e x a s

EXHIBIT "A"

DESCRIPTION OF TRUST EQUIPMENT

<u>QUANTITY</u>	<u>CLASS</u>	<u>CAPACITY IN GALLONS</u>	<u>INITIALED AND CAR NUMBERS</u>
20 Tank Cars	DOT111A100W5	10,000	RTMX 1000 through 1019
25 Tank Cars	DOT111A100W5	20,000	RTMX 2000 through 2024
14 Tank Cars	DOT111A100W1	16,000	RTMX 1600 through 1613

MARATHON LEASING COMPANY

Tank Car Lease and Service Contract

THIS AGREEMENT, made as of this 30 day of March, 1971, by and between MARATHON LEASING COMPANY, a Delaware corporation, having its principal office at 801 Houston Natural Gas Building, Houston, Harris County, Texas, hereinafter called "Lessor", and The Dow Chemical Company, a Delaware corporation, having its principal office at Midland, Michigan, hereinafter called "Lessee",

W I T N E S S E T H:

Lessor agrees to lease to the Lessee, and the Lessee hereby leases and hires from the Lessor and agrees to accept delivery of, upon the terms and conditions herein set forth, the following described tank cars (hereinafter referred to as the "cars", reference to which shall include singular as well as plural cars) for the use of each of which cars the Lessee agrees to pay to the Lessor the following rental and service charges:

<u>Number of Cars</u>	<u>Type</u>	<u>Lease Price</u>
7A RTMX 1000 thru 1019 20 (Twenty) Cars (formerly Nos. TSVX 10800 through 10819)	DOT 111A 100W5 10,000 Gallon	\$ 205.50 per month
7A RTMX 2000 thru 2024 25 (Twenty-five) Cars (formerly Nos. TSVX 20804 through 20828)	DOT 111A 100W5 20,000 Gallon	\$ 251.35 per month
7A RTMX 1600 thru 1613 14 (Fourteen) Cars (formerly Nos. TSVX 1600F through 1613)	DOT 111A 100W1 16,000 Gallon	\$ 249.78 per month

1613  
7A

Term. The term of this lease respecting each car commences on the date of delivery of such car to Lessee but such delivery shall not commence before March <sup>20</sup>~~30~~, 1971 (hereinafter called "Effective Date") and shall continue in effect for a period of fifteen years, provided that after the initial one hundred and twenty months of lease, Lessee or Lessor may terminate this lease upon giving six months prior written notice, subject to the rates of the above rate schedule. Notwithstanding the expiration or termination of this lease by notice or otherwise, it shall continue in effect with regard to each car until returned to possession of Lessor.

Payment. Lessee agrees to pay said rentals and service charges to Marathon Leasing Company at the principal office located in Houston, Harris County, Texas, on the first day of each calendar month in advance, without deduction, except that the Lessee shall pay in advance on the delivery of each car respectively a pro rata portion of one month's rent for the period intervening the date of delivery and the first of the next succeeding calendar month and shall pay only the pro rata portion of such monthly charge attributable to any fractional month accruing at the termination of this lease.

Delivery. Each of the cars shall be delivered to the Lessee at such points and dates as will be designated by Lessee. The obligation of Lessor to furnish the cars shall be subject to all causes reasonably beyond the control of Lessor, including, but not limited to, delays caused by fire, labor difficulties, delays of carriers and materialmen or governmental authority; and Lessor shall not be liable for any damages by reason of any such delay.

Inspection of Car. Each of the cars shall be subject to Lessee's inspection before loading; and the loading of such car shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition of such car for the purpose of transporting the commodities then and thereafter loaded therein.

Damage to Car Resulting from Lading. In the event the tank of any of the cars, or the fittings or appurtenances thereto, shall become damaged by the commodity loaded therein, Lessee agrees to assume the responsibility for such damage.

Alteration and Lettering. Lessee will preserve the cars in good condition and will not in any way alter the physical structure of the cars without the advance approval in writing of Lessor, which approval will not be unreasonably withheld. Lessee will place no lettering or marking of any kind upon the cars without Lessor's prior written consent, which approval will not be unreasonably withheld, except that, for the purpose of evidencing the operation of the cars in Lessee's service hereunder, Lessee will be permitted to board, placard or stencil the cars with letters not to exceed two inches (2") in height.

Maintenance. Lessor agrees to maintain each of the cars in good condition and repair according to the Code of Rules of the Association of American Railroads, and Lessee agrees to forward the cars to the shops of Lessor for periodic maintenance repairs as may be directed by Lessor. No repairs to any of the cars shall be made by Lessee without Lessor's prior written consent, except that Lessee shall at its expense replace any removable tank parts (dome

covers, outlet caps, etc.) if lost or broken. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot be operated in railroad service as determined by the parties, then either party may at its option cancel this lease as to such car as of the date of which such event occurred. When cars are placed in a shop for maintenance and/or repair at the direction of Lessor, the rental charges on each car shall cease on the date of notification by Lessee and will be reinstated on the date such car is forwarded from shop and/or date such car is ready to leave such shop. If a car is in need of repairs while in route and is placed in railroad shops for repair, then after the lapse of five days the rent on the cars so placed shall cease until such cars are returned to Lessee's service. If any repairs are required as a result of the misuse by or negligence of Lessee, its consignee, agent or sublessee, the rental charge shall continue during the rental period.

Indemnity. Lessee will indemnify Lessor against any loss, damage or injury caused during the term of this lease by any of the cars hereby leased, or to or by the contents thereof, howsoever occurring, except any loss, liability, claim, damage or expense which is attributable to the fault or neglect of the Lessor or for which a railroad or railroads have assumed full responsibility therefor, and will indemnify Lessor against any loss or damage suffered by the Lessor by reason of same.

Return of Cars. Upon the expiration or termination of this lease Lessee agrees to return each of the cars in good working order, ordinary wear and tear excepted, to Lessor at the loading point or at a point mutually agreed upon, free from residue, and to give Lessor advance written notice of such return. Lessee shall on demand reimburse Lessor for the cost of cleaning any cars containing residue.

Reports and Mileage. Lessor shall collect all mileage earned by the cars and shall credit to the rental account of Lessee for each accounting period (as defined) such mileage earned by the cars while in the service of Lessee, as and when received from the railroads according to, and subject to, all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder for such year. The term "accounting period", as used in this contract, is defined to mean each period of twelve (12) consecutive months within the term of this contract ending on the anniversary of the effective date hereof, and any period from the last such twelve (12) months period to the date of expiration of this contract. Lessee shall give Lessor monthly reports of the movements of the cars, giving destination, date and routing of each movement.

Excess Empty Mileage. Lessee agrees so to use the cars that their mileage under load shall be equal to their mileage empty upon each railroad over which the cars move, and, upon the expiration or termination of this agreement, should the empty mileage of the cars upon any railroad exceed

the loaded mileage of the cars on such railroad, Lessee agrees to pay Lessor, as an additional rental, for such excess of empty mileage, at the rate established by the tariffs of the railroad upon which such excess is incurred. Lessor agrees to furnish to Lessee proof that it has been billed by the railroad for such mileage.

Taxes and Liens. Lessor agrees to pay all property taxes levied upon the cars and to file all property tax reports relating thereto.

Assignment. Lessee agrees to use the cars exclusively in Lessee's own service within the boundaries of the continental United States (exclusive of Alaska and Hawaii), Canada, and Mexico, and to make no transfer, or assignment of this agreement, or sublease of the cars, without Lessor's prior written consent, except that Lessee shall have the right to sublease any of the cars, for trip lease, or otherwise sublease cars to its customers, or to its suppliers, <sup>OR OTHERS 70-887</sup> and to cause such cars so subleased to be boarded or placarded with the names of the sublessees in accordance with the provisions of demurrage tariffs lawfully in effect, where the sole purpose of such subleasing is to obtain an exemption from demurrage for said cars so subleased, provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor under this lease, and provided further that Lessor shall have the right to withdraw this privilege of subleasing at any time.

Subject always to the foregoing, this lease inures to the benefit of, and is binding upon, the Lessor, its successors and assigns, and the Lessee, its successors and assigns.

Lessor may not assign this Lease without the prior written consent of Lessee, which consent may not be unreasonably withheld; provided, however, that the Lessor may assign this Lease and the rentals payable thereunder without such written consent as security for any loan or loans which Lessor may make.

Default. It is mutually agreed that the time of payment of rentals is of the essence of this contract and that if the Lessee shall make default in the payment of rentals for the cars at the time when same become due and payable or shall make default in the performance or observance of any of the other agreements herein contained and by Lessee to be performed or observed and such default is not cured or reasonable efforts are not made to cure the same within fifteen (15) days after written notice is given by the Lessor to the Lessee, or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under the Bankruptcy Law or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors and the same is not set aside or cancelled or reasonable efforts are not made to set aside and cancel the same within fifteen (15) days after written notice is given by the Lessor to the Lessee, then and in any of said events Lessor, at its election, may terminate this lease and repossess itself of said cars and this lease shall thereupon

become and be terminated, or Lessor may repossess itself of said cars and relet the same or any part thereof to others for such rent and upon such terms as it may see fit; and if a sufficient sum shall not thus be realized after repaying all expenses of retaking and reletting said cars and collecting the rental thereof, to satisfy the rentals herein reserved, the Lessee agrees to satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such termination of this lease and/or such retaking of the cars. Lessee shall without expense to Lessor assist it in repossessing itself of said cars and shall for a reasonable time if required furnish suitable trackage space for the storage of said cars. The rights and remedies herein given to Lessor shall in no way limit its rights and remedies given or provided by law or in equity.

Additional Provisions. The Lessee agrees so to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars, during the term hereof, shall result in any charges being made against Lessor by any such railroad, the Lessee shall pay Lessor for such charges, within the period prescribed by, and at the rates and under the conditions established by, said then prevailing tariffs.

Lessor will be responsible for the new cars empty from point of manufacture to Freeport, Texas. Any additional cost to move the cars to a more distant point will be for the account of Lessee.

Lessee shall have the right and option at any time by giving written notice to Lessor within SIX (6) MONTHS <sup>70-810</sup> from the date of this lease (~~but after August 1, 1971~~) to purchase for cash payable within 30 days from the date notice is given the cars at a price to be negotiated between the parties but not to exceed the cost on which the rental <sup>70-810</sup> rate for the cars was based plus ONE-HALF (1/2) OF ONE (1%) PER CENT.

Lessor hereby warrants to the Lessee, that at the time of delivery of the above described railroad equipment to the Lessee, Lessor is the lawful owner of the railroad equipment; has good and indefeasible legal title thereto, and has the right to lease the railroad equipment to the Lessee. Lessor further warrants and agrees to defend the title to said railroad equipment at all times and to reimburse and hold the Lessee harmless from all damages and expenses which Lessee may suffer by reason of any restriction, encumbrance or defect in such title. So long as Lessee shall not be in default under this Lease, Lessee shall peacefully and quietly hold and possess and use the railroad equipment during the term hereof and the Lessee shall have the right to cancel this lease agreement because of any breach of this covenant by the Lessor.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed and delivered the day and year first above written.

MARATHON LEASING COMPANY

ATTEST:

James J. O'Hara  
Secretary

By

F. R. Duvall  
Vice President

THE DOW CHEMICAL COMPANY

ATTEST:

By

J. B. ...  
Vice President  
Manager of Purchasing - Metals <sup>WJ</sup>

Secretary