

RECORDATION OF LEASE
OF RAILROAD EQUIPMENT

June 4, 1979

9-156-054
JUN 5 1979
50.00
Washington, D. C.

10454

RECORDATION NO. Filed 1425

JUN 5 1979 - 3 50 PM

Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423
INTERSTATE COMMERCE COMMISSION

Dear Secretary:

Pursuant to Title 49, Section 11303 U.S.C., Diboll Leasing Company, a party to the lease hereinafter mentioned, is submitting herewith for recordation three copies of the lease dated June 4, 1979, each bearing original signatures and all of which have been acknowledged pursuant to the requirements of 49 CFR 1116.3. In accordance with 49 CFR 1116.4, we furnish the following information:

Lessor: Diboll Leasing Company, P. O. Box 636, Diboll, Texas 75941.

Lessee: Texas Southeastern Railroad Company, P. O. Box 366, Diboll, Texas 75941.

Equipment: One Hundred Twenty (120) 70-Ton, 50'6" Single Sheath Boxcars with Single 10' Sliding Doors centered on each car, Nailable Steel Flooring, Lading Anchors, AAR Plate "C", manufactured by FMC Corporation, Portland, Oregon, A.A.R. Mechanical Designation XM, bearing reporting markings and identifying marks TSE 5001 through TSE 5120, inclusive, including appurtenances and additions thereto.

We are also enclosing herewith a cashier's check in the sum of \$50.00 to cover the filing cost.

We request that the lease be duly recorded and returned to the following attorneys:

Zeleskey, Cornelius, Rogers
Hallmark & Hicks
P. O. Drawer 1728
Lufkin, Texas 75901
Attention: Jack D. Hicks

FEE OPERATION
I.C.C.
JUN 5 3 40 PM '79
RECEIVED

Your attention to the foregoing matter will be appreciated.

Yours truly,

DIBOLL LEASING COMPANY

C. Tom Sumner

C. Tom Sumner,
President

- cc: Mr. Jack D. Hicks
Zeleskey, Cornelius, Rogers,
Hallmark & Hicks
P. O. Drawer 1728
Lufkin, Texas 75901
- cc: Mr. Ward R. Burke
Burke, Leach & Sloan
P.O. Box 777
Diboll, Texas 75941
- cc: Mr. Ira D. Einsohn
Gardere, Wynne, Jaffe & DeHay
1700 Republic National Bank Bldg.
Dallas, Texas 75201

10454

RECORDATION NO. Filed 1425

JUN 5 1979 -3 50 PM

INTERSTATE COMMERCE COMMISSION.

A LEASE BETWEEN

DIBOLL LEASING COMPANY

AND

TEXAS SOUTHEASTERN RAILROAD COMPANY

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 4th day of June, 1979, between DIBOLL LEASING COMPANY, a private corporation with its principal office and place of business in the City of Diboll, Angelina County, Texas, whose mailing address is P. O. Box 636, Diboll, Texas 75941, herein referred to as "Lessor", and TEXAS SOUTHEASTERN RAILROAD COMPANY, a private corporation with its principal office and place of business in the City of Diboll, Angelina County, Texas, and whose mailing address is P. O. Box 366, Diboll, Texas 75941, herein referred to as "TSE".

W I T N E S S E T H:

1. SCOPE OF AGREEMENT

A. Lessor agrees to lease to TSE, and TSE agrees to lease from Lessor, the railroad boxcars described in the lease Schedule executed by the parties concurrently herewith or hereafter and made a part of this Agreement, the railroad boxcars described in the Schedule hereinafter referred to singularly as the "Boxcar" or collectively as the "Boxcars". The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement.

B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Boxcars. TSE agrees that it will at no time take any action or

file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

C. It is further understood that the Boxcars herein leased are subject to a purchase money lien in favor of Republic National Bank of Dallas, and TSE does hereby expressly acknowledge such purchase money lien. And, except for such purchase money lien, TSE, at its expense, will protect and defend Lessor's title to the Boxcars and will keep the Boxcars free and clear from any and all liens, claims, encumbrances and legal processes of TSE's creditors.

D. TSE shall execute and deliver to Lessor, upon Lessor's request, such instrument and assurances as Lessor deems necessary for the confirmation or perfection of this Lease and Lessor's rights hereunder. In furtherance thereof, Lessor may file or record this Lease so as to give notice to any interested party. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code.

E. The equipment is and shall remain personal property and not part of any real estate. Upon the expiration or termination of this Lease as to any of the Boxcars, TSE agrees to return each of the Boxcars in good working order, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of TSE, to Lessor at the place where the rent is paid, or to such other place as Lessor and TSE agree upon,

complete with all parts, equipment, and accessories with which the Boxcar was originally equipped or which had been added during the term of the Lease.

F. TSE shall have no option to purchase or otherwise acquire title to or ownership of any of the Boxcars and shall have only the right to use the same under and subject to the terms and provisions of this Lease.

2. TERM

A. The term of this Lease shall be for a period of one hundred twenty-five (125) months commencing June 1, 1979, and terminating on the 31st day of October, 1989.

B. TSE shall have no option to renew or extend the Lease term.

3. SUPPLY PROVISIONS

A. It is acknowledged by TSE that the Boxcars are being delivered to Lessor by FMC Corporation ("FMC") pursuant to specifications approved by Texas Southeastern Railroad Company ("TSE"); that each of the Boxcars will be delivered by FMC to Lessor for acceptance at Portland, Oregon.

B. Lessor will inspect each of the Boxcars tendered by FMC for delivery to TSE. Prior to such inspection, however, TSE shall confirm in writing to Lessor that the sample Boxcar which will be made available for TSE's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by TSE. Upon such approval by TSE and Lessor's determina-

tion that the Boxcar conforms to the specifications ordered by Lessor and to all applicable governmental regulatory specifications, Lessor will accept delivery thereof at FMC's facility in Portland, Oregon, and shall notify TSE in writing of such acceptance. Each of the Boxcars shall be deemed delivered to TSE upon acceptance by Lessor. The Boxcars shall be delivered to TSE's railroad line at no cost to TSE as soon after acceptance of delivery by Lessor as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Lessor can neither control nor determine when the Boxcars leased hereunder will actually be available to TSE for its use on its railroad tracks. Notwithstanding that TSE may not have immediate physical possession of the Boxcars leased hereunder, TSE agrees to pay to Lessor the rent set forth in this Agreement. To move the Boxcars to TSE's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of TSE (the "Initial Loading"), Lessor agrees to assist TSE in monitoring Boxcar movement and, when deemed necessary by TSE and Lessor, to issue movement orders with respect to such Boxcars to other railroad lines in accordance with ICC and AAR Interchange Agreements and Rules.

C. The obligation of Lessor to furnish the Boxcars 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 govern-

mental authority; and Lessor shall not be liable for any damages by reason of any such delay.

4. RENTALS

A. TSE agrees to pay the following rent to Lessor for the use of the Boxcars:

(i) Lessor shall receive all payments made to TSE by other railroad companies for their use or handling of the Boxcars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to TSE are hereinafter collectively referred to as "Payments"). In addition, Lessor will receive, as additional rental, all monies earned by the Boxcars prior to their initial loading.

(ii) The rental charges payable to Lessor by TSE shall be paid from the payments received by TSE in the following order: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges; and (4) other; shall be payable to Lessor at its office in Diboll, Angelina County, Texas, or elsewhere as Lessor shall, in writing, designate to TSE; and all such rental charges, if not sooner paid, shall be paid on the 15th day of each month throughout the term hereof.

(iii) In the event damage or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules--Freight and the appropriate amount due as a result thereof is received by Lessor, said damaged or destroyed Boxcar will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. In the event utilization in any calendar quarter is less than seventy-five (75%) per cent, Lessor may, at its option and upon not less than thirty (30) days prior written notice to TSE, terminate this Agreement as to such Boxcars as Lessor shall determine.

C. Lessor may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire for boxcars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to Lessor at least equal in amount to such reduction, (2) determine that TSE may not apply its incentive car hire receipts in payment of the rental charges set forth in this paragraph, or (3) require that TSE spend funds not earned by the Boxcars in order for TSE to continue to meet its obligations set forth in this Paragraph.

5. ADDITIONAL CONSIDERATIONS TO TSE

As an additional consideration to TSE for the execution of this Agreement and the performance of its duties hereunder, Lessor agrees for each Boxcar so leased by Lessor to TSE, to pay unto TSE the sum of \$25.00 per month as a management fee. As to each Boxcar, the \$25.00 per month management fee shall be payable on the 1st day of each and every month throughout the term of this Lease commencing October 1, 1979. If for any reason this Lease is terminated as to a Boxcar, the monthly management fee as to such Boxcar shall likewise terminate. And, in the event Lessor should fail to make delivery of any Boxcar called for in the Schedule, then any management fee paid by Lessor to TSE for such Boxcar shall be refunded by TSE to Lessor.

6. TAXES AND LIENS

A. Lessor agrees to reimburse TSE for all taxes, assessments and other governmental charges of whatsoever kind or

character paid by TSE relating to each Boxcar and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Boxcar to TSE or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on TSE and sales or use taxes imposed on the mileage charges and/or car hire revenues. Lessor shall forward to TSE all sales and use tax payment received by it on behalf of TSE. Lessor and TSE will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. Lessor shall review all applicable tax returns prior to filing.

B. TSE agrees not to encumber or dispose of this Lease or of any of the Boxcars or any part of a Boxcar or permit any encumbrance or lien to be entered or levied upon of the Boxcars. TSE will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

7. MAINTENANCE

A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Boxcars during the term of this Lease and Agreement, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of TSE while such Boxcar is in the physical possession of TSE. TSE shall inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and

shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. TSE hereby transfers and assigns to Lessor for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessor at its sole expense, and TSE shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to Lessor.

B. Except as provided above, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to the Boxcars as may be required. Upon request of Lessor, TSE shall perform any necessary maintenance and repairs to Boxcars on TSE's railroad tracks as may be reasonably requested by Lessor. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the Lease of such Boxcars. TSE may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any repairs, alterations, improvements or additions to the Boxcars without Lessor's prior written consent. If TSE makes an alteration, improvement or addition to any Boxcar without Lessor's prior written consent, TSE shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Lessor.

C. TSE will at all times while this Agreement is in effect be responsible for the Boxcars while on TSE's railroad tracks in the same manner that TSE is responsible under Rules 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules--Freight for cars not owned by TSE on TSE's railroad tracks. TSE shall protect against the consequences of an event of loss involving the Boxcars while on TSE's railroad tracks by either obtaining insurance or maintaining a self-insurance program which conforms to sound actuarial principles. If TSE elects to carry insurance, it shall furnish Lessor concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months with a certificate of insurance with respect to the insurance carried on the Boxcars signed by an independent insurance broker. All insurance shall be taken out in the name of TSE and Lessor (or its assignee or any other party in interest as may be designated by Lessor) as their interest may appear.

8. POSSESSION AND USE

A. So long as TSE shall not be in default under this Agreement, TSE, unless otherwise herein provided, shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. However, TSE's rights shall be subject to the rights of Republic National Bank of Dallas, its successors or assigns, under any financing agreement entered into by Lessor or other third person owner of any Boxcar leased hereunder in connection

with the acquisition of the Boxcars, i.e., upon notice to TSE from Republic National Bank of Dallas, its successors or assigns, that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Boxcars be returned to such party. Lessor agrees to deliver unto TSE the name of any Boxcar owner with whom Lessor has a Management Contract or Lease affecting a Boxcar leased hereunder.

B. TSE agrees to use the Boxcars within the boundaries of the continental United States (exclusive of Alaska and Hawaii) and Canada.

9. EQUIPMENT TO BE IDENTIFIED

TSE shall, upon the request of Lessor, and at its own expense firmly affix to the Boxcars, in a conspicuous place, such a decalcomania or metal plate as shall be supplied by Lessor showing Lessor, or Lessor's Assignee (if this Lease be assigned), as the owner and Lessor of such Boxcars.

10. RAILROAD MARKINGS AND RECORD KEEPING

A. Lessor and TSE agree that on or before delivery of any Boxcars to TSE, said Boxcars will be lettered with the railroad markings of TSE and may also be marked with the name and/or other insignia used by TSE. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessor, TSE shall during the term of this Agreement prepare and file, or, when necessary, prepare for Lessor's signature and filing, all documents relating to the

registration, maintenance and record keeping functions involving the Boxcars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Boxcar leased hereunder shall be registered at no cost to Lessor in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. TSE shall perform all record keeping functions related to the use of the Boxcars by TSE and other railroads in accordance with AAR Railroad Interchange Agreements and Rules, such as Car Hire Reconciliation. At Lessor's election, correspondence from railroads using such Boxcars shall be addressed to TSE at such address as Lessor shall select.

D. All record keeping performed by TSE hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by TSE in a form suitable for reasonable inspection by Lessor from time to time during regular TSE business hours. TSE shall supply Lessor such reports, including daily telephone reports of the number of Boxcars on TSE's tracks, regarding the use of the Boxcars by TSE on its railroad line as Lessor may reasonably request.

11. ASSIGNMENT OR SUBLEASE BY TSE

TSE may not without the prior written consent of Lessor assign this Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void.

12. ASSIGNMENT BY LESSOR

For the purpose of providing funds for financing the purchase of the Boxcars, or for any other purpose, TSE agrees (a) that Lessor may assign, sell or encumber all or any other part of this Lease Agreement, the Boxcars and the rental payments hereunder and (b) in the event of any such assignment of rental payments hereunder and written notice thereof to TSE, to pay directly to any such assignee all rentals and other sums due or to become due under this Lease Agreement.

13. GOVERNMENTAL AND INDUSTRIAL REGULATIONS

TSE agrees to comply with all governmental laws, rules, regulations, and requirements, and with the Interchange Rules of the AAR with respect to the use and operation of each of the Boxcars during the term of this Agreement, except that TSE may in good faith and by appropriate proceedings contest the application of any such law, rule, regulation or requirement in any reasonable manner and at its expense.

14. INDEMNITY

Lessor will defend, indemnify and hold TSE harmless from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring while TSE

has physical possession of the Boxcars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against TSE with respect to the Boxcars except any claim, cause of action, damage, liability, cost or expense which is attributable to the fault or neglect of TSE, and except loss or physical damage to the Boxcars described in (1) above. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

15. DEFAULT

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by TSE of any sum required herein to be paid by TSE within ten days after the date any such payment is due.

(ii) The breach by TSE of any other term, covenant, or condition of this Agreement, which is not cured within ten days following the receipt of written notification of TSE's failure to comply herewith.

(iii) Any act of insolvency by TSE, or the filing by TSE of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against TSE that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of TSE, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of TSE's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by TSE of this Agreement or to recover damages for a breach thereof (and TSE agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcement), or

(ii) By notice in writing to TSE, terminate TSE's right of possession and use of the Boxcars, whereupon all right and interest of TSE in the Boxcars shall terminate; and thereupon Lessor may enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of TSE. Lessor shall nevertheless have the right to recover from TSE any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

16. EARLY TERMINATION

A. Lessor may, at its option, by giving TSE written notice of termination not less than sixty (60) days prior to the termination date designated in such notice, terminate this Agreement as to one or more of the Boxcars if the Interstate Commerce Commission shall, at any time, (i) issue an order reducing incentive car hire for boxcars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to Lessor at least equal in amount to such reduction, (ii) determine that Lessor may not apply its incentive car hire receipts in payment of the rental charges set forth in this Agreement, or (iii) require that Lessor spend funds not earned by the Boxcars in order for Lessor to continue to meet its obligations set forth in this Lease Agreement.

B. In the event that the Boxcars, or any of them, shall be requisitioned or taken over for a period which exceeds the remaining term of this Lease, this Lease as to such Boxcars or Boxcar shall terminate, and all sums payable by any governmental authority for the requisition or taking of such Boxcars or Boxcar shall belong to and vest in Lessor.

C. In the event that during the term of this Lease the Boxcars, or any of them, are requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, this Lease as to such Boxcars or Boxcar shall not terminate, but (1) during such period, Lessor shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession of such railroad cars or railroad car and (2) during such period, the obligation of Lessor to pay unto TSE a management fee as provided in Paragraph 5 hereof, shall abate as to each Boxcar so requisitioned or taken.

D. Lessor shall not, by reason of such early termination of this Agreement in accordance with the terms and provisions hereof, be liable to TSE for compensation, reimbursement or damages, either on account of present or prospective profits or on account of expenditures, investments or commitments made in connection therewith, or on account of any other cause or thing whatsoever, except as is otherwise herein provided.

E. Except as may be otherwise expressly set forth

herein, upon the expiration or termination of this Agreement as to one or more of the Boxcars, all obligations of the parties as to such Boxcar or Boxcars shall immediately cease. TSE shall, however, provide reasonable assistance to Lessor in transferring to Lessor, all at Lessor's expense and upon Lessor's request, all records, data and other information relating to the Boxcars.

17. TERMINATION

At the expiration or termination of this Agreement as to any Boxcars, Lessor will surrender possession of such Boxcars to TSE by delivering the same to TSE. A Boxcar shall be no longer subject to this Agreement upon the removal of TSE's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by Lessor, either, at the option of Lessor, (1) by TSE upon return of such Boxcars to TSE's railroad line or (2) by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such Boxcar. If such Boxcars are not on the railroad line of TSE upon termination, any cost of assembling, delivering, storing, and transporting such Boxcars to TSE's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Boxcars are on the railroad line of TSE upon such expiration or termination or are subsequently returned to TSE's railroad line, TSE shall at its own expense within five (5) working days remove TSE's railroad markings from the Boxcars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, TSE shall use its best efforts to

load such Boxcars with freight and deliver them to a connecting carrier for shipment. TSE shall provide up to thirty (30) days free storage on its railroad tracks for Lessor or the subsequent lessee of any terminated Boxcar. If any Boxcar is terminated pursuant to Paragraph 15 hereof prior to the end of its lease term, TSE shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint the Boxcars and place thereon the markings and name or other insignia of Lessor's subsequent lessee.

18. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. TSE represents, warrants and covenants that:

(i) TSE is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operation and to own or hold under lease its properties and perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to TSE, or result in a breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of TSE or on the Boxcars pursuant to any instrument to which TSE is a party or by which it or its assets may be bound.

(iii) There is not action or proceeding pending or threatened against TSE before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, property and assets, or conditions, financial or otherwise, of TSE.

(iv) There is no fact which TSE has not disclosed to Lessor in writing, nor is TSE a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as TSE can now reasonably foresee, will individually or in the aggregate materially adversely affect the business,

condition or any material portion of the properties of TSE or the ability of TSE to perform its obligations under this Agreement.

B. Lessor represents, warrants and covenants that:

(i) Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operation and to own or hold under lease its properties and perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law, lease, or regulation applicable to Lessor, or result in a breach of, or constitute a default thereunder.

19. INSPECTION

Lessor shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure TSE's compliance with its obligations hereunder. TSE shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Boxcars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to TSE's investigation of the accident. TSE shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. TSE shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other

income or balance sheet statements required to be submitted to the ICC.

20. MISCELLANEOUS

A. Binding Effect: This Agreement and the Schedule contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

B. Other Documents: Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

C. No Partnership: It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to TSE any right, title or interest in the Boxcars except as a lessee only.

D. Waiver: No failure of delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. Situs: This Agreement shall be governed by and construed according to the laws of the State of Texas.

F. Notices: All notices hereunder shall be in writing and shall be deemed given when delivered personally or when

deposited in the United States mail, postage pre-paid, certified or registered, addressed to the parties hereto at the address set forth above, or to Lessor or TSE at such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

G. 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 and unenforceable without invalidating the remaining provisions hereof. To the extent permitted by applicable law, TSE hereby waives any provision of law which prohibits or renders unenforceable any provisions hereof in any respect.

H. Amendments: This Agreement and the Schedule executed by Lessor and TSE constitute the entire agreement between Lessor and TSE with respect to the Boxcars and the subject matter of this Lease. No term or provision of this Lease may be changed, modified, amended or terminated except by a written agreement signed by both Lessor and TSE except that Lessor may insert the identification number as to a Boxcar on the appropriate Schedule after delivery thereof.

I. Paragraph Headings: The paragraph headings contained in this Agreement are provided for convenient reference only and shall not be considered for any purpose in analyzing or construing the intention of the parties with respect to this Agreement.

J. Counterparts: This Agreement may be executed in one or more counterparts and each of such counterparts shall for

all purposes be deemed to be an original, and all such counter-
parts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the date first above written.

DIBOLL LEASING COMPANY

By C. Tom Sumner
Its President

"LESSOR"

TEXAS SOUTHEASTERN RAILROAD COMPANY

By G. T. Honea
G. T. Honea, Vice President and
General Manager

"TSE"

LEASE SCHEDULE

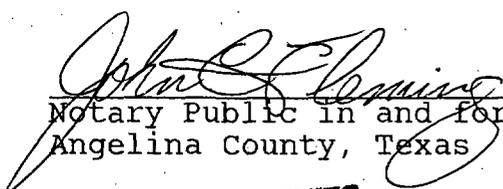
<u>ITEM</u>	<u>QUANTITY</u>	<u>MARKINGS - IDENTIFICATION</u>
FMC Corporation 70-Ton 50'6" Single Sheath Boxcar with Single 10' Sliding Doors Centered on Car, Nailable Steel Flooring, Lading Anchors, AAR Plate "C"	120	"TSE 5001 through "TSE 5120"

THE STATE OF TEXAS ¶

COUNTY OF ANGELINA ¶

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared C. TOM SUMNER, President of Diboll Leasing Company, a corporation, 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 the said Diboll 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 4th day of June, 1979.


Notary Public in and for
Angelina County, Texas

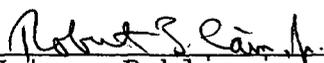
JOHN C. FLEMING
Notary Public

THE STATE OF TEXAS ¶

COUNTY OF ANGELINA ¶

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared George T. Honea, Vice President of Texas Southeastern Railroad Company, a corporation, 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 the said Texas Southeastern Railroad 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 4th day of June, 1979.


Notary Public in and for
Angelina County, Texas

ROBERT T. CAIN, JR.
Notary Public