

WITKOWSKI, WEINER, McCAFFREY AND BRODSKY, P. C. 12643
ATTORNEYS AT LAW

12643 SUITE 350

DEC 22 1980 - 3 35 PM

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INTERSTATE COMMERCE COMMISSION
COUNSEL

RICHARD I. PEYSTER
PETER A. GILBERTSON

DEC 22 1980 - 3 35 PM

INTERSTATE COMMERCE COMMISSION

*ADMITTED IN MN. ONLY

December 22, 1980

12643 No. A
Date DEC 22 1980
Fee \$ 110.00
Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

DEC 22 1980 - 3 35 PM

INTERSTATE COMMERCE COMMISSION

Re: Recordation of Documents:
Chattel Mortgage and Security
Agreement; Bill of Sale;
Assignment of Agreement and
Consent

12643
DEC 22 1980 - 3 35 PM
INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Please find enclosed for recordation pursuant to
49 U.S.C. 11303 two counterpart copies of:

- (1) CHATTEL MORTGAGE AND SECURITY AGREEMENT dated December 22, 1980, made and given by Western Rail Leasing Corporation ("Mortgagor") to Greycas, Inc. ("Mortgagee");
- (2) BILL OF SALE, dated December 10, 22 1980, from North American Car Corporation ("Vendor") to Western Rail Leasing Corporation ("Vendee");
- (3) ASSIGNMENT OF AGREEMENT, entered into as of October 16, 1980, by Western Rail Leasing Corporation ("Assignor") to Greycas, Inc. ("Assignee") with Exhibits A and B attached; and
- (4) CONSENT, by Mo-Kan Grain, Inc. ("Lessee"), dated as of December 10, 1980.

DEC 22 3 35 PM '80
DOCKET FILES
BRANCH

PAG

Peter A. Miller
Quincy Jones

Ms. Agatha L. Mergenovich

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December 22, 1980

The names and addresses of the parties to this transaction are as follows:

Mortgagor, Assignor, Lessor and Vendee

Western Rail Leasing Corporation
P.O. Box 4534
Walnut Creek, California 94549

Mortgagee and Assignee

Greycas, Inc.
Greyhound Tower
Phoenix, Arizona 85077

Vendor

North American Car Corporation
222 South Riverside Plaza
Chicago, Illinois 60606

Lessee

Mo-Kan Grain, Inc.
P.O. Box 1388
Salina, Kansas 67401

The equipment that is the subject of this transaction is described as follows:

Fifty (50) used (built in December, 1972) 4750 cubic ft. covered hopper cars (AAR mech. desig. LO), and listed in the Official Railway Equipment Register as WRTX 3011 - WRTX 3060 inclusive.

This equipment was previously the subject of an Indenture of Mortgage and Deed of Trust between North American Car Corporation and American National Bank & Trust Co. dated April 16, 1973, and recorded on June 13, 1973 at 3:10 p.m. as document number 7068, and was listed in the Official Railway Equipment Register as NAHX 50715-50721, 50723, 50725-50730, 50732-50738, 50740-50741, 50743-50744, 50746-50754, 50756-50769, and 50771-50772.

Ms. Agatha L. Mergenovich

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December 22, 1980

Pursuant to 49 C.F.R. Part 1116, please stamp the documents described above with the date and hour of recordation, a recordation number and a notation to the effect that it has been filed pursuant to the provisions of section 11303 of the Title 49, United States Code. After performing these tasks, please retain one copy of these documents in the Commission's files and return the other to the delivering agent of:

Witkowski, Weiner, McCaffrey and Brodsky, PC
1575 Eye Street NW, Suite 350
Washington, DC 20005

Enclosed is a check drawn to the order of the Interstate Commerce Commission for filing fees.

Your cooperation is appreciated.

Greycas, Inc.

By its Special Counsel,



R. Lawrence McCaffrey, Jr.
Witkowski, Weiner, McCaffrey
and Brodsky, P.C.
Suite 350
1575 Eye Street, N.W.
Washington, DC 20005

12643 

RECORDATION NO. Filed 1425

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DEC 22 1980 -3 35 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF AGREEMENT

THIS ASSIGNMENT ("Assignment") entered into as of this 16th day of October, 1980, between Western Rail Leasing Corporation, a California corporation having its principal office in Lafayette, California 94549 ("Assignor") and GREYCAS, INC. ("Assignee") an Arizona corporation having its principal place of business in Phoenix, Arizona.

WITNESSETH:

WHEREAS, Assignor has entered into with Mo-Kan Grain, Inc. a Rail Car Lease ("Lease") with respect to certain Rail Cars ("Cars"), which Cars are the subject of that one certain Loan and Security Agreement dated as of October 16, 1980, ("Loan and Security Agreement") entered into between Assignor as Borrower and Assignee, as Lender;

WHEREAS, Assignor stands to substantially benefit by and increase its business because of the said Loan and Security Agreement entered into between it and Assignee, as Lender, and such Loan and Security Agreement will make possible the aforementioned Lease;

WHEREAS, as an inducement to Assignee, as Lender, to enter into the aforesaid Loan and Security Agreement with Assignor as Borrower, Assignor has agreed, with Mo-Kan Grain, Inc. to assign the Agreement and all Assignor's interests therein to Assignee as security for the payment and performance by Assignor as Borrower of all of its obligations to Assignee, as Lender, under and pursuant to the aforesaid Loan and Security Agreement and the Documents called for therein;

NOW, THEREFORE, Assignor and Assignee hereby mutually covenant and agree as follows:

1. GRANT. Assignor does hereby grant, sell, transfer and assign to Assignee all of the right, title and interest of Assignor in and to the Lease attached hereto as Exhibit A and all rental, service, hire, allowances and other payments, income and profits ("Payments") now due and which may hereafter become due to Assignor by virtue of said Lease and Assignor hereto irrevocably appoints Assignee, as Assignor's true and lawful attorney in its name and stead (with or without taking possession of the Cars), to enforce said Lease and to collect all of said Payments.

2. SECURITY. This Assignment is for the purpose of securing:

(a) Payment in full of all sums together with interest thereon becoming due and payable to Assignee as Lender under the provisions of the Loan and Security Agreement and the Documents or hereof; and

(b) Performance and discharge of each and every obligation, covenant, condition and agreement of Assignor contained herein and of said Borrower in said Loan and Security Agreement and Documents.

3. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants to Assignee that:

(a) Notwithstanding this Assignment, and the exercise by Assignee of any rights assigned hereunder, Assignor will nevertheless, at all times for the duration of the Lease (and thereafter) at its sole cost and expense use reasonable diligence to perform or secure the performance of each and every obligation, covenant, condition, and agreement of the Lease to be performed by Assignor thereunder.

(b) No Payment under the Lease has been or will be forgiven, released, reduced or discounted, or otherwise discharged or compromised by Assignor.

(c) Assignor is entitled as of this date to receive said Payments, and to enjoy all the other rights and benefits mentioned in the Lease and the same have not been heretofore nor will they be hereinafter granted, sold, transferred or assigned by Assignor and Assignor has the right to grant, sell, transfer and assign the same and to grant and confer upon Assignee the rights, interest, powers and/or authority herein granted and conferred.

(d) Assignor will not modify, alter or amend or prematurely terminate the Lease without the prior written consent of Assignee.

(e) (i) Assignor has the full power and legal right to make this Assignment and all proceedings necessary to authorize this Assignment have been taken; (ii) the Lease is in full force and effect and neither Assignor nor Mo-Kan Grain, Inc. is in default thereunder; (iii) the Lease is and will continue to be valid, binding and enforceable against Assignor and Mo-Kan Grain, Inc. in accordance with its terms; and (iv) Mo-Kan Grain, Inc. has consented to this Agreement, by the execution of the Consent, attached hereto and made a part hereof.

4. EXERCISE OF RIGHTS. (a) Although it is the intention of the parties that this Assignment shall be a present assignment, it is understood and agreed, anything herein to the contrary notwithstanding, that Assignee will not exercise any of its rights and powers hereunder until and unless there shall occur an Event of Default (as defined in the Loan and Security Agreement and the Mortgage referred to therein) or a default in the performance of any obligation, covenant, condition or agreement hereunder, and so long as none of the same shall occur, Assignor shall have the right to collect, but not in advance of their due date, all the Payments due under the Lease and to retain, use and enjoy the same.

(b) If an Event of Default shall occur or there shall occur a default in the performance of any obligation, covenant, condition or agreement hereunder, not cured as provided herein and therein, Assignee may, at its option, (i) enforce any and all of Assignee's rights and remedies under the Loan and Security Agreement and the Documents, and/or (ii) take such action it deems proper or necessary to collect the Payments from Mo-Kan Grain, Inc. and to retain use and enjoy same and/or (iii) otherwise enforce Assignor's rights under the Lease. In the furtherance thereof, Assignee may make, cancel, enforce or modify the Lease, and do any acts or things which Assignee deems proper to protect the security hereof, and may in its own name or Assignor's name, sue for or otherwise collect and receive the Payments, including those past due and unpaid, and apply the same in accordance with the provisions of this Assignment.

(c) Assignee in the exercise of the rights and powers conferred upon it by this Assignment shall have the full power to hold, use and apply all of the Payments, to the payment of or on account of any sums due under the Loan and Security Agreement and the Documents and any cost and expense of collection, including reasonable attorneys' fees, all in such order as Assignee in its sole discretion may determine. The collection of such Payments and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or effect notice of default under the Loan and Security Agreement (or Mortgage referred to therein) or invalidate any act done pursuant to such notice.

5. NO LIABILITY OF ASSIGNEE. This Assignment shall not operate to increase Assignee's obligations or liabilities or decrease Assignee's rights and remedies under the Loan and Security Agreement or the Documents. In the exercise of the powers herein granted to Assignee, no liabilities shall be asserted or enforced against Assignee, all such liabilities being herein expressly waived and released by Assignor. Assignee shall not be responsible for any loss, liability or damage under the Lease, or under or by reason of this Assignment. Should Assignee incur any such expense, liability, loss or damage under the Lease or under or by reason of this Assignment, or in the defense of any claims or demands whatsoever asserted against Assignee under the Lease or under or by reason of this Assignment, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional sums secured hereby, shall bear interest at the Overdue Rate specified in the Loan and Security Agreement and Assignor agrees that it shall reimburse Assignee therefor immediately upon demand.

6. AUTHORIZATION TO RECOGNIZE CLAIMS OF ASSIGNEE. Mo-Kan Grain, Inc. is hereby authorized to recognize the claims of Assignee hereunder when made under the sole signature of Assignee, without investigating the reason for any action taken by Assignee, or the validity of the amounts due and owing to Assignee, or the existence of any default in the Loan and Security Agreement or the Documents or hereunder, or the application to be made by Assignee of any amount to be paid to Assignee. Checks for all or any part of the Payments collected under this Assignment shall be drawn at Assignee's option to the exclusive order of Assignee.

7. NATURE OF REMEDIES. The remedies herein set forth shall be deemed special remedies given to Assignee and shall not be deemed exclusive of any other remedies granted in the Loan and Security Agreement or the Documents or by law, which shall be cumulative with the remedies herein granted. Any right or remedy exercised hereunder by Assignee including, without limitation, the collection of the Payments and the application thereof as aforesaid shall not cure, modify or waive any default or any notice thereof under the Loan and Security Agreement or the Documents or invalidate any act done pursuant to such notice. No delay or failure of Assignee to exercise any right or remedy hereunder or under the Loan and Security Agreement or the Documents, or under the Lease, shall be deemed to be a waiver thereof and the single or partial exercise by Assignee of any right or remedy under this Assignment, the Loan and Security Agreement, the Documents or the Lease shall not preclude other or further exercise thereof or the exercise of any other right of remedy at any time.

8. CROSS DEFAULT. Any default by Assignor in the performance of any obligation, covenant, condition or agreement herein contained shall at Assignee's option, constitute and be deemed an Event of Default under the terms of the Loan and Security Agreement and the Documents entitling Assignee to every and all rights and remedies contained therein.

9. BINDING. This Assignment and each and every covenant, agreement and other provision hereof shall be binding upon Assignor, Borrower and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

10. DURATION. This Assignment shall continue in full force and effect until the payment in full of all sums due to Assignee under the Loan and Security Agreement and the Documents and the performance and discharge of each and every obligation, covenant, condition and agreement of Assignor thereunder and hereunder.

11. ENFORCEABILITY. The unenforceability, illegality or invalidity of any provision hereof shall not render any other provision of provisions herein contained unenforceable, illegal or invalid and this Assignment shall be construed as if such unenforceable, illegal or invalid provision had never been contained herein.

12. CONDITIONS. Concurrently with the execution of this Assignment, Assignor will deliver to Assignee, at its sole cost and expense, the favorable opinion of its independent legal counsel acceptable to Assignee confirming that:

(a) To such counsel's knowledge, the Lease is in full force and effect and the Assignor and Evans Grain Co. are not in default thereunder;

(b) The execution and delivery of this Assignment by Assignor have been duly authorized and this Assignment and the Lease each are legal, valid, binding and enforceable against Assignor in accordance with their respective terms.

(c) No consents, authorizations or approvals of third parties including, without limitation, governmental authorities are or will be required as a condition to the validity of this Assignment.

(d) The execution, delivery and performance of this Assignment will not contravene any provision of law, statute, rule, regulation or agreement or other instrument or undertaking, order, decree, judgment, finding, franchise or permit applicable to Assignor to which Assignor is a party or by which it is bound.

13. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been duly given if sent by certified or registered mail, postage prepaid, to the parties at their addresses below.

14. CHOICE OF LAW. This Assignment shall be governed by, construed and enforced in accordance with the Uniform Commercial Code in effect from time to time in the State of Arizona.

15. ASSIGNEE'S ACCEPTANCE AND CONSENT. Assignee hereby accepts this Assignment on the understanding that notwithstanding the Assignment, Assignor shall remain fully responsible and liable for the full, complete and faithful performance of all of the terms, conditions and covenants in the Agreement, the Documents, and in the Time Charter as are applicable to Assignor.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed in their names as of the day and year first above written.

WESTERN RAIL LEASING CORPORATION,
"Assignor"

By Charles J. Franklin
Its: Vice-President

By Paul J. [Signature]
Its: ASSISTANT SECRETARY

Address:
28th and "N" Street
Omaha, Nebraska 68107

Western Rail Leasing Corporation
Omaha, Nebraska

GREYCAS, INC., "Assignee"

By [Signature]
Vice President

ATTEST:
By John A. Greene
Assistant Secretary

Address:
Greyhound Tower
Phoenix, Arizona 85077
Attention: Vice President - Operations

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this 5th day of November, 1980 before me personally appeared MARTIN G. ROTH to me known, who being by me duly sworn, did depose and say that he resides in Phoenix, Maricopa County, State of Arizona, and that he is the VICE PRESIDENT of GREYCAS, INC., the corporation described in and which executed by the foregoing instrument; that he knows the seal of said corporation; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Dolores W. Weisberg
Notary Public

My Commission Expires:
My Commission Expires July 31, 1983

STATE OF Nebraska,
COUNTY OF Lincoln) ss:

On this 28 day of Oct., 1980 before me personally appeared Charles T. Franklin to me known, who being by me duly sworn, did depose and say that he resides at _____ and that he is the Vice President of WESTERN RAIL LEASING CORPORATION the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Loretta E. Halverson
Notary Public

My Commission Expires:

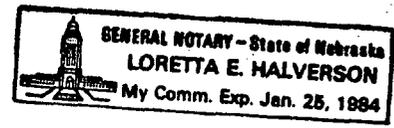


EXHIBIT A TO ASSIGNMENT

RAIL CAR LEASE

CAR LEASE

Date: October 8, 1980

Lease No: 80-10

In accordance with your request, Western Rail Leasing Corporation, ("Lessor") is placing in your service the following railroad Car(s) (hereinafter referred to as the "Cars"; if only one Car is covered by the Car Lease, all plural references to Cars shall mean one Car) described in Schedule A attached to and made part of this Lease.

Lessor leases to Mo-Kan Grain, Inc., Salina, Ks. ("Lessee") and Lessee leases from Lessor, the following Cars under the following terms and conditions:

1. **WHEN LEASE BECOMES EFFECTIVE:** The Lease Term for each Car commences on the date of arrival of that Car at the delivering railroad yard at the initial loading point designated by Lessee (the Effective Date), and continues in effect until the Expiration Date of the Lease or earlier termination of the Lease, as defined herein, with respect to that Car. The Lessor's obligation to deliver the Cars to Lessee is subject to all delays and contingencies beyond the control of the Lessor.

2. **RENT:** The Lessee's obligation to pay Rent commences on the Effective Date. Lessee shall pay Rent in advance on the 1st day of each month during the Lease Term, except that, Lessee shall pay a pro rata amount of Rent for any period less than a full month.

Lessee shall pay the Rent to Lessor in U.S. currency, at its principal office without deduction or offset of any kind. If Lessor is billed directly for any duty, switching, demurrage, storage or tariff charges, tax (other than property), or charges of any kind as a result of this Lease or the use of the cars under this Lease, or any amendment thereto, Lessee shall forthwith reimburse Lessor therefore, as additional rent.

3. **MILEAGE ALLOWANCES:** Lessor shall collect all mileage earned by the Cars during the Lease Term, and remit to Lessee the amount of mileage received from railroads according to the rules and tariffs of the railroads then in effect. Provided, however, that Lessor will retain, as additional rent, such mileage received in any Accounting Period (as defined below) which is in excess of the aggregate Rent paid by Lessee in that period.

The first Accounting Period begins on the Effective Date and ends on the Expiration Date, or the last day of the twelfth month following the Effective Date, whichever first occurs. Subsequent Accounting Periods begin on the day following the end of the prior period, and end on the last day of the twelfth month following, except that the last Accounting Period ends on the expiration of the Lease Term.

4. **INSPECTION OF CARS:** Lessee shall inspect the Cars promptly after they are delivered, and, if substitutions or repairs are necessary, notify the Lessor thereof within one week following the Effective Date. The loading of any Car will constitute conclusive evidence that such car is fit and in suitable condition for transporting the commodities then and thereafter loaded in that Car, and that the Car meets all of Lessee's requirements and those of other users of the Car.

5. **USE AND OPERATION:**

A. Lessee will:

- (1) Preserve the Cars in good condition;
- (2) Use the Cars solely for the purposes for which the Cars are intended;
- (3) Advise Lessor promptly when any Car is in need of repair;

- B. Lessee will not:
- (1) Encumber or dispose of this Lease or of any of the Cars or any part of a Car or permit any encumbrance or lien to be entered or levied upon any of the Cars;
 - (2) Change or permit to be changed, altered or obscured the identification marks, lettering, and/or numbering on the Cars;
 - (3) Alter in any way the physical structure of the Cars;
 - (4) Allow its name or the name of any other person, or entity, to be placed on any of the Cars;
- C. Lessee will not without first obtaining Lessor's written consent:
- (1) Transfer or assign this Lease, or any of the Cars;
 - (2) Sublet the Cars or allow any other person or entity to use the Cars;
 - (3) Repair the Cars;
 - (4) Place lettering or markings of any kind upon the Cars;
 - (5) Use the Cars outside of the boundaries of the contiguous United States, or the Dominion of Canada.
 - (6) Use any of the Cars in unit train service.
- D. In the event any Cars are used outside of the area as specified in Subparagraph C(5) above, for any reason whatsoever, Lessee shall bear full responsibility for and assume any and all costs, duties and taxes assessed or incidental to their use in or exportation of Cars to the prohibited areas.
- E. Lessee shall have the right to place on each of the Cars a small, removable placard to the effect that such Car is leased to it, provided that the affixation of such placard in no way damages the Car, or obscures any Car marking, and that such placard is removed prior to redelivery of such Car to Lessor.
- F. Lessee will furnish Lessor monthly with complete reports of the movements of the Cars, including dates loaded and shipped, commodity, destination, and full junction routing.

6. **EMPTY MILEAGE:** Lessee, to the best of its ability, shall maintain the aggregate mileage under load for all Cars equal to or exceeding the aggregate mileage empty for the Cars. Following (i) the end of each calendar year during this Lease and (ii) the termination or expiration of the Lease, the Lessor will determine, for the calendar year or portion thereof then ended, the aggregate loaded mileage and empty mileage of the Cars and advise Lessee of the same.

In the event that the empty mileage of the Cars should exceed, in the aggregate or as defined by D.M. Rogers' Mileage Tariff 7-F or the applicable tariff then in effect, their loaded mileage for the applicable period, Lessee shall promptly pay the Lessor for such excess at the rate established by the then governing tariff.

7. **RESPONSIBILITY FOR LOSS OR DAMAGE TO LOADING CARS:** Howsoever loss or damage shall be caused, Lessee shall assume full responsibility and on demand reimburse Lessor for all loss or damage to lining, fittings, appliances, and appurtenances of the Cars; to all or any part of the commodities loaded or shipped in the Cars; and for damage to any part of a Car resulting from the commodity loaded in a Car. Provided, however, that the Lessee shall not have responsibility for all of the foregoing resulting from the sole negligence of Lessor (it being understood that negligence imputed to Lessor under the doctrine of strict liability in tort shall not be deemed to be Lessor's negligence for purposes of this Section.).

8. **INDEMNITY:** Lessee will defend, indemnify and hold Lessor harmless from and against any liability, claim, loss, cost or damage (including court costs and attorney's fees) of whatever kind, in any way relating to or arising out of the delivery, possession, use, condition, or return of the Cars, except any of the foregoing arising from the sole negligence of Lessor (provided that negligence imputed to Lessor under the doctrine of strict liability in tort shall not be deemed to be Lessor's negligence for purposes of this indemnity).

9. **TAXES:** Lessor shall file all property tax reports relating to the Cars and pay all property taxes levied on the Cars during the term of this Lease. Lessee shall pay all sales, use, and rental taxes imposed in respect of this Lease.

10. **REPAIRS:** Lessor shall keep each of the Cars in good condition and repair, according to the present Interchange Rules of the Association of American Railroads. If any Car becomes unfit for railroad service, as determined by Lessor, then the rental charges covering such Car shall abate, beginning on the 5th day after the Lessee reports to Lessor that the Car is unfit and continuing until the Car is either repaired and returned to service, or replaced by a similar car, at the option of Lessor. If any Car is completely destroyed, or if Lessor determines that it cannot be operated in railroad service, Lessor may terminate this Lease as to such Car as of the date on which the Car was damaged or destroyed, provided however, that if any repairs are required as a result of the Lessee's breach of this Lease or the misuse of any of the Cars or the negligence of Lessee, its consignee or consignor or agent, Lessee will be responsible for all repairs, and the rental charges shall continue during the period of repair. Lessee shall on demand reimburse Lessor for all costs of repair incurred by Lessor for which Lessee is responsible under this Lease.

No repairs to any of the Cars shall be made by Lessee for Lessor's account without Lessor's prior written consent.

11. LEASE PERIOD, RELEASE OF THE CARS FROM SERVICE: Upon the expiration of the Lease Period, Lessee shall, at its expense, return the Cars to Lessor at the location and to the agent selected by Lessor, in the same good order and condition as the Cars were at the Effective Date, empty, clean, and free from residue and suitable for loading the commodity indicated in Schedule A. When the Cars have been so returned, they shall be deemed to have been released from service.

The Expiration Date of a Car under this Lease will be the Expiration of the Lease Period.

At expiration, should car cleaning be required, the Lessee shall bear the full cost of cleaning and the Rent shall continue for that Car until it is clean—ready for service.

12. WARRANTIES: LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE CARS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND LESSEE LEASES THE CARS AS-IS.

13. DEFAULT, REMEDIES: If Lessee fails to pay when due any Rent or other amount required to be paid by this Lease or to perform any of its obligations under this Lease, or if a petition in bankruptcy or for reorganization is filed by or against Lessee, Lessor may exercise any one or more of the following remedies: (a) sue for and recover all Rent and other payments then due and as they become due; (b) take possession of any or all of the Cars, without demand or notice, without court order or other process of law and without liability for any damages occasioned by the taking of possession; (c) terminate this Lease as to any or all of the Cars; and (d) pursue any other remedy at law or in equity.

A termination under this Section will occur only after written notice to Lessee of Lessor's election to exercise that remedy, and only with respect to those Cars as Lessor specifies in its notice. The Lease will continue in full force and effect as to all other Cars, and Lessee shall be and remain liable for the full performance of its obligations under the Lease as to those other Cars. If Lessor gives such notice with respect to any Car, Lessee shall promptly return that Car to Lessor in the manner and condition specified in Section 11 of this Lease. Lessee's obligations as to that Car, including the obligation to pay Rent, continue until the Car has been so returned at which time the Lease will be deemed to be terminated with respect to that Car.

14. LEASE SUBORDINATE: This Lease is subject and subordinate to any chattel mortgage, conditional sales agreement or equipment trust covering the Cars or any of them heretofore or hereafter created.

Lessee shall pay Lessor all costs and expenses, including attorney's fees and court costs, incurred by Lessor in exercising any of its rights or remedies under this Lease or in enforcing any of the provisions of the Lease.

15. TIME OF ESSENCE: Time is of the essence of this Lease and to each of its provisions.

16. NOTICES: All notices given under this Lease shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, return receipt requested, postage prepaid to the parties, in care of the officers who executed this Lease, at their address set out in the following page.

17. PLACE OF EXECUTION: This Lease is deemed to have been entered into at San Francisco, California, and Lessee agrees to be subject to the jurisdiction of the courts therein located.

18. ASSIGNMENT: Lessee shall not assign, transfer, pledge or hypothecate the Lease, the Cars, or any interest in them. Lessee's interest in this Lease may not be assigned or transferred by operation of law.

Subject to the foregoing, this Lease inures to the benefit of and is binding upon the successors and assigns of the parties.

19. RIGHT TO PROPERTY: No right, title, or interest in or to the Cars, shall vest in the Lessee, or in the Lessee's successors or assigns, by reason of this Lease, or by reason of the delivery of the Cars to Lessee, except as expressly set out in this Lease.

20. **RELIANCE ON LEASE:** Lessor, in consideration of the Lessee's oral representations and agreement to observe and be bound by the terms and conditions of this Lease and because of the Lessee's immediate need of cars, may have shipped one or more of the Cars to Lessee prior to the execution of this Lease. This Lease, whether or not executed, shall be the agreement between the parties for such Cars and supercedes prior negotiations and correspondence.

21. **COMPLETE AGREEMENT:** This Lease is the complete agreement between the parties and may be amended or modified only in writing as executed by them. If any provision of this Lease is determined to be invalid, the remaining provisions will continue to be fully effective.

LESSEE:

MO-KAN GRAIN, INC.

By: Frank S. Henshild

Title: V. President

LESSOR:

WESTERN RAIL LEASING CORPORATION
TWO EMBARCADERO CENTER - SUITE 2940
San Francisco, California 94111

By: Charles S. Franklin

Title: Vice President

SCHEDULE A

LEASE NO. 80-10

SCHEDULE NO. 1

Attached to and made a part of the Car Lease as of October 7, 1980, by and between Western Rail Leasing Corporation and Mo-Kan Grain, Inc.

1. RENT:

<u>Type and Number of Cars</u>	<u>Car Numbers</u>	<u>Monthly Rental Charge per Car</u>
Fifty (50), 100 Ton covered hopper cars.	WRTX 3000-3049*	\$400.00

2. LOADING:

The Lessee will use the cars for the loading of non-corrosive commodities. The Cars shall be returned cleaned.

3. TERM:

This lease will commence October 15, 1980, and terminate October 14, 1983.

4. ESCALATION OF MONTHLY RENTAL CHARGE:

a. Any changes in Car design required by the AAR, DOT, FRA or any other governmental authority during the term of this lease will cause the Rental Charge to increase by a monthly rate of \$1.40 per Car for each \$100.00 of Lessor's cost incurred in the course of complying with the foregoing design changes.

b. In the event that a Car travels more than 30,000 miles in any calendar year, the Lessee shall pay the Lessor \$.015 per mile for each mile over 30,000 traveled by such Car. Any Cars covered by this Lease during onlay a portion of the calendar year shall be so measured on a pro-rata basis for the calculation of amounts (if any) due the Lessor.

LESSEE:

MO-KAN GRAIN, INC.
By Donald A. McBride
Title: V. Pres

LESSOR:

WESTERN RAIL LEASING CORPORATION
By Harriet G. Gaudin
Title: Vice President

*Changed to WRTX 3011-3060 as per Western Rail Leasing Corporation.

FIRST SUPPLEMENTAL CAR LEASE

Western Rail Leasing Corporation, of Walnut Creek, California (Lessor), and Mo-Kan Grain, Inc., of Salina, Kansas (Lessee), have this date entered into a certain Car Lease, identified as Lease No. 80-10 (Lease). The parties hereto desire to supplement and amend said Lease as follows:

1. Paragraph 4 of the Lease deals with the inspection of cars, and it is hereby amended so that it shall not be applicable to any defect in a car which is not apparent upon a visual inspection thereof.

2. Paragraph 5 of the Lease is amended by changing Paragraph C to be as follows:

"C. Except as otherwise permitted hereunder, Lessee will not without first obtaining Lessor's written consent (which shall not be unreasonably withheld): (1) Transfer or assign this Lease or any of the Cars; (2) Sublet the Cars or allow any other person or entity to use the Cars; (3) Repair the Cars; (4) Place lettering or markings of any kind upon the Cars; (5) Use the Cars outside of the boundaries of the contiguous United States, or the Dominion of Canada; or (6) Use any of the Cars in unit train service."

3. Paragraph 5 of the Lease is amended by adding a new paragraph G, which shall be as follows:

"G. Without altering Lessee's obligation under the Lease or hereunder, Lessee shall have the right to permit the use of any car hereunder by (i) any other entity if such use is in Lessee's service or under Lessee's control or direction, or (ii) any entity all or any part of the business of which is managed or controlled by Lessee, the shareholders of Lessee or any corporation which is owned or controlled by any one or more of the shareholders of Lessee, or (iii) any entity more than fifty percent of the capital stock of which is owned by Lessee or any one or more of its shareholders, or (iv) any customer of Lessee for the shipment of commodities in accordance with contracts with Lessee or any entity more than fifty percent of the capital of which is owned by Lessee or any one or more of its shareholders."

4. Paragraph 5 of the Lease is hereby amended by adding a new paragraph H, which shall be as follows:

"H. Lessor agrees to take such actions as may be required in order to obtain OT-5 approval pursuant to the applicable rules of the American Association of Railroads for the assignment of the cars into service with the Lessee during the term hereof for use as needed or directed by Lessee. In the event any such approval is not obtained with respect to any car, then Lessee shall have the right to (i) terminate this Lease in its entirety, or (ii) terminate this Lease with respect to the particular car, or (iii) discontinue payment of rent for the use of the particular car until such approval is obtained."

5. Paragraph 7 of the Lease is hereby amended by adding an additional sentence thereto, which shall be as follows:

"Provided further, however, that the Lessee shall not have responsibility for the normal and ordinary wear and tear resulting from the use and operation of the Cars."

6. Paragraph 11 of the Lease is hereby amended so that the "Expiration Date of a Car" under the Lease shall be the Expiration of the Lease Period or the prior termination of the Lease with respect to any car under other provisions of the Lease and this Supplemental Lease.

7. Paragraph 12 of the Lease is amended to add an additional sentence thereto, which shall be as follows:

"Lessee shall have the benefit of and may pursue claims against the manufacturers of the cars by reason of any manufacturer warranties which exist with respect to the cars and to which Lessor has any rights or recourse."

8. The first sentence of Paragraph 18 of the Lease is hereby amended to be as follows:

"Except as otherwise permitted hereunder, Lessee shall not assign, transfer, pledge or hypothecate the Lease, the Cars, or any interest in them."

9. The Lease as supplemented and amended by this First Supplemental Car Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands this October 7th, 1980.

LESSOR:

WESTERN RAIL LEASING CORPORATION

BY: Charles J. Franklin

LESSEE:

MO-KAN GRAIN, INC.

BY: Frank J. Hill
v. Hill

SECOND SUPPLEMENTAL CAR LEASE

Western Rail Leasing Corporation, of Walnut Creek, California (Lessor), and Mo-Kan Grain, Inc., of Salina, Kansas (Lessee), have this date entered into a certain Car Lease, identified as Lease No. 80-10 (Lease). The parties hereto desire to supplement and amend said Lease as follows:

1. Upon the Expiration Date of the Lease, the Lessee shall have the first right and option to renew and extend the Lease and the First Supplemental Car Lease, as supplemented and amended by this Second Supplemental Car Lease, for a term of two years commencing on the Expiration Date, which first right and option must be exercised by the Lessee giving written notice thereof to the Lessor at least 30 days prior to the Expiration Date. The monthly Rent payable during said option period shall be an amount equal to the greater of the following:

(a) The monthly rental charge per Car payable under the existing Lease; or

(b) The lowest monthly rental charge per Car by the Lessor for the leasing of comparable Cars of the same age and condition to any other customer of the Lessor at the inception of the option period.

Provided, that should Lessee contemplate exercising said option Lessee may request from Lessor the lowest monthly rental figures pursuant to subparagraph (b), above, making written request of Lessor between 45 and 60 days prior to the Expiration Date. Lessor will submit said requested figures to Lessee, in writing, within seven (7) days of its receipt of Lessee's written request. Said figures returned by Lessor to Lessee shall be deemed figures to be in existence at the inception of the option period for purposes of this paragraph.

2. The Lease and the First Supplemental Car Lease as supplemented and amended by this Second Supplemental Car Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands this October 7th, 1980.

LESSOR:

WESTERN RAIL LEASING CORPORATION

BY: Charles J. Franklin

LESSEE:

MO-KAN GRAIN, INC.

BY: Frank J. McLeod
V. Price