

COPY

6180
~~7000~~

RECORDATION NO. _____ Filed & Record.

APR 7 - 1971 - 9 45 AM

INTERSTATE COMMERCE COMMISSION

LEASE

This Lease by and between MONON TRANSPORTATION CORPORATION, an Indiana corporation (hereinafter referred to as "Lessor"), and MONON RAILROAD, an Indiana corporation (hereinafter referred to as "Lessee"), is entered into as of the 15th day of February, 1971.

In consideration of the rents and covenants hereinafter set forth, the parties agree as follows:

Section 1. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, gondolas and box cars (hereinafter referred to as the "Leased Equipment") bearing the Lessee's car numbers as set forth in Schedule 1 annexed hereto.

Section 2. The original term of this Lease shall commence at 12:01 A. M. on February 15, 1971 and terminate at 11:59 P. M. on February 14, 1981. Thereafter this Lease shall remain in effect from month to month until terminated by either party upon the giving of one month's notice to the other party.

Section 3. Lessee covenants and agrees to pay rent in respect of the Equipment to Lessor and its successors and assigns in lawful money of the United States in accordance with the provisions of Schedule II, "Schedule of Rental Payments", attached hereto and by reference made a part hereof.

Rent shall be payable monthly on the fifteenth (15th) day of

the calendar month following the month for which the rental is accrued and payable.

Lessee's obligation to pay rent hereunder with respect to any unit of the Leased Equipment shall continue at all times during the term hereof notwithstanding that such unit may be lost, stolen, destroyed, damaged or out of service for any reason whatsoever, except that the Lessee's obligation to pay rent shall cease in respect of (i) any unaccepted unit of Leased Equipment which the Lessee has purchased pursuant to Section 10 of Part II of a certain Agreement for Purchase, Construction and Lease, dated as of February 15, 1971 between the Lessor and the Lessee, and (ii) any lost, stolen or destroyed unit of Leased Equipment which the Lessee has purchased pursuant to Section 8 of this Lease.

Section 4. Lessee agrees to keep the Leased Equipment and each unit thereof free and clear of all levies, charges, liens and encumbrances. Lessee further agrees to pay, and reimburse Lessor for any payments made by Lessor of any and all taxes, license fees, assessments, registration fees and charges (excluding taxes on net income of Lessor from rentals on the Leased Equipment) including (without limitation) sales taxes, use taxes, gross income taxes, excise taxes and property taxes whether levied by municipal, state, federal or governmental authorities, which may now or hereafter be imposed on Lessor or Lessee by reason of the leasing, ownership, operation, possession or use of the Leased Equipment, and

Lessee agrees promptly to prepare and file all tax returns and other forms which are or may at any time be required by any governmental authority in respect of the foregoing; provided, however, that upon giving notice to Lessor, Lessee may in good faith contest the validity of any such taxes, assessments, license fee, registration fee or charge in any reasonable manner which will not in the judgment of Lessor (or any successor or assign of Lessor of whom Lessee shall have notice or knowledge) materially impair the rights or interests of Lessor, or its successors or assigns.

Section 5. Lessee acknowledges and agrees that it does not have, and by payments and performance hereunder it does not and will not obtain, any title to any unit of the Leased Equipment or any property right or interest, legal or equitable, therein except solely as Lessee hereunder and subject to all of the terms hereof.

Section 6. Lessee will protect, indemnify and hold harmless Lessor, its successors and assigns, against any and all claims, loss, damage, costs, expenses, settlements, judgments, decrees, fines, awards and penalties in any way arising out of or through the operation of the Leased Equipment. or any portion thereof, and will indemnify and protect Lessor, its successors and assigns, in the use of any and all patented inventions employed in and about the Leased Equipment, and will comply (and cause full compliance by others at any time using any of the Leased Equipment) in all respects with the laws of the United States and of all the states and

other jurisdictions in which the Leased Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission, and all other commissions, boards and other legislative, executive or judicial bodies, or officers, having power to regulate or supervise any of the Leased Equipment; provided, however, that upon giving notice thereof to Lessor or its successors or assigns, Lessee may in good faith contest the validity of any such rules, regulations and orders in any reasonable manner which will not, in the judgment of Lessor or its successors or assigns, materially impair the rights or interests of Lessor, its successors or assigns.

Section 7. Lessee will maintain all of the Leased Equipment in good order and repair at its own expense. Without limiting the generality of the foregoing sentence or of Section 6 of this Lease, Lessee will make or cause to be made, all repairs and changes in the Leased Equipment necessary to make the Leased Equipment acceptable for safe and suitable use in accordance with general railroad rules and regulations; provided, however, that Lessee may in good faith contest the validity of any such rules and regulations in any reasonable manner which will not, in the judgment of Lessor or its successors or assigns, materially impair the rights or interests of Lessor or its successors or assigns.

Section 8. In the event of the loss, theft, destruction or damage beyond reasonable repair of any unit of Leased Equipment from whatever

cause arising, the Lessee shall, on demand of the Lessor or its nominee, purchase or cause to be purchased from the Lessor such Leased Equipment, and pay, or cause to be paid, in cash, for such Leased Equipment an amount equal to the sum of the price paid by the Lessor to the Lessee for such Leased Equipment and the Construction Costs incurred in respect of such Leased Equipment.

Section 9. At or before the delivery to Lessee of each of the gondolas and box cars comprising the Leased Equipment, there shall be plainly, distinctly and conspicuously stencilled upon the side of such gondolas and box cars the following words in letters not less than one-half (1/2) inch in height:

"MONON TRANSPORTATION CORPORATION
OWNER AND LESSOR
MONON RAILROAD - LESSEE. "

In case any such stencilling shall be removed, defaced or destroyed, Lessee shall promptly cause the same to be restored. Lessee shall not change, or permit to be changed, the marking and numbers of any of the Leased Equipment acquired by it, except with the prior written consent of Lessor.

The Leased Equipment may also be labeled with the name, initials or trademark of Lessee, but no designation shall be placed on any of the Leased Equipment in a manner which might be interpreted as a claim of ownership thereof by Lessee, or any person other than Lessor.

Section 10. In the event that:

(A) Lessee shall default in the payment of any rent at any time due hereunder, and such default shall continue for at least thirty (30) days;

(B) Lessee shall make or suffer any unauthorized assignment or transfer of its rights or interest in, or, except as herein expressly authorized, part with the possession of the Leased Equipment or any part thereof and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties purporting to have any interest therein and recover possession of such Leased Equipment all within thirty (30) days after Lessor shall have demanded in writing such cancellation and recovery or possession; or

(C) Lessee shall, for more than thirty (30) days after Lessor shall have demanded in writing performance thereof, fail or refuse to comply with any of the terms and covenants hereunder on its part to be performed, or to make provisions satisfactory to Lessor for such compliance;

or

(D) A decree or order by a court having jurisdiction in the premises shall have been entered adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of Lessee under the federal bankruptcy laws or any other applicable federal or state insolvency or receivership law, and such decree or order shall have continued undischarged and unstayed for a period of thirty (30) days; or

(E) Lessee shall have instituted proceedings to be adjudicated a voluntary bankrupt, or shall have consented to the filing of a bankruptcy proceeding against it, or shall have filed a petition or answer or consent seeking reorganization or readjustment under the federal bankruptcy laws, Section 20b of the Interstate Commerce Act or any other applicable federal or state insolvency or receivership law; or shall have consented to the filing of any such petition, or shall have consented to the appointment of a receiver or liqui-

dator or trustee or assignee in bankruptcy or insolvency of it or of its property or any substantial portion of its property, or shall have made an assignment for the benefit of creditors, or shall have admitted in writing its inability to pay its debts as they become due, or corporate action shall have been taken by Lessee in furtherance of any of the aforesaid purposes;

then, in any case, Lessor may take possession of all or any part of the Leased Equipment, or Lessor may declare due and payable all installments of rent expressed hereunto to be payable at any time or times thereafter, whereupon all such installments of rent shall be and become immediately due and payable, or Lessor may do both of the foregoing, all without prejudice to Lessor's right (in lieu of the foregoing or in addition thereto) to avail itself of any other remedy or remedies to which it is entitled in law or in equity (including without limiting the generality of the foregoing any remedy for arrears of rent).

Without limiting the generality of the foregoing, Lessor may, with or without repossessing any of the Leased Equipment, by written notice delivered to Lessee, elect to receive from Lessee as liquidated damages for the breach of this Lease, an amount equal to the

difference between the value of the Leased Equipment and the sum of (i) all installments of rent which under the express provisions of Section 3 hereof shall have theretofore become due and payable, (ii) the current value (as hereinafter defined) of all installments of rent which under the express provisions of Section 3 hereof are to become due and payable thereafter, (iii) all other sums and amounts then due and unpaid under this Lease, and (iv) all other costs and expenses which Lessor shall have sustained as a result of the breach of this Lease including, without limitation, a reasonable sum for attorneys' fees and such expenses as shall have been incurred in the seizure or sale of any of the Leased Equipment or in the enforcement of any right or privilege hereunder, at law, or in equity. "Current value" as hereinabove used shall mean the present value of such rental payments determined by discounting the respective amounts thereof at the rate of nine (9) percent per annum.

In case Lessor shall rightfully demand possession of the Leased Equipment in pursuance of this Lease, and shall reasonably designate a point or points upon the line of any railroad for the delivery of the Leased Equipment to Lessor, Lessee will, at its own expense, forthwith and in the usual manner and at reasonable speed, cause the Leased Equipment to proceed or be drawn to such point or points on said railroad as shall be designated by Lessor and will there deliver or cause to be delivered the same to Lessor; or Lessor at its option may keep the Leased

Equipment on any of the lines of railroad or premises of Lessee until Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose Lessee agrees to furnish without charge the necessary tracks at any convenient point or points selected by Lessor. It is hereby expressly covenanted and agreed that the performance of the covenants contained in this Section 10 are of the essence of this Lease and that upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring the specific performance thereof.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies existing at law or in equity, and may be exercised from time to time and as often and in such order as may be deemed expedient. No delay or omission of Lessor in the exercise of any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of such event of default or any acquiescence therein.

All rights, remedies and powers provided for in this Section 10 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Section 10 are intended to be subject to all applicable mandatory provisions of law that may be controlling in the premises and to

be limited to the extent necessary so that they will not render this Lease invalid or unenforceable.

Section 11. Subject to the terms and conditions hereof, Lessee shall be entitled to the possession of the Leased Equipment, to use the same upon its railroad lines in North America in the usual course of its business as a railroad carrier.

Section 12. Lessor may, without the consent of Lessee, at any time and from time to time assign this Lease or all or any portion of Lessor's rights hereunder (including, without limitation, its right to receive rents) outright, or as security for any obligation or otherwise. The assignee of any of Lessor's rights hereunder shall be under no obligation to perform any of Lessor's duties, obligations covenants, or agreements under this Lease and such duties, obligations, covenants and agreements shall be and remain the sole liability of Lessor and of any person, firm or corporation succeeding to it or to substantially all of its business assets from and after such assignment.

Lessee further acknowledges and agrees that the rights of any such assignee in and to rents and other sums payable by the Lessee under this Lease or any provisions hereof shall not be subject to any abatement whatsoever and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of any defect in Lessor's title, or any interruption from whatsoever cause in the use, operation or

possession of the Leased Equipment or any thereof, or any damage to, or loss, theft or destruction of the Leased Equipment, or any thereof, or by reason of any other indebtedness or liability. howsoever and whenever arising, of Lessor to Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that Lessee shall be unconditionally and absolutely obligated to pay to any such assignee hereof all of the rents and other sums provided for by this Lease and assigned to such assignee.

Lessee shall not assign any of its rights or interest in or under this Lease and shall not sublease the Leased Equipment or any part thereof without first obtaining the consent of Lessor and any successors or assigns of Lessor (of whom Lessee shall have notice) to such assignment or sublease. However, no consent shall be required to the assignment of the rights or interests of Lessee where such assignment shall occur by reason of the merger or consolidation of Lessee into or with another corporation and whereby the surviving or resulting corporation shall assume all obligations and liabilities of the Lessee, including those under this Lease.

IN WITNESS WHEREOF, Lessor and Lessee, pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by their respective officers thereunto duly authorize and their separate corporate seals to be hereunto affixed and duly attested

as of the day and year first above written.

MONON TRANSPORTATION CORPORATION

ATTEST:

By /s/ W. J. Nuetzel
President

/s/ Helen M. Chrisman
Secretary

MONON RAILROAD

ATTEST:

By /s/ Samuel T. Brown
President

/s/ Frank E. Van Bree
Secretary

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 18 day of February, 1971, before me personally appeared W. J. Nuetzel, to me personally known, who being by me sworn says that he is President of Monon Transportation Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

/s/ Vivian B. Mertes
Notary Public

My Commission expires: **January 4, 1972**

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 18 day of February, 1971, before me personally appeared Samuel T. Brown, to me personally known, who being by me sworn, says that he is President of Monon Railroad, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

/s/ Vivian B. Merten
Notary Public

My Commission expires: **January 4, 1972**

SCHEDULE I

Fifty-eight (58) Gondolas:

3502	3528	3555	3578
3506	3530	3556	3579
3510	3532	3558	3580
3511	3533	3559	3581
3512	3534	3560	3582
3514	3535	3565	3583
3515	3537	3566	3590
3516	3540	3567	3591
3517	3541	3568	3593
3518	3545	3570	3595
3519	3548	3572	3596
3520	3549	3574	3599
3521	3550	3575	3650
3522	3552	3576	
3523	3553	3577	

New Monon Transportation car numbers of the above are:

MON 35001-58

Thirty (30) Box Cars:

1301	1304	1308	1311	1314	1317	1320	1372	1380
1302	1306	1309	1312	1315	1318	1370	1373	1381
1303	1307	1310	1313	1316	1319	1371	1374	1382
								1383
								1384
								1385

New Monon Transportation car numbers of the above are:

MON 21001-30

SCHEDULE II

The Lessee shall pay to the Lessor the amount of
\$ 1.65 per car per day commencing with February 15,
1971, and continuing for the entire period of this agreement.