

C.I.T. Corporation

135 West 50th Street
New York, New York 10020

August 29, 1984

CIT

Secretary of the
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. **14419** Filed 1425

AUG 30 1984 - 3 15 PM

No. **AUG 30 1984**
Date

INTERSTATE COMMERCE COMMISSION Fee \$ **10.00**

Re: Railcar Operating Lease Agreement dated as of CC Washington, D. C.
August 3, 1984 between C.I.T. LEASING CORPORATION,
As Agent and Lessor, and SPRING CREEK COAL COMPANY,
As Lessor

Dear Sir:

C.I.T. LEASING CORPORATION, a Delaware Corporation, as Agent for
C.I.T. Corporation, a New York Corporation, (the "Lessor"), and SPRING CREEK
COAL COMPANY, a Montana Corporation, (the "Lessee") executed and entered into
that certain Railcar Operating Lease Agreement as described above, covering the
railroad equipment described on Exhibit A attached hereto (the "Equipment").

Enclosed are three identical originals of the above-referenced lease
signed by both parties. The addresses of these parties are as follows:

Lessor	C.I.T. Leasing Corporation 135 West 50th Street New York, New York 10020 Attention: Mr. Stephen O'Neill
Lessee	Spring Creek Coal Company 101 Southwest Main Street, Suite 1300 Portland, Oregon 97204-3221 Attention: Manager of Marketing

We request that you record this lease. A check for \$10.00 is enclosed
to cover the recording fee. Two stamped original leases should be returned
with stamped copies of the transmittal letter to bearer or to Mr. Leo Sheer of
C.I.T. Corporation at 135 West 50th Street, New York, New York.

Sincerely,

[Signature]
Vice President

100 OFFICE OF
AUG 30 3 51 PM '84
FUTURE UNIT

Herbert Coomb

[Handwritten mark]

EXHIBIT A
EQUIPMENT DESCRIPTION

<u>Description</u>		<u>Number of Cars</u>						<u>Car Markings</u>	
3,600 cubic foot, 100 ton capacity, triple pocket open top hopper railcars built in 1968.		140						(to be supplied by Lessee) To be selected by Lessee from the following: *	
*									
523000	523058	523104	523142	523186	523233	523301	523348	523389	
004	069	108	143	190	236	302	349	393	
005	070	110	145	191	242	305	352	394	
007	071	113	146	192	243	306	353	395	
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054	100	140	182	230	298	343	387		
055	101	141	183	232	299	345	388		

Interstate Commerce Commission
Washington, D.C. 20423

8/30/84

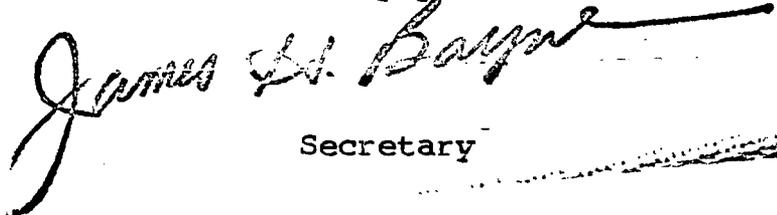
OFFICE OF THE SECRETARY

Leo Sheer
C.I.T. Corporation
135 West 50th St.
New York, N.Y.

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/30/84 at 3:15pm and assigned re-
recording number(s). 14419

Sincerely yours,


Secretary

Enclosure(s)

AUG 30 1984 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

RAILCAR OPERATING LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of this 3rd day of August, 1984, by and between C.I.T. Leasing Corporation, a Delaware Corporation, as agent for C.I.T. Corporation, a New York Corporation, hereinafter called "Lessor", and Spring Creek Coal Company, a Montana corporation, hereinafter called "Lessee".

1. Equipment and Lease Charges : Lessor agrees to furnish to the Lessee, and the Lessee agrees to accept and use, upon the terms and conditions herein set forth, the following described railcars (hereafter "Cars"), for the transportation of coal in accordance with all present DOT requirements and in compliance with now existing AAR rules of interchange, for the use of each of which the Lessee agrees to pay Lessor the following lease charges (hereafter "Lease Charges"):

<u>Number of Cars</u>	<u>Description</u>	<u>Lease Charges</u>	<u>Car Nos.</u>
140	3,600 cubic foot, 100 ton capacity, triple pocket open top hopper railcars built in 1968 by Bethlehem Steel	Monthly lease rate per Car is \$275.0	See Exhibit A

Lease Charges shall become effective, with regard to each of the Cars, upon the date of the delivery of each as hereafter provided in Article 2, and shall continue in effect, with regard to each of the Cars, until returned to Lessor at the end of the term of this Agreement, as hereafter provided in Article 5. Payment of Lease Charges shall be made to Lessor at the address specified in Article 16, or to such other place as Lessor may direct, on the last day of each month in arrears, with the first month's payment due on the last day of the month following the month the last Car is delivered as provided in Article 2 below. Rent for any Car for any partial month shall be pro-rated on a daily basis. Lessee shall pay to Lessor as additional Lease Charges 2 cents per mile per Car for each mile a Car travels in excess of 30,000 miles during the term of this Agreement. Such additional Lease Charges shall be due and payable at the expiration of this Agreement. If Lessee exercises its Purchase Option pursuant to Article 17 of this Agreement, any Lease Charges due for excess mileage as described in the preceding sentence shall be refunded to Lessee. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by Lessee.

Lessee shall not be obligated to accept any Cars under this Lease, but shall be subject to the terms of this Lease as to any Cars accepted. At any time prior to the delivery of the 140th Car, Lessee may give notice to Lessor by telex, telephone, telegram or other electronic means, to be followed within 10 days by a written confirmation pursuant to Article 16, that Lessee will not accept additional Cars. Lessee shall not be liable to Lessor for Lease Charges or any other costs of any nature on Cars tendered after the date of such notice.

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Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided in Articles 4, 6 and 9 below; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Car or damage to or loss of possession or loss of use or destruction of all or any of such Cars from whatever cause and of whatever duration, except as otherwise provided in Articles 4 and 6 below, or the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee.

Lessor covenants that so long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use all Cars free from any disturbance or interruption of possession arising as a result of any action or inaction, failure of title, or conduct of or by Lessor, or of or by any assignee of its rights hereunder.

2. Delivery of Cars: Each Car will be delivered to Lessee free of transportation charge to Spring Creek Coal Company, Decker, Montana Burlington Northern delivery. Lessor shall not be liable on account of any failure by it to deliver Cars to Lessee pursuant to this Agreement. However, if Lessor fails to deliver 60 cars by August 15, 1984, Lessee may, as its sole remedy hereunder, terminate this Agreement.

3. Warranties and Representation: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE CARS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE CARS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE CARS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY CAR.

4. Responsibility for Damage or Destruction of Cars: If any of the Cars are lost, destroyed, or damaged beyond economic repair in the opinion of Lessee (except when the car is in the possession of Lessor), Lessee agrees to pay Lessor the settlement value of the Car computed under Rule 107 of the Interchange Rules adopted by the Association of American Railroads (hereafter "A.A.R. Code of Rules") within 60 days of advising Lessor of such occurrence. Lease Charges with respect to any Car shall abate upon the date Lessor is advised that such Car has been lost, destroyed, or damaged beyond economic repair.

Upon payment by Lessee to Lessor of the settlement value of any Car as hereinabove provided, so long as Lessee is not in default hereunder, such Car shall become the property of the Lessee. In order to facilitate the sale or other disposition of any Car which becomes Lessee's property as hereinbefore provided, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's vendee, assignee or nominee, a bill of sale for such Car, warranting title free and clear of all liens, security interests, and other encumbrances (except such as may have arisen by, through or under Lessee during the term of this Agreement) and such other documents as may be required to release such Car from the terms and scope of this Agreement and from any other lien or encumbrance of Lessor's making, undertaking or sufferance, in such forms as may be reasonably required by the Lessee.

5. Return of Cars: The Lessee agrees, immediately upon the expiration or termination of this Agreement without demand by Lessor, to return each of the Cars to Lessor uncontaminated and in the same condition as received, less reasonable wear and tear, and free of liens arising by, through or under Lessee, at a point mutually agreed to, and to pay rent on each Car until such return. Rent for each Car shall cease when all cars are returned in the above condition to the point referenced above, or are placed in storage at the request of Lessor as stipulated below. Lessee shall provide up to ninety (90) days free storage for any or all Cars at the request of the Lessor at the expiration or termination of this Agreement. Lessee agrees to transport the Cars free of charge to any point on the tracks of the Burlington Northern Railroad at the expiration of this Agreement or storage period. If such free move on the Burlington Northern is not available, Lessee agrees to pay up to \$250 per Car to Lessor for transportation costs.

6. Maintenance: Lessor agrees to maintain at its own expense each of the Cars in good condition and repair, in conformity with all applicable laws and regulations including the A.A.R. Code of Rules and FRA Railroad Freight Car Safety Standards except for the following:

(a) Repairs or maintenance required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(b) Repairs or maintenance required because of damage caused to the Cars by any corrosive or abrasive substance loaded therein or used in connection therewith; or

(c) Repairs or maintenance required because of damage caused to the Cars by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or

(d) Repairs or maintenance required because of excessive or unbalanced loading.

Lessee will make the Cars available to Lessor or its contractors at any facility specified by Lessor at any reasonable time on request for the purpose

of maintenance inspection and to ensure regular maintenance or repairs. Lessee shall pay all transportation charges for moving any Car to the repair or inspection facility designated by Lessor. Rent shall abate for any Car requiring repairs or inspection as of the date the Car is delivered to the repair or inspection facility designated by Lessor; rent shall resume as of the date that such Car is returned to the Burlington Northern in serviceable condition.

In the case of damage caused to any of the Cars which is the responsibility under AAR Rules of a railroad and not repaired by such railroad, Lessor will perform the necessary repairs and will prepare and submit such documents as are necessary to recover the cost of such repair in accordance with AAR Rules and will perform all necessary administrative tasks in connection with such counterbilling. Lessor will be solely entitled to any sum so recovered.

Lessee will, at Lessor's request, take such reasonable action as Lessor may specify to modify operating conditions within Lessee's control which Lessor's reasonable opinion are causing undue and avoidable wear or damage to the Cars.

Neither party to this Agreement will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Cars without the other party's written consent.

Lessor reserves the right to retire any car that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Car retired by Lessor as of the date on which it is retired.

7. Freight and Other Charges: Lessor shall not be obligated for the payment of any switching, freight, or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this Agreement, all of which will be paid by Lessee. Lessor shall have no right or claim to any per diem, demurrage or other Car hire charges arising out of the use of the Cars and all such charges, as applicable, shall belong and be payable to Lessee.

8. Lettering of Cars: Lessor will supply reporting marks for the Cars in accordance with the A.A.R. Code of Rules as indicated in Exhibit A. Lessee agrees to keep and maintain on the sides of each Car in letters not less than one-half inch in height the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

9. Responsibility for Taxes: Lessor agrees to pay any personal property taxes associated with the Cars. Lessee agrees to assume responsibility for, and to pay, all other taxes, costs, fines and assessments of every kind upon the Cars, and to file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor.

10. Responsibility for Lading: Lessor shall not be liable for any loss

of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused, or shall result. The Lessee agrees to assume responsibility for, and to indemnify Lessor against, and to save it harmless from, any such loss or damage or claim therefor.

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Once Cars have been delivered to Lessee pursuant to Article 2, and until such Cars are returned to Lessor or placed in storage pursuant to Article 5

11. Indemnification: Lessee agrees to indemnify and save Lessor harmless from any and all claims, demands, causes of action, cost, and expenses, including attorney fees, arising directly or indirectly out of the use, custody, control, or operation of the Cars, whether in contract, tort, strict liability in tort or otherwise. In any personal injury action(s) arising from the operation of said Cars naming Lessor as a defendant, Lessee agrees, if Lessor so requests, to undertake the defense and costs associated therewith immediately upon tender of such defense, including payment of any judgment directed against Lessor jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, fines, and levies arising from the operation of said Cars under this Agreement. Lessee shall have the right to self-insure in order to fulfill its indemnity obligations as described above. Lessee's obligations hereunder shall survive the termination of this Agreement.

12. Assignment: Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Agreement. Except as herein provided, Lessee will not assign, transfer, encumber or otherwise dispose of this lease, the Cars or any part thereof, or sublet any Car without the prior written consent of Lessor. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon any Car, other than such as may arise by, through, or under Lessor or any assignee of Lessor's rights hereunder.

Lessee acknowledges and understands that Lessor may, without notice to Lessee, assign its interest under this Agreement and in and to the Cars to a bank or other lending institution as security for one or more loans. Lessee agrees, in the event of any such assignment and upon notice thereof from Lessor, and only in the event of such assignment to one or more such assignees:

(i) to recognize such assignment; (ii) to make all payments of Lease Charges and other amounts due under the Agreement as so assigned directly to the assignee identified in such notice or to its designee; (iii) to accept the directions or demands of such assignee in place of those of the Lessor; (iv) to surrender the Cars to such assignee upon termination of this Agreement; (v) that, in the event of such assignment and except as otherwise provided in Articles 4, 5, 6 or 9, Lessee's obligations hereunder with respect to payment of Lease Charges shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever; (vi) except as otherwise provided in Articles 2, 4 (with respect to any Car which becomes Lessee's property), 5, 6, 14, and Article 19, not to terminate this Agreement; provided, however, nothing contained in this Article 12 shall relieve Lessor from its obligations to Lessee hereunder, nor shall any assignee hereof be relieved of the obligation to release its interests in any Car to facilitate Lessor's obligations contained in the second paragraph of Article 4 hereof.

13. Remedies: If the Lessee after five business days notice shall fail

to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Cars, to remove the Cars from the Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's fault. If Lessor shall terminate this Agreement pursuant to this Article 13, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given to Lessor shall in no way limit its other rights and remedies given or provided by law or in equity. If Lessor after five (5) business days' notice shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if petition in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessor, then, and in any of said events, Lessee shall have the right to immediately terminate this Agreement and Lease Charges hereunder shall cease. If Lessee shall terminate this Agreement pursuant to this Article 13, the rights and remedies herein given to Lessee shall in no way limit its other rights or remedies given or provided by law or in equity.

14. Term of Agreement: This Agreement shall remain in full force and effect, with regard to each of the Cars, for a period of six (6) months from the date of delivery of the 70th car. The Agreement shall be binding upon and inure to the legal representatives and successors. Lessee shall have the option to extend this Agreement, from month to month, on the same terms and conditions as contained herein, upon thirty (30) days written notice to Lessor prior to the end of the initial term or any extension, provided, that this Agreement may not be extended for a total of more than two (2) months.

15. OT5 Authority: Lessee will, before delivery of any Car, obtain any permission or authority which may be necessary for the operation of the Cars under AAR Circular OT5 and will maintain any OT5 permission in force throughout the term of this Agreement.

16. Notice: Any notice to be given under this Agreement shall be given by certified mail in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Spring Creek Coal Company
101 Southwest Main Street, Suite 1300
Portland, Oregon 97204-3221
Attention: Manager of Marketing

(b) Notices from Lessee to Lessor shall be sent to:

C.I.T. Leasing Corporation
135 West 50th Street
New York, New York 10020
Attention: Mr. Stephen O'Neill

17. Purchase Option: At the termination of this lease, if Lessee is not in default hereunder, with thirty (30) days advance notice, Lessee may purchase all but not less than all, of the Cars for \$6,600.00 each.

18. Option for Additional Cars: Lessee shall have the right of first refusal for a period of sixty (60) days to lease an additional sixty (60) cars subject to the terms and conditions of this Agreement.

19. Cancellation: Lessee shall have the right to cancel this Agreement until August 31, 1984. If such cancellation is exercised, Lessee agrees to pay all Lease Charges due on any Car and return all Cars pursuant to Article 5 of this Agreement, except Lessee shall provide Lessor a free move to any point on the Burlington Northern Railroad.

20. Execution: This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract. This Agreement may be signed in separate counterparts as long as each party hereto shall have signed at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered the day and year first about written.

ATTEST: Constance L. Rodemus SPRING CREEK COAL COMPANY

By: Lance P. Asaka
Title: MANAGER, MARKETING
Date: 8/17/81

ATTEST: [Signature]
Assistant Secretary

C.I.T. LEASING CORPORATION,
as agent for C.I.T. CORPORATION

By: [Signature]
Title: VP
Date: 8/9/81

EXHIBIT A
EQUIPMENT DESCRIPTION

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