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RECORDATION NO. _____ [Stamp]

DEC 20 1971 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

between

PACIFIC CAR AND FOUNDRY COMPANY

and

MISSOURI PACIFIC RAILROAD COMPANY



Dated as of December 1, 1971

THIS LEASE AGREEMENT, dated as of December 1, 1971, between Pacific Car and Foundry Company, a Washington corporation (hereinafter called the "Lessor") and Missouri Pacific Railroad Company, a Missouri corporation, with an office at St. Louis, Missouri (hereinafter called the "Lessee");

WITNESSETH :

1. *Lease and Rental.* The Lessor will, as contemplated by the Lessee's purchase order described in Schedule A hereto (hereinafter called the Purchase Agreement), construct at its manufacturing plant, set forth in the said Schedule A, the cars which are to be subjected to this Lease, as described and to be numbered as set forth on the said Schedule A (all of the foregoing cars being referred to as the Cars), in accordance with the specifications applicable thereto pursuant to the Purchase Agreement and any modifications thereof as agreed to between the Lessor and the Lessee (hereinafter called the Specifications).

The Lessor hereby leases to the Lessee and the Lessee hereby hires from the Lessor each of the Cars, for use upon its lines of railroad, and upon connecting and other railroads in the usual interchange of traffic, upon the terms and subject to the conditions hereinafter set forth. Such Lease shall become effective as to each Car upon delivery to and acceptance by the Lessee thereof, and shall terminate, unless modified or amended prior thereto, as to all Cars which have become subject to it, either (a) upon purchase of the Cars subject to this Lease by the Lessee, pursuant to Article 12 hereof, or, (b) in the event that the cars subject to this Lease become subject to either an equipment trust agreement, conditional sale agreement or other equipment financing arrangement, upon payment to the Lessor of the Purchase Price (as that term is defined in Section 12 hereof) of such Cars under such equipment trust agreement, conditional sale agreement or other equipment financing arrangement, as the case may be. Such termination of leasing under this Lease may be confirmed by an appropriate instrument executed by Lessor and/or Lessee.

For the use and rental of the Cars, the Lessee agrees to pay the sum of \$1 and other good and valuable consideration. This rental shall be due and payable to the Lessor in cash on the date on which the Lessor shall receive payment of the Purchase Price (as hereinafter defined) of such Car.

2. *Delivery.* The Lessor will deliver the Cars to the Lessee at the delivery point specified in Schedule A hereto, or at such other point upon which the Lessor and the Lessee may mutually agree.

On delivery of the Cars by the Lessor and acceptance by the Lessee, the Lessee will assume the responsibility and risk of loss with respect to the Cars so delivered.

Each Car shall be tendered by Lessor to Lessee at the appropriate point of delivery hereinbefore specified and the Lessee shall cause each Car to be inspected by the Lessee or its representative and agrees that such inspection shall not be delayed beyond 48 hours after receipt of notification by the Lessee that such unit is ready for inspection.

If such Car is in good order and condition and conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and all standards recommended by the Association of American Railroads, the Lessee or its representative shall accept the Car and execute a certificate of acceptance (hereinafter called the Certificate of Acceptance) in the form attached hereto as Exhibit 1. Such Certificate of Acceptance shall constitute conclusive evidence that the Car has been delivered to and accepted by the Lessee under this Lease; provided, however, that such delivery and acceptance shall not relieve the Lessor of its warranties provided for in the Purchase Agreement and the obligations under this Lease with respect to warranty obligations of the Lessor shall be those in the Purchase Agreement. The Certificate of Acceptance shall be delivered to the Lessor at the time of the delivery of each Car to the Lessee. The Lessee shall promptly, after the execution of this Agreement, deliver to the Lessor a certificate stating the persons authorized to execute and deliver Certificates of Acceptance on behalf of the Lessee.

Prior to the delivery of each Car to the Lessee, it shall be numbered with a car number as hereinbefore provided and there shall be plainly, distinctly, permanently and conspicuously marked on each side of each Car the following legends* in each case in letters not less than one inch in height:

MISSOURI PACIFIC RAILROAD EQUIPMENT TRUST, SERIES II
CHEMICAL BANK, TRUSTEE, OWNER AND LESSOR

In case, during the term of this Lease, such markings shall at any time be removed, defaced or destroyed on any Car, the Lessee shall immediately cause the same to be restored or replaced.

*or such other legend as may be specified by the Lessee

3. *Title to the Equipment.* Notwithstanding the delivery of the Cars to and the possession and use thereof by the Lessee, the Lessor shall and hereby does retain the full legal title to, and a security interest in, each of the Cars, subject only to the rights of the Lessee under this Lease.

The Lessee, will, throughout the term of this Lease, cause the Cars to be kept numbered with their identifying numbers, as specified in Article 1 hereof. The Lessee will not change the numbers of any of the Cars without first notifying the Lessor in writing. In any such case, the new number shall be set forth in a supplemental lease or in an amendment to this Lease which the Lessor and Lessee shall execute, and the Lessee shall file or record such supplemental lease or amendment in each jurisdiction wherein this Lease is recorded or filed in accordance with Article 11 hereof.

4. *Maintenance and Repair.* The Lessee shall at its own cost and expense maintain and keep said Cars in good order and repair at all times subject to the right of the Lessor to inspect the condition and supervise the maintenance thereof (but the Lessor shall be under no obligation to so inspect and supervise). However, in the event the Lessor does so inspect and supervise as provided in this Article 4, the Lessee will not assume liability for any injury to, or death of any agent or employee of Lessor while exercising these rights.

5. *Loss or Destruction.* In the event of loss or destruction of or irreparable damage to any of the Cars from any cause whatsoever during the term of this Lease, the Lessee shall promptly and fully inform the Lessor in regard to such loss, destruction or damage, and the Lessee shall pay promptly to the Lessor, in addition to the rent due hereunder, a sum equal to the Purchase Price of each Car so lost, destroyed or damaged, whereupon this Lease shall terminate as to such Car.

6. *Taxes and Compliance with Laws, Rules and Regulations.* The Lessee shall promptly pay all taxes (other than income taxes imposed upon the Lessor), licenses and assessments on or in respect of the Cars (including any which may be imposed upon or in respect of said Cars by reason of or in connection with the Lessee's possession or use of the Cars under this Agreement, or by reason of Lessor's retention of an interest therein) and agrees at all times to keep said Cars free and

clear of all taxes, assessments, liens and encumbrances and covenants, and that the Cars at all times hereunder will be maintained, used and operated under and in lawful compliance with the laws, rules and regulations to which they may be subject in any local, state or federal jurisdiction. Any sums of money that may be paid by the Lessor at its option by way of release, discharge or otherwise, of any of the foregoing, shall be promptly reimbursed and paid to the Lessor by the Lessee on demand as an additional part of the obligation herein with interest thereon at the rate of 10% per annum from the date of such payment by Lessor.

The Lessee, however, may withhold any such payment so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner and such withholding does not, in the judgment of the Lessor, affect the Lessor's title to or security interest in any of the Cars.

7. *Prohibition Against Liens.* The Lessee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Lessee and its successors or substitutes or assigns, or a person, firm or corporation using the Cars, which, if unpaid, might become a lien or a charge upon the Cars but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not effect the title of the Lessor in and to the Cars.

8. *Lessee's Indemnities and Guarantees.* The Lessee will save, indemnify and keep harmless the Lessor from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Cars or the use or operation thereof during the term of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee as provided in Article 12 hereof, or the termination of this Lease in any manner whatsoever.

The Lessee shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of the Cars; provided, however, that the Lessor and any successor or successors to its manufacturing property and business shall not, as to the Cars so destroyed or lost, be relieved from its warranty covering workmanship and material or design as provided for in the Purchase Agreement.

21. *Effect and Modification of Agreement.* With respect to Cars which become subject thereto, this Agreement amends the Purchase Agreement to the extent that it governs the date on which Lessee is obligated to pay the Purchase Price. This Agreement may be modified, amended or supplemented and any of its provisions or conditions waived if such actions are evidenced in writing and signed by the duly authorized officers of the Lessor and Lessee.

IN WITNESS WHEREOF, Pacific Car and Foundry Company, has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful authority; and Missouri Pacific Railroad Company has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of the day, month and year first above written.

PACIFIC CAR AND FOUNDRY COMPANY

By *M. E. O. Byrne*
.....
Vice President

[CORPORATE SEAL]

Attest:

F. D. J. Allinger
.....
Assistant Secretary

MISSOURI PACIFIC RAILROAD COMPANY

By *M. M. Kennedy*
.....
Vice President

[CORPORATE SEAL]

Attest:

A. M. ...
.....
Secretary

State of Washington }
County of King } ss:

On this 14 day of December 1971, before me personally appeared M. E. O'Byrne, to me personally known, who, being by me duly sworn, says that he is Vice President of Pacific Car and Foundry Company, that the seal 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.

.....*Loella Ann Green*.....
Notary Public

[NOTARIAL SEAL]

State of Missouri }
~~County~~ of *ST. LOUIS* } ss:

On this 16th day of December 1971, before me personally appeared *M. M. Henneley*, to me personally known, who, being by me duly sworn, says that he is Vice President of Missouri Pacific Railroad Company, that the seal 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.

.....*R. C. Mason*.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires Sept 23, 1974

CERTIFICATE OF INSPECTION

This is to certify that the following railroad equipment constructed for the Missouri Pacific Railroad Company has been duly inspected at the Builder's plant at the location shown below:

<u>No. of Units</u>	<u>Description</u>	<u>R.R. Car Nos.</u>
	MO-PAC-70-Ton 51'-5" RBL CARS	

and that such Equipment has been completed in accordance with the terms of the Builder's proposal dated August 30, 1971 and the Company's acceptance dated October 6, 1971, together with mutually agreed amendments thereof and the Specifications referred to therein.

We further certify that each and every unit of said Equipment was marked on each side, in letters not less than 1" in height:

MISSOURI PACIFIC RAILROAD EQUIPMENT TRUST, SERIES II
CHEMICAL BANK, TRUSTEE, OWNER AND LESSOR.

Dated at the Builder's Plant
at Renton, Washington.

PACIFIC CAR AND FOUNDRY COMPANY
(Builder)

_____, 1971.

By _____
(Car Inspector)

CERTIFICATE OF ACCEPTANCE

The undersigned, on behalf of Missouri Pacific Railroad Company, (herein referred to as Vendee) and pursuant to written authority from Vendee, a copy of which has been delivered to Pacific Car and Foundry Company, hereby fully and finally accepts delivery of the above described railroad equipment on behalf of Vendee and further certifies that said railroad equipment is now held by Vendee subject to the terms and conditions of the above described Agreement and, that at the time of accepting delivery, the undersigned verified the presence on each unit of the legend above set out, in the form and manner as above described.

Equipment accepted at: Renton, Washington

Dated: _____, 1971.

Authorized Representative of Vendee

SCHEDULE A

<u>Lessor</u>	<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Identifying Number</u>	<u>Time and Place of Delivery</u>
Pacific Car and Foundry Company 1400 North Fourth Street Renton, Washington 98055	51'5" 70-TON RBL CARS	PC 244 27 August 1971, as revised.	100	MP 786600- 786699	December 1971 Lessor's Plant Renton, Washington

21. *Effect and Modification of Agreement.* With respect to Cars which become subject thereto, this Agreement amends the Purchase Agreement to the extent that it governs the date on which Lessee is obligated to pay the Purchase Price. This Agreement may be modified, amended or supplemented and any of its provisions or conditions waived if such actions are evidenced in writing and signed by the duly authorized officers of the Lessor and Lessee.

IN WITNESS WHEREOF, Pacific Car and Foundry Company, has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful authority; and Missouri Pacific Railroad Company has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of the day, month and year first above written.

PACIFIC CAR AND FOUNDRY COMPANY

By *M. E. O. Byrne*
.....
Vice President

[CORPORATE SEAL]

Attest:

F. D. J. Allinger
.....
Assistant Secretary

MISSOURI PACIFIC RAILROAD COMPANY

By *M. M. Kennedy*
.....
Vice President

[CORPORATE SEAL]

Attest:

A. M. ...
.....
Secretary

State of Washington }
County of King } ss:

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.....*Loella Ann Green*.....
Notary Public

[NOTARIAL SEAL]

State of Missouri }
~~County~~ of *ST. LOUIS* } ss:

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.....*R. C. Mason*.....
Notary Public

[NOTARIAL SEAL]

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	MO-PAC-70-Ton 51'-5" RBL CARS	

and that such Equipment has been completed in accordance with the terms of the Builder's proposal dated August 30, 1971 and the Company's acceptance dated October 6, 1971, together with mutually agreed amendments thereof and the Specifications referred to therein.

We further certify that each and every unit of said Equipment was marked on each side, in letters not less than 1" in height:

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_____, 1971.

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