

# FMC Leasing Corporation

111 E. Wacker Drive  
Chicago, Illinois 60601

**LEASE  
APPLICATIO**

LEASE NO. \_\_\_\_\_

NAME AND ADDRESS OF LESSEE

SUPPLIER OF EQUIPMENT (COMPLETE ADDRESS)

SSI Rail Corporation  
Two Embarcadero Center  
San Francisco, California 94111

FMC Corporation  
Marine & Rail Equipment Division  
4700 Northwest Front  
Portland, Oregon 97708

Quantity	MODEL NO.	DESCRIPTION (MANUFACTURER'S SERIAL NO., OTHER IDENTIFICATION)
100		50'6", 70Ton, Single Sheath Box Cars with 10" Freightma "ME" End of Car Cushion, Nailable Steel Flooring with 10' Single Sliding Door
	RECORDATION NO. <b>8089</b>	*****
	<b>OCT 23 1975-4 15 PM</b>	
	INTERSTATE COMMERCE COMMISSION	
		EQUIP. COST SALES TAX FREIGHT TOTAL COST ▶
PERSONAL PROPERTY TAXES TO BE REPORTED AND PAID BY LESSEE. LESSOR ASSUMES NO RESPONSIBILITY FOR PERFORMANCE OR MAINTENANCE. THIS IS A NON-CANCELLABLE LEASE. EQUIPMENT TO BE INSURED BY LESSEE.		

LOCATION (IF DIFFERENT FROM ABOVE ADDRESS)

STREET \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

**EQUIPMENT DELIVERY DATE:**

NO. OF RENT PAYMENTS	RENT PAYMENT PERIODS	AMOUNT OF EACH RENT PAYMENT	ANNUAL RENEWAL	SECURITY DEPOSIT	ADVANCE PAYMENT
Sixty (60)	MONTHLY <input type="checkbox"/> OTHER <input type="checkbox"/> QUARTERLY <input checked="" type="checkbox"/> (SPECIFY BELOW)	\$ 79,447.53	\$ NA	\$ NA	\$ NA

ADDITIONAL PROVISIONS:

Sixty (60) Equal & Consecutive Quarterly Payments  
Beginning November 5, 1975

**NET LEASE AGREEMENT (NON-CANCELLABLE)**

1. **Lease.** Lessor hereby leases to Lessee, and Lessee leases, from Lessor the property described above, herein referred to as "equipment".
2. **Selection of Equipment.** Lessee has requested equipment of the type and quantity specified above and has selected both the equipment and supplier named above. Lessor agrees to order such equipment from said supplier upon the terms and conditions of the purchase order initially attached hereto, and shall not be obligated to lease such equipment to Lessee unless all the conditions of said order are fulfilled. Lessor shall have no liability for any delay or failure by the supplier to fill the order or meet the conditions thereof. Lessee shall accept such equipment, and hereby authorizes Lessor to add to this Lease serial numbers and other identification of the equipment when known.
3. **Location.** The equipment shall be delivered and thereafter kept, maintained and located at the location specified herein, and shall not be removed therefrom without the written consent of Lessor and Lessee in writing.
4. **WARRANTIES.** Lessor makes NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Lessee hereby waives any claim it might have against Lessor for any loss, damage, injury or expense caused by the equipment or by any defect therein, use or maintenance thereof or servicing or adjustment thereto. Lessor assigns to Lessee manufacturer's warranty on the equipment. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. If equipment is not properly installed, does not operate as represented or warranted by supplier or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against supplier and shall, nevertheless, pay Lessor all rent payable under this Lease. Lessor further authorizes Lessee to obtain whatever service to the equipment the manufacturer customarily renders, provided that no such service be at the expense of Lessor.
5. **Supplier Not An Agent.** Lessee understands and agrees that neither supplier, nor any salesman or other agent of supplier, is an agent of Lessor. No salesman or agent of supplier is authorized to waive or alter any term or condition of this Lease, and no representation as to equipment or any other matter by supplier shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.
6. **Filing or Recording.** The parties hereto do not intend this lease to be a conditional sale agreement, chattel mortgage or security instrument within the meaning of any statute requiring filing or recordation thereof or of any notice or statement with respect thereto. Nevertheless, this instrument may be filed or recorded for any such purpose so as to give notice thereof to any interested parties.
7. **Termination.** Unless the equipment is delivered to Lessee within thirty (30) days after the date on which Lessor accepts Lessee's offer to enter into this Lease (which date Lessor is authorized to fill in below as the "Approval Date"), Lessor at its option may terminate this Lease by giving written notice of termination to Lessee.
8. **TERM.** The term of this lease shall commence when the equipment is delivered F.O.B. point indicated in the purchase order and ends upon the expiration of the number of years specified above after the First Rent Due Date shown below, which Lessee hereby authorizes Lessor to fill in.
9. **RENT.** Lessee shall pay Lessor during the initial term of this Lease rent equal to the amount of each rent payment as specified above multiplied by the number of such payments as specified above. The first rent payment shall be due and payable on the date the term hereof commences and one of which rent payments become due and payable on the same day of each succeeding rent payment period specified above until the total rent shall be paid. All rent shall be paid to Lessor at its address set forth above or as otherwise directed by Lessor in writing.
10. **Security Deposit.** Lessor may, but shall not be obligated, to apply the security deposit to cure any default of Lessee hereunder, in which event Lessee shall promptly restore the security deposit to the full amount specified above. Upon termination of this Lease and all renewals hereof if Lessee has fulfilled all the terms and conditions hereof, Lessor shall return to Lessee any remaining balance of the security deposit actually made by Lessee.
11. **USE.** Lessee shall use the equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations and otherwise related to the possession, use or maintenance of the equipment. Lessee shall put the equipment only to the use contemplated by the manufacturer and operate it only within its rated capacity and by safe, careful and competent personnel. Lessee shall affix to the equipment and maintain thereon any labels or plates provided to Lessee by Lessor, stating that the equipment is owned by Lessor.
12. **Name Plates or Labels.** If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings stating that the equipment is owned by the Lessor, Lessee shall affix and keep the same upon a prominent place on the equipment.
13. **Lessor's Inspection.** Lessor shall at any time during business hours have the right to enter into and upon the premises where the equipment may be located for the purpose of inspecting the same or observing its use. Lessee shall give Lessor immediate notice of any attachment or judicial process affecting any item of equipment and shall, whenever requested by Lessor, advise Lessor of the exact location of the equipment.
14. **ALTERATIONS.** Lessee shall not make any alterations, additions or improvements to the equipment without the prior written consent of Lessor. All such alterations or improvements shall become the property of Lessor upon termination of this lease. Without the prior written consent of Lessor, Lessee shall not affix or attach the equipment to any real property, and the equipment shall remain personal property regardless of whether it becomes affixed or attached to real property, or permanently rests upon any real property or any improvement thereon.

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE

The undersigned agree to all the terms and conditions set forth above and on the reverse side hereof, and in witness thereof hereby execute this lease, and each certifies that the person or persons signing this lease on its behalf are authorized so to obligate it.

**FMC LEASING CORPORATION** (LESSOR)

BY X [Signature] TITLE President

APPROVAL DATE 10/22/75 FIRST RENT DUE DATE 11/5/75

SSI RAIL CORP.

FULL LEGAL NAME OF LESSEE

BY X [Signature] TITLE President

CO-LESSEE X \_\_\_\_\_ TITLE \_\_\_\_\_

WITNESS X \_\_\_\_\_

ORIGINAL SIGNATURES REQUIRED ON APPLICATION

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17. Surrender

Upon the expiration of this lease, Lessee shall return the equipment to Lessor in good repair, condition, and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering such equipment at Lessee's cost and expense to a place upon which the parties shall agree; provided that if the parties shall not have agreed upon a place for delivery, the place for delivery shall be Chicago, Illinois. Notwithstanding anything contained in section 24, Lessee may surrender the cars up to 90 days after the expiration of this lease. Lessee shall pay the fair market daily rental for each day after expiration during which the equipment shall not have been surrendered.

Lessor shall be the sole judge of whether the condition of the equipment is due to ordinary wear and tear or to other causes. Lessee will pay all damages other than those attributed to ordinary wear and tear.

39. Confession of Judgment for Failure to Pay Stipulated Rent

For the sole purpose of obtaining a judgment for a default consisting of failure of Lessee to make any stipulated quarterly rental payment (but not for curing any other default of Lessee), and if allowed by law (except in the state of Indiana), Lessee and guarantor hereby irrevocably authorize any attorney to appear for them 30 days after Lessee shall have received written or oral notice of such default from Lessor if such default shall continue, in any court of record and waive the issue and service of process and to confess judgment against them in favor of the legal holder hereof for the amount of such rent as may appear to be unpaid or declared due hereunder, together with interest due, costs, and reasonable attorneys' fees to be included in the judgment; to release all errors; to consent that no writ of error or appeal shall be prosecuted to restrain the operation of said judgment or any execution thereon; to consent that any such execution may immediately be levied upon any real or personal property; and to waive all right to have personal property last taken and sold under such execution. Lessee and Guarantor hereby severally waive demand, presentment, protest, notice of nonpayment, and all benefit of valuation, appraisalment, and exemption laws.

40. Section 22(f) shall provide as follows:

To sell any or all of the equipment at public or private sale for cash or on credit and to recover from Lessee all costs of taking possession, storing, repairing, and selling the equipment, plus the termination value, less the proceeds of such sale.

41. Casualty Value and Termination Value

For purposes of section 16 the term "casualty value" shall equal:

(1) all rent then due, plus (2) the present value of all future rental payments to be due hereunder, discounted at 6%, plus (3)

20% of the invoice price to Lessor of the equipment, discounted at 6% from the expiration date hereof, plus (4) an amount which will indemnify Lessor for the loss of any tax benefits arising from the investment tax credit and accelerated depreciation, which benefits would have been available to Lessor if this lease had run to expiration. For purposes of calculating Lessor's lost tax benefits, the following accounting assumptions shall be used:

- (a) investment tax credit - 10%
- (b) depreciable life - 12 years
- (c) net salvage value (for depreciation) - 5%
- (d) depreciation method - double declining balance to sum of the years' digits
- (e) Lessor's cost - invoice purchase price.

For purposes of sections 22(f) and 41, Termination Value shall mean the sum of items 1, 2, and 3 above.

AGREED AND ACCEPTED

SSI RAIL CORPORATION

BY

TITLE President

DATE 10/22/75

FMC LEASING CORPORATION

BY

TITLE President

DATE 10/22/75



