

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202

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JOE C. CRAWFORD  
GENERAL SOLICITOR

214-651-6736

RECORDATION NO. 1948  
ARTHUR M. ALBIN  
GENERAL ATTORNEY  
MICHAEL E. ROPER  
COMMERCE COUNSEL

7-1-134

JUN 6 1977-2 40 PM

INTERSTATE COMMERCE COMMISSION  
IN REPLY REFER TO:

Mr. Robert L. Oswald  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

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410.043-16-F

June 2, 1977

Re: Car Lease Agreement dated May 27, 1977, between Southwestern States Management Co., Lessor, and Missouri-Kansas-Texas Railroad Company, Lessee, covering 401 70-ton open top and covered hopper cars

Dear Mr. Oswald:

In accordance with the provisions of Section 20c of the Interstate Commerce Act and rules and regulations prescribed by the Interstate Commerce Commission pursuant thereto, I am enclosing for filing and recording four counterparts of a Car Lease Agreement dated May 27, 1977, by and between Southwestern States Management Co., Lessor, 701 Commerce Street, Dallas, TX 75202, and Missouri-Kansas-Texas Railroad Company, Lessee, 701 Commerce Street, Dallas, TX 75202, which lease provides for the leasing of 401 open top and covered hopper cars bearing Lessee's standard markings as follows:

16 2000-cubic foot Covered Hopper Cars numbered:

34081, 34082, 34084, 34085, 34087 through 34094, 34095, 34097, 34098, 34100

385 70-ton Open Top Hopper Cars numbered:

36000 through 36130 36155 through 36167 36206 through 36241 36302 through 36319  
36132 through 36139 36169 through 36184 36243 36321 through 36379  
36141 through 36149 36186 through 36197 36245 through 36257 36381 through 36395  
36151 through 36153 36199 through 36204 36259 through 36300 36397 through 36399

I am also enclosing a copy of this letter for your use in acknowledging receipt of the enclosures. Please show the recording number and date on two copies of the enclosed Car Lease Agreement and return them to me for distribution to the parties.

Enclosed also is a Cashier's check in favor of the ICC in the amount of \$50 to cover the prescribed fee for recording the car lease agreement.

I certify that I have knowledge of the matters set forth herein.

Sincerely yours,

*Arthur M. Albin*

Arthur M. Albin

AMA:jar

Enclosures

FEE OPERATION DR.  
JUN 6 2 39 PM '77  
I.C.C.

JUN 8 1977-2 42 PM

C A R L E A S E A G R E E M E N T MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

AGREEMENT made and entered as of the 27 day of May, 1977, between SOUTHWESTERN STATES MANAGEMENT CO., hereinafter referred to as "Lessor," and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, hereinafter referred to as "Lessee."

R E C I T A L S

Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor certain 70-ton open-top hopper cars and covered hopper cars as described in Exhibit A attached hereto.

A G R E E M E N T

NOW, THEREFORE, IT IS COVENANTED AND AGREED BY THE PARTIES AS FOLLOWS:

1. Lease of Cars. Lessor, as owner, agrees to lease to Lessee, and Lessee agrees to and hereby does lease from Lessor those certain Cars (hereinafter referred to collectively as the "Cars" and individually as the "Car"), being 401 70-ton open-top and covered hopper Cars as further described and set forth in Exhibit A, attached hereto and incorporated herein by reference.
2. Delivery and Acceptance of Cars. Lessor shall deliver the Cars to Lessee on or about the date first set forth above, and Lessee accepts delivery of the Cars as of the date first set forth above. Lessee warrants and represents that it has inspected all of the Cars described in Exhibit A, is fully familiar with the physical condition of each of said Cars, and accepts the Cars in their present condition.
3. Use and Possession. Throughout the continuance of this lease and so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of the Cars and may use such Cars either on its own property or upon the lines of any railroad in the usual interchange of traffic and to receive such compensation for the use of said Cars (i) as is provided for in the then-current Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the interchange of traffic adopted by the Association of American Railroads (hereinafter called the "Interchange Rules"), or (ii) such other compensation as Lessee and the user railroads may agree to, provided Lessee shall comply at all times with the requirements of Section 5 hereof, but any such uses of said Cars shall at all times be subject to the terms and conditions of this lease.
4. Term. This lease shall be for a term of sixty (60) months, commencing as of the date first set forth above and terminating on May 27, 1982, unless sooner terminated in accordance with the provisions hereof.

5. Rental. During the term of this lease, Lessee shall pay to Lessor for each Car, commencing as of the date first set forth above, a rental of Seventy-five Dollars (\$75.00) per Car per month. Rental for the first partial month and the last partial month of this lease shall be prorated on the basis of Two and 50/100ths Dollars (\$2.50) per day per Car, based on a 30-day month. Rental for any Car removed from the terms and provisions of this lease by reason of loss, theft, or destruction as set forth below, shall also be prorated for any partial month on the basis of \$2.50 per day. Rental shall be due and payable by Lessee to Lessor on or before the 25th day of the month following the month for which such rental has accrued.
6. Title. Lessor has title to the Cars as of the date first set forth above, and Lessee shall not by reason of this lease or any action taken hereunder acquire or have any right or title in the Cars except the rights expressly granted to it as Lessee.
7. Maintenance. Lessee, during the continuance of this lease, shall perform or cause to be performed and shall pay all costs and expenses of all maintenance and repair work necessary to maintain the Cars in good working order and general condition as when delivered to Lessee, ordinary wear and tear excepted. Any parts, replacements, or additions made to any Car shall be accessions to such Car, and title thereto shall immediately vest in Lessor without cost or expense to Lessor.
8. Taxes. Lessee shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes levied or assessed during the continuance of this lease upon the Cars or the interest of the Lessee or therein or any thereof, or upon the use or operation thereof or the earnings arising therefrom, and if any levy or assessment is made against Lessor on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of Lessor therefrom (except any such tax on rentals which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), Lessee will promptly pay or reimburse Lessor for same; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interests of Lessor in and to the Cars will be materially endangered. In the event any tax reports are required to be made on the basis of individual Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by Lessor or will notify Lessor of such requirements and will make such report in such manner as shall be satisfactory to Lessor.
9. Liens. Lessee shall keep the Cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's interest, which arise out of any suit involving Lessee or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of

this lease and shall promptly discharge any such lien, encumbrances or legal process.

10. Warranty - Representations. Except as otherwise provided in paragraph 6, Lessor makes no warranty or representation of any kind whatsoever, either express or implied as to any matter whatsoever, including specifically but not exclusively, fitness, design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder, and Lessor shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential on account of any matter which would otherwise constitute a breach of warranty or representation.
11. Car Marking. In the event Lessee shall paint or otherwise stencil any of the cars, Lessee shall also cause such Cars to be stenciled:

SOUTHWESTERN STATES MANAGEMENT CO., OWNER

Lessee shall also cause said cars to be stenciled in accordance with any instructions from Lessor resulting from Lessor's financing of the Cars so that said Cars will reflect the interest of any bank or corporation which may act as mortgagee or trustee or which may have a security interest in and to said Cars. Except as provided for herein, Lessee shall not permit any marking or labeling or stenciling of said Cars.

12. Loss, Theft or Destruction of Cars. In the event any Car is lost, stolen, or is destroyed, or is damaged beyond economic repair from any cause whatsoever, Lessee shall promptly and fully inform Lessor of such occurrence and shall, at the time of the next monthly payment or at such other date as may be mutually agreed upon, pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder except for accrued rent and such claims as may have arisen under paragraphs 8 and 9, an amount in cash equal to the applicable amount shown in Schedule A attached hereto and incorporated herein by reference. Upon demand by Lessee, Lessor will give to Lessee a Bill of Sale covering any Car lost, stolen or destroyed and paid for by Lessee in accordance with Schedule A.
13. Return of Cars. Upon the termination of this lease, as provided for herein, the Lessee agrees to return the Cars (except for any Cars lost, stolen, or destroyed and paid for pursuant to paragraph 12, above) forthwith in as good working order and general condition as when delivered to Lessee, ordinary wear and tear excepted.
14. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:
- (a) non-payment by Lessee within thirty (30) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by Lessee;

- (b) Lessee shall default or fail for a period of thirty (30) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder;
- (c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days;
- (d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in paragraph 14(c), or the making by Lessee of any assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

15. Remedies. Upon the happening of an event of default, Lessor, at its option, may:

- (a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessor's enforcement of its remedies hereunder;
- (b) elect only to terminate the Lessee's right of possession (but not to terminate the lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder or hereafter to accrue for the remaining term of the lease and thereupon require Lessee to deliver all such Cars to Lessor at any point designated by it or to take possession itself of any or all of the Cars wherever same may be found. Lessor may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorney's fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of

rent due under this lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be required to accept or receive any lessee offered by Lessee or do any act whatsoever or exercise any diligence whatsoever in or about the procuring of another lessee to mitigate the damages of the lessee or otherwise. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

- (c) declare this lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of the bargain and not as penalty, a sum which represents the excess of the present worth, at the time of such termination, if any, of the aggregate rental which would have thereafter accrued from the date of such termination to the end of the original term over the then-present worth of the fair rental value of the Cars for such period. Present worth is to be computed in each case on the basis of a five percent (5%) per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this lease not terminated. In addition to the foregoing, Lessor shall recover any damages sustained by reason of the breach of any covenant of the lease other than for the payment of rental;
- (d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this paragraph 15 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in Lessor's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

16. Sublease and Assignment. Lessee shall have no right to sublease any of the Cars. Lessor shall have the right to assign the lease or its rights thereunder as follows: All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this lease. If Lessor shall have given written notice to Lessee stating the identity and post office address or any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Lessee will not amend, alter or terminate this lease without the consent of the assignee while such assignment is in effect. The rights of any assignee or any party or parties on behalf of whom such assignee is

acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to the Lessee.

17. Indemnification. Lessee hereby agrees to indemnify and save harmless the Lessor from and against any and all liability, demands, and causes of action, whether well-founded or otherwise, including the cost of defending same, for bodily injury to or death of any person or damage to the property of any person whatsoever, including the parties hereto or the employees of either of the, arising out of or in connection with the use or operation of said Cars leased hereunder, whether said damage shall be the result of obvious defects, latent defects, or other causes, and shall not call upon the Lessor for contribution in any sum whatsoever by reason of the fact that Lessor is the owner of said Cars. Indemnity shall apply from the time the said cars are accepted by the Lessee until they are returned to and accepted by the Lessor.

18. Notice. Any notice required or permitted to be given pursuant to the terms of this lease shall be properly given when forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

Southwestern States Management Co.  
701 Commerce Street  
Dallas, TX 75202

or at such other address as Lessor may from time to time designate by notice in writing and to Lessee at:

Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, TX 75202

or any such other place as Lessee may from time to time designate by notice in writing.

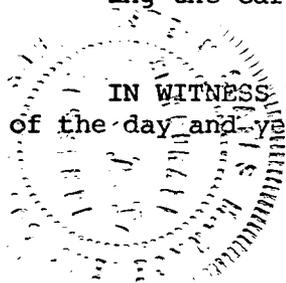
19. Recording of Lease. Lessee agrees to forthwith, following execution hereof, cause this lease to be recorded with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act.

20. Counterparts. This agreement may be executed in multiple counterparts, each of which shall be deemed an original.

21. Law Governing. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

22. Purchase Option. Notwithstanding the provisions of paragraph 13, above, Lessee is hereby given the option and right to purchase any and all Cars remaining at the end of this Lease Agreement by giving Lessor at least thirty (30) days written notice of Lessee's desire to purchase said cars and tendering, along with the notice, the sum of One Dollar (\$1.00) for each Car purchased pursuant to this paragraph. In the event such notice is given and the proper amount tendered, Lessor will, on the date this lease expires, deliver unto Lessee a Bill of Sale covering the Cars so purchased by Lessee.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease as of the day and year first above written.



SOUTHWESTERN STATES MANAGEMENT CO.,  
Lessor

ATTEST:

[Signature]  
Assistant Secretary

By [Signature]  
Vice President

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,  
Lessee

ATTEST:

[Signature]  
Assistant Secretary

By [Signature]  
Vice President

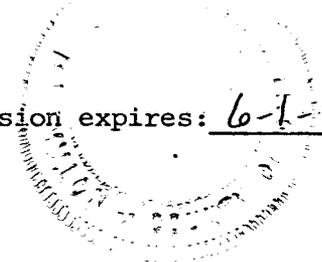
THE STATE OF TEXAS )  
                                  )  
COUNTY OF DALLAS    )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Karl R. Ziebarth, Vice President, 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 SOUTHWESTERN STATES MANAGEMENT CO., 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 the 25<sup>th</sup> day of May, 1977.

My Commission expires: 6-1-77.

[Signature]  
Notary Public in and for Dallas County,  
T E X A S





E X H I B I T A

Pursuant to attached Security Agreement dated May 27, 1977, Mercantile Trust Company National Association has a security interest in and to the following open top and covered hopper cars bearing MKT reporting marks as follows:

16 2000-Cubic Foot Covered Hopper Cars

34081 and 34082	34095
34084 and 34085	34097 and 34098
34087 through 34094	34100

385 70-Ton Open Top Hopper Cars

36000 through 36130	36206 through 36241
36132 through 36139	36243
36141 through 36149	36245 through 36257
36151 through 36153	36259 through 36300
36155 through 36167	36302 through 36319
36169 through 36184	36321 through 36379
36186 through 36197	36381 through 36395
36199 through 36204	36397 through 36399

**SCHEDULE "A"**

Any car destroyed during the term of the lease shall have a "destruction value" as shown in the following table. If an event of destruction occurs during the month shown, the value to be deposited is the amount shown next to it. The first month runs from 25 April 1977 to 25 May 1977, and sequentially thereafter.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
1	\$3,740	26	2,240	51	740
2	3,680	27	2,180	52	680
3	3,620	28	2,120	53	620
4	3,560	29	2,060	54	560
5	3,500	30	2,000	55	500
6	3,440	31	1,940	56	440
7	3,380	32	1,880	57	380
8	3,320	33	1,820	58	320
9	3,260	34	1,760	59	260
10	3,200	35	1,700	60	200
11	3,140	36	1,640		
12	3,080	37	1,580		
13	3,020	38	1,520		
14	2,960	39	1,460		
15	2,900	40	1,400		
16	2,840	41	1,340		
17	2,780	42	1,280		
18	2,720	43	1,220		
19	2,660	44	1,160		
20	2,600	45	1,100		
21	2,540	46	1,040		
22	2,480	47	980		
23	2,420	48	920		
24	2,360	49	860		
25	2,300	50	800		