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INTERSTATE COMMERCE COMMISSION

SUBLEASE AGREEMENT

This Sublease Agreement made and entered into as of February 6, 1976, by and between COOK INDUSTRIES, INC., a Delaware corporation with offices at Memphis, Tennessee (hereinafter referred to as "Sublessor"), and the MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation with offices at Dallas, Texas (hereinafter referred to as the "Sublessee").

## WHEREAS:

(1) BT Leasing Services Inc., New York (hereinafter referred to as "Bankers Trust") by a lease dated May 8, 1975 (hereinafter referred to as the "Basic Lease"), a copy of which Basic Lease with Exhibits A through D is attached hereto as Exhibit 1 and incorporated herein by reference as fully as if the terms and provisions thereof were set forth in full herein, has leased to Sublessor 200 100-ton Covered Hopper Cars (hereinafter referred to as the "Cars");

(2) The Basic Lease provides that Sublessor shall not assign its interest in the Basic Lease or sublease the whole or any part of the Cars without the prior written consent of Bankers Trust;

(3) Sublessor and Sublessee desire that Bankers Trust consent to a sublease to Sublessee of 100 of the Cars.

(4) Bankers Trust is agreeable to a sublease to Sublessee of 100 of the Cars upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, Sublessor agrees to furnish and lease to Sublessee, subject to the consent of Bankers Trust, and Sublessee agrees to accept, subject to the provisions set forth below, and sublease from Sublessor, 100 of the Cars (hereinafter referred to collectively as the "Subleased Cars," any individual

or single car being referred to as a "Subleased Car") which Subleased Cars are numbered and more particularly described in Exhibit 2 attached hereto and incorporated herein by reference.

1. Basic Lease. Sublessee hereby acknowledges that Sublessor is now leasing the Subleased Cars from Bankers Trust pursuant to the Basic Lease. Sublessee agrees to observe, perform, assume, and be bound by all the terms, conditions, responsibilities, rights privileges, and duties that Sublessor has from or to Bankers Trust under the Basic Lease, except as otherwise specifically provided for herein in Section 1.1, and except for those obligations of Sublessor under the Basic Lease previously performed by Sublessor. Sublessee agrees not to do any act or permit any condition or thing to occur which would constitute a default under the terms and conditions of the Basic Lease. Any reference in the Basic Lease to "Lessee," the Sublessor herein, shall for purposes of this Sublease be construed as referring to Sublessee and thus accord to Sublessee all the rights and obligations available or accruing to the benefit of the Lessee under the Basic Lease. Any references in the Basic Lease to "Lessor," Bankers Trust, shall for purposes of this Sublease be construed as referring to Sublessor and accord to Sublessor under this Sublease Agreement all the rights, remedies, limitations of liability, and defenses available or accruing to the benefit of Bankers Trust under the Basic Lease. An event of default under the Basic Lease shall likewise be an event of default under the Sublease Agreement. The occurrence of any event of default under the terms of the Basic Lease of this Sublease shall accord to Sublessor all the rights and remedies against Sublessee available to Bankers Trust against Sublessor under the Basic Lease. Additionally, Sublessee agrees to fully defend, indemnify, and hold Sublessor harmless from any responsibility or liability that Sublessor may incur by virtue of this Sublease Agreement or the use or possession of the Subleased Cars.

As long as Sublessee shall not be in default hereunder and Sublessor shall not be in default under the Basic Lease, Sublessee shall be entitled to quiet enjoyment and use of the Subleased Cars. However, in the event Sublessor defaults under the Basic Lease and BT Leasing Services Inc., its successors or assigns, demands or requests redelivery or other disposition of the Subleased Cars pursuant to the Basic Lease, all of Sublessee's obligations hereunder, including payment of rent but not accrued obligations or liabilities, shall cease and terminate as of the effective date of such redelivery or other disposition.

1.1 Inapplicability of Certain Provisions of the Basic Lease

The following sections of the Basic Lease are hereby deleted in their entirety from this Sublease Agreement, it being the intent of Sublessor and Sublessee that such sections and only such sections, not be binding on them: Sections 4 (e), 6, 7 (a) (b), the second sentence of 8 (a), 10, and 20 of the Basic Lease and Sections 2 (f), 4, 6, 7, 13, and paragraphs 23, 24, and 25 of Section 14 of Exhibit A to the Basic Lease.

For purposes of this Sublease Agreement and the determination of "Stipulated Loss Values" and "Termination Values" pursuant to the Basic Lease, the "Acquisition Cost" for each Subleased Car is the sum of \$30,014.00. For purposes of calculating any amounts that may be payable by Sublessee to Sublessor as "Stipulated Loss Value" and/or "Termination Value," the first "Rent Installment Date" as referred to in Exhibits C and D of the Basic Lease was November 30, 1975, with subsequent "Rent Installment Dates" being semiannually thereafter.

In addition, Section 11 of Exhibit A amending Section 13 of the Basic Lease is hereby amended by deleting the clause "WITHIN THE CONTINENTAL LIMITS OF THE UNITED STATES" and substituting in lieu thereof the clause "at any point or points on lines of Sublessee." In addition, Section 5(d) (i) of Exhibit A amending Section 8(d) (i) of the Basic Lease is hereby amended by deleting the clause "for a period longer than two years" therefrom.



## 1.2 Insurance

Sublessee shall at all times carry and maintain on the equipment, at its own cost and expense, with insurers of recognized responsibility, all-risk loss and physical damage insurance on the equipment in an aggregate amount not less than the replacement value of the equipment, which shall be defined for purposes of this section as the fair market value of the equipment as defined in the Basic Lease. In addition, Sublessee shall at all times carry and maintain, at its own cost and expense, comprehensive public liability and property damage insurance in respect of the operation and use of the equipment in an amount not less than \$10,000,000 per occurrence. Sublessee may, at its option, self-insure up to a maximum of \$400,000. Sublessee shall pay the premium for such insurance and deliver to Sublessor or its assignee original policies of insurance or other evidence satisfactory to Sublessor or its assignee of such insurance coverage. The proceeds of insurance payable as a result of loss of or damage to any equipment shall be applied, in the sole discretion of Sublessor or its assignee, toward either

- (i) the replacement, restoration or repair of the equipment which may be lost, stolen, destroyed or damaged, or
- (ii) payment of the obligations of Sublessee hereunder.

## 1.3 Additional Events of Default

In addition to the events of default under this Sublease set forth in Section 1, the following events shall also constitute events of default under this Sublease:

1.3.1 Any proceedings shall be commenced by or against the Sublessee for any relief under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and unless such proceedings shall have been dismissed, nullified, stayed, or otherwise rendered ineffective within 60 days of commencement (but then only so long as such stay shall continue in force or such ineffectiveness shall continue); or

1.3.2 A petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Sublessee and unless such petition shall have been dismissed, nullified, stayed, or otherwise rendered ineffective within 60 days of filing (but then only so long as such stay shall continue in force or such ineffectiveness shall continue).

2. Term. The term of this Sublease Agreement shall commence as to each separate Subleased Car to be leased hereunder upon the acceptance by Sublessee of each such Subleased Car as evidenced by its execution of a Certificate of Acceptance in the form of the attached Exhibit 3. Sublessor has caused all Subleased Cars to be delivered to Sublessee. Acceptance of any Subleased Car shall be contingent upon Sublessee's inspection and stenciling. In the event any Subleased Car delivered by Sublessor to Sublessee pursuant hereto does not meet the interchange rules of the Association of American Railroads, hereinafter called "AAR") or contains Federal Railroad Administration (hereinafter called "FRA") defects or is otherwise damaged, Sublessee shall repair said Sub-

leased Car to make it comply with such interchange rules and FRA standards or make other necessary repairs and shall submit AAR bills covering such repairs to Sublessor which hereby agrees to pay same. Sublessee need not execute a Certificate of Acceptance for any damaged or defective Subleased Car until it has had a reasonable time in which to repair same. Execution of a Certificate of Acceptance with respect to a Subleased Car shall constitute an acknowledgment that such Subleased Car is in good condition and working order, free from all defects, and is suitable for the purposes for which said Subleased Car is to be used by Sublessee. The term of this Sublease Agreement as to each Subleased Car shall terminate on May 30, 1990, except as otherwise sooner terminated in accordance with the Basic Lease.

3. Rental. Sublessee agrees to pay Sublessor in lawful money of the United States a rental charge for the use of the Subleased Cars at the rate of TWO HUNDRED EIGHTY DOLLARS (\$280.00) per car for each calendar month during the term of this Sublease Agreement, which rental charge, except for the first month, shall be due in advance on the first day of each month at the offices of Sublessor or at such other place as Sublessor, or its assignee, may specify in writing. Rental charges for the month of February, 1976, shall be payable on March 1, 1976. Rental shall begin with and include the date of commencement of the term of this Sublease Agreement as to each Subleased Car and shall cease upon termination of this Sublease Agreement as provided for above. Rental for the first and last month shall be prorated to a daily basis. Sublessee shall not be considered in default for nonpayment of rent until 10 days following written notice from Sublessor of Sublessee's failure to pay such rent when due.

4. Representations, Warranties, and Agreements of Sublessee. Sublessee represents, warrants to, and agrees with Sublessor as follows:

4.1 Sublessee hereby makes to Sublessor the representations and warranties made by Sublessor to Bankers Trust pursuant to Section 4 of the Basic Lease, as supplemented by Exhibit A to the Basic Lease, which representations and warranties shall survive the execution and delivery of this Sublease Agreement. Sublessee represents and warrants that each of said representations and warranties are true and correct as to the same extent as if set out verbatim herein.

4.2 Sublessee is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power, authority, and requisite government authorizations to enter into this Sublease Agreement.

4.3 Sublessee has taken all corporate action necessary to approve the execution and delivery of and performance under this Sublease Agreement, and all other documents and writings contemplated hereby as required under the laws of its jurisdiction of incorporation.

4.4 Sublessee has duly authorized, executed, and delivered this Sublease Agreement and all other documents and writings contemplated hereby.

4.5 The execution and delivery of this Sublease Agreement will not result in the creation or imposition of any lien, charge, or incumbrance of any nature whatsoever upon any of the Subleased Cars pursuant to the terms of any mortgage, security agreement, or other instrument binding upon the Sublessee.

4.6 Sublessee shall, at its expense, promptly, but in no event more than 10 days after the execution of this Sublease by all parties hereto,

(1) cause the documents and other instruments specified by counsel for Sublessee pursuant to Section 5.2.6 hereof to be duly filed for recordation with the appropriate public officials; (ii) execute, deliver, acknowledge, file, record, and register such further documents and assurances and take such further action as may be necessary or advisable or as Sublessor may, from time to time, reasonably request in order to more effectively carry out the intent and purpose of this Sublease Agreement and to establish and protect Sublessor's rights in the Subleased Cars and remedies created or intended to be created in favor of Sublessor hereunder; and (iii) furnish, or cause to be furnished, to Sublessor certificates or other evidences of such filings, registrations, and/or recordings; and (iv) furnish or cause to be furnished to Sublessor within 10 days of the execution of this Sublease Agreement an opinion of counsel for Sublessee, in form and substance satisfactory to Sublessor and its counsel, Messrs. Ireland Reams Henderson & Chafetz, to the effect that:

4.6.1. All the documents and other instruments specified by counsel for Sublessee pursuant to Section 5.2.6 hereof have been duly filed for recordation with appropriate public officials.

4.7 No approval of the Interstate Commerce Commission or any other governmental authority or agency is necessary, or if necessary, has been obtained, for the valid authorization, execution, and delivery of this Sublease Agreement or for the validity and enforceability of the terms hereof.

4.8 The execution and delivery of this Sublease Agreement and the fulfillment of its terms and provisions by the Sublessee will not conflict with, violate, or result in a breach of any law, administrative regulation or court decree applicable to Sublessee.

4.9 No litigation or administrative proceedings are pending or, to the knowledge of Sublessee, threatened against Sublessee, the adverse determination of which would affect the validity of this Sublease Agreement or the rights of Sublessor to enforce the provisions thereof.

4.10 To Sublessee's knowledge, there is no impediment under any existing laws, including Section 77 of the Bankruptcy Act (11 U.S.C. §205), as presently constituted, to Sublessor's retaking of the Subleased Cars from Sublessee upon an event of default under this Sublease including those events of default set forth in Section 1.2.

4.11 Sublessee shall, at its expense, promptly, but in no event more than 14 days after execution of this Sublease Agreement, cause to be placed on each side of each Subleased Car, in letters not less than one inch in height, the following legend:

BT Leasing Services, Inc.  
Owner-Lessor

Cook Industries, Inc.  
Sublessor

In case, during the continuance of this Sublease Agreement, any of such marks shall at any time be removed, defaced, destroyed, or become illegible in whole or in part, Sublessee will, at its own expense, immediately cause the same to be restored or replaced. Sublessee will cause each Subleased Car to be kept numbered with the identifying number thereof as set forth in Exhibit 2, and will not permit the number of any such Subleased Car to be changed except with the consent of Bankers Trust and Sublessor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with Bankers Trust and Sublessor by Sublessee and filed, registered, and recorded in all public offices where this Sublease Agreement (and/or any Financing

Statements relating thereto) shall have been filed, registered, and/or recorded. Sublessee will not allow the name of any person, association, or corporation to be placed on the Subleased Cars as a designation that might be interpreted as a claim of ownership thereof by any person other than Bankers Trust, but Sublessee may letter the Subleased Cars with such names or initials or other insignia as are customarily used by Sublessee on its cars of the same or similar type for convenience of identification of the right of Sublessee to use and operate the Subleased Cars under this Sublease Agreement.

5. Documents Being Delivered by Sublessee. In connection with this Sublease Agreement and the transactions contemplated hereby, the Sublessee shall deliver to Sublessor documents, each of which shall be in form and substance satisfactory to Sublessor and its counsel, Messrs. Ireland Reams Henderson & Chafetz, as follows:

5.1 Corporate Proceedings, Etc. Certified Resolutions of the Executive Committee of the Board of Directors of Sublessee authorizing execution and delivery of and performance under this Sublease Agreement and the documents contemplated hereby.

5.2 Opinion of Counsel. An opinion of counsel for Sublessee dated the date of this Sublease Agreement:

5.2.1. stating that, to counsel's knowledge, the representations made by Sublessee pursuant to Section 4.1 hereof are true;

5.2.2. stating that Sublessee is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power, authority, and requisite

governmental authorizations to enter into this Sublease Agreement, and all other documents and writings contemplated hereby;

5.2.3. stating that Sublessee has taken all corporate action necessary to approve the execution and delivery of and performance under this Sublease Agreement, and all other documents and writings contemplated hereby as required under the laws of its jurisdiction of incorporation;

5.2.4. stating that Sublessee has authorized, executed, and delivered this Sublease Agreement, and all other documents and writings contemplated hereby, and such Sublease Agreement, documents, and writings are valid and enforceable against Sublessee in accordance with their respective terms;

5.2.5. stating that the execution and delivery of this Sublease Agreement will not result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the Subleased Cars pursuant to the terms of any mortgage, security agreement, or other instrument binding upon the Sublessee;

5.2.6. specifying the documents and other instruments that are required to be filed and recorded for the full protection of the rights of Sublessor in the Subleased Cars and the further refilings and recordings required in order to continue full protection of the right of Sublessor in the Subleased Cars;

5.2.7 stating that no approval of the Interstate Commerce Commission or any other governmental authority or agency is necessary, or if necessary, has been obtained, for the valid authorization, execution,

and delivery of this Sublease Agreement or for the validity and enforceability of the terms hereof;

5.2.8. stating that the execution and delivery of this Sublease Agreement and the fulfillment of its terms and provisions by the Sublessee will not conflict with, violate, or result in a breach of any law, administrative regulations, or court decree applicable to Sublessee;

5.2.9. no litigation or administrative proceedings are pending or, to the knowledge of counsel, threatened against Sublessee, the adverse determination of which would affect the validity of this Sublease or the rights of Sublessor to enforce the provisions hereof; and

5.2.10. stating that to counsel's knowledge there is no impediment under any existing laws, including Section 77 of the Bankruptcy Act (11 U.S.C. §205), as presently constituted, to Sublessor's retaking of the Subleased Cars from Sublessee upon an event of default under this Sublease Agreement including those events of default set forth in Section 1.2.

6. Survival, Etc. All covenants, agreements, representations, and warranties made hereunder shall be deemed to be material and to have been relied upon by Sublessor and Sublessee, notwithstanding any investigation heretofore or hereafter made by either party or on their respective behalfs, and shall survive the execution of this Sublease Agreement.

7. Indemnity. Sublessee further agrees, as part of the consideration of this Sublease Agreement, that Sublessor shall not be liable under any circumstances

for any loss or delay or for any damage of any kind to the Subleased Cars or any commodities or properties loaded in or shipped on any of the Subleased Cars, nor shall Sublessor be liable to Sublessee because of or on account of any damage or injury caused directly by any of the Subleased Cars, or resulting in any way from the use thereof. Sublessee agrees to forever fully indemnify and hold Sublessor harmless of and from any and all claims, demands, or causes of action whatsoever asserted against Sublessor by any person, firm, or corporation on account of any damage to any Subleased Car, injury caused directly or indirectly by any of said Subleased Cars or resulting in any way from the use thereof, and to defend at Sublessee's expense any litigation or proceeding arising incidental to the operation of the Subleased Cars.

8. Assignment, Sublease Agreement. This Sublease Agreement shall not, in whole or in part, be assigned by Sublessee nor shall any of the Subleased Cars be subleased or loaned without the prior written consent of Sublessor and Bankers Trust. In the event such consent to assignment or sublease is given, Sublessor shall continue to look solely to Sublessee for payment of rental and fulfillment of the obligations of this Sublease Agreement the same as if the Subleased Cars were being actually operated by Sublessee.

9. Subordination. It is understood that some or all of the Subleased Cars and Sublessor's rights under this Sublease Agreement may, at the time of delivery to Sublessee or at some future time during the term of this Sublease Agreement, be subject to the terms of a mortgage, deed of trust, equipment trust, pledge, or assignment or similar security arrangement. Sublessee agrees, but not at its expense, that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee, assignee, or security holder and that this Sublease Agreement and Sublessee's

rights hereunder are and shall at all times be subject and subordinated to any and all rights of any mortgagee, trustee, pledgee, or security holder. This Sublease Agreement and the rentals hereunder may be assigned to the holder, if any, of the superior lien from time to time on each Subleased Car as determined with reference to the filings under Section 20c of the Interstate Commerce Act; however, until notified to the contrary by any person reasonably proving to Sublessee's satisfaction that he is the assignee of this Sublease Agreement or the rentals hereunder, Sublessee is to pay all rentals to the order of Sublessor. Sublessee hereby consents to and accepts any such assignment. Sublessee agrees that no claim or defense which Sublessee may have against Sublessor shall be asserted or enforced against any such assignee of this Sublease Agreement or the rentals due hereunder.

10. General Provisions.

10.1 Notices. Any notice, request, instruction, or other document given hereunder by either party hereto shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid and, if to Sublessor, addressed to Cook Industries, Inc., 2185 Democrat Road, Memphis, Tennessee 38131, Attention of Michael Swanson, with copies to Ireland Reams Henderson & Chafetz, 2856 Directors Cove, Memphis, Tennessee 3813, Attention of John M. Reams, Esquire; and, if to Sublessee, addressed to Missouri-Kansas-Texas Railroad Company, 701 Commerce Street, Dallas, Texas 75202, Attention of Karl R. Ziebarth, with copies to William A. Thie, General Counsel, 701 Commerce Street, Dallas, Texas 75202; and to such other address as the parties shall furnish to the other upon notice in accordance with this subsection. If mailed as aforesaid, notice shall be deemed given when deposited in the United States mail.

10.2 Invalidity or Inapplicability of Clause. If any term, covenants, condition, or provision of this Sublease Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Sublease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Sublease Agreement shall be valid and be enforced to the fullest extent permitted by law.

10.3 Counterparts. This Sublease Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10.4 Entire Agreement. It is expressly understood and agreed by and between Sublessor and Sublessee that this Sublease sets forth all the promises, agreements, conditions, inducements, and understandings between Sublessor and Sublessee relative to the Subleased Cars and that there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein set forth and shall not be modified in any manner except by an instrument in writing executed by the parties.

10.5 Successors or Assigns. Except as herein otherwise expressly provided, the covenants, conditions, and agreements contained in this Sublease Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

10.6 Waivers. Failure of Sublessor to complain of any act or omission on the part of Sublessee, no matter how long the same may continue, shall

not be deemed to be a waiver by Sublessor of any of its rights hereunder. No waiver by Sublessor at any time, express or implied, of any breach of any provision of this Sublease Agreement shall be deemed to be a waiver of a breach of any other provision of this Sublease Agreement or a consent to any subsequent breach of the same or any other provision. No acceptance by Sublessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

10.7 Section Headings. All section headings are inserted for convenience only.

11. Conflicts. In the event of any conflict or inconsistency between the terms and conditions of this Sublease Agreement and the terms and conditions of the Basic Lease, the terms and conditions of this Sublease Agreement shall govern and control the relationship of Sublessor and Sublessee.

IN WITNESS WHEREOF, Sublessor and Sublessee, respectively, each pursuant to due corporate authority, have caused their representatives thereunto duly authorized to execute this Sublease Agreement this 6<sup>th</sup> day of February, 1976.

ATTEST:

John M. Reams  
Assistant Secretary

COOK INDUSTRIES, INC.

By [Signature]

Its Senior Vice President

ATTEST:

[Signature]  
Assistant Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By [Signature]

Its Vice President

