

# AMERICAN REFRIGERATOR TRANSIT CO.

210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103  
TEL. AREA CODE 314 622-2716

ROBERT J. DUNNE, JR.  
PRESIDENT AND GENERAL MANAGER

February 6, 1980

No. ~~0-044A064~~ File: E-712  
Date FEB 13 1980 S-395  
Fee \$ 50.00

11495

FOR DELIVERY BY MESSENGER

ICC Washington, D. C.

RECORDATION NO.....Filed 1425

Mrs. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

FEB 13 1980 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

Dear Mrs. Mergenovich:

Re: Lease between American Refrigerator Transit Company, Lessee,  
and E. I. du Pont de Nemours & Company, Lessor, dated  
October 31, 1974 recorded with the Interstate Commerce Com-  
mission December 31, 1974, under Recordation No. 7732.  
Amendment to Lease dated September 29, 1976 recorded  
December 1, 1976, under Recordation No. 7732-B.

Enclosed as information and for recording, pursuant to Section 11303 of the Inter-  
state Commerce Act, are four fully executed copies of lease dated October 31,  
1979 between American Refrigerator Transit Company and E. I. du Pont de Nemours  
& Company, which cancels lease referred to in the caption hereof. Two copies of  
this lease are for retention in your Commission's files, and the other two copies  
are to be appropriately stamped or otherwise processed to show recordation date,  
and returned to:

Mrs. Judy Durand, Vice President  
Missouri Pacific Railroad Company  
1825 K Street, N. W., Suite 1203  
Washington, D. C. 20006

Mrs. Durand will arrange to pick same up at your office as soon as recordation has  
been accomplished.

The lease transmitted herewith for filing and recording covers the following equipment:

<u>Number of Units</u>	<u>Description</u>	<u>Numbers</u>
20	52' - 70-ton RBL cars	ARDP 787000 through ARDP 787019

The names and addresses of the parties to the transactions set forth in this lease,  
herewith transmitted for filing and recording, are:

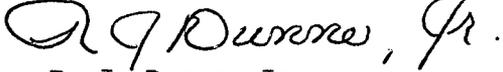
E. I. du Pont de Nemours & Company Wilmington Delaware 19898	American Refrigerator Transit Company 210 North 13th Street St. Louis, Missouri 63103
--	---

*Katherine E. Starb*  
*C Dunlap*

Mrs. Agatha L. Mergenovich  
Page Two  
February 6, 1980

Enclosed herewith is my check in the amount of \$50.00 to cover filing and recording fees.

Very truly yours,

  
R. J. Dunne, Jr.

RJD/yk  
Enclosures - 5

**Interstate Commerce Commission**  
Washington, D.C. 20423

2/13/80

OFFICE OF THE SECRETARY

Mrs Judy Durand, VP  
Missouri Pacific RR Co.  
1825 K Street, N.W. Suite 1203  
Washington, D.C. 20006

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 2/13/80 at 2:50pm, and assigned re-  
recording number(s). **11495**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

11495  
RECORDATION NO. .... Filed 1425

FEB 13 1980 -2 50 PM

INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT dated as of this 31st day of December, 1979, by and between E. I. DUPONT DE NEMOURS & COMPANY, INC., a Delaware corporation hereinafter called "Lessor", and AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, the Lessor has leased certain railroad cars under a lease agreement dated as of December 29, 1979 ("Prime Lease") from United States Railway Leasing Company, which cars Lessee desires to sublease from Lessor, to which Lessor is agreeable;

NOW, THEREFORE, in consideration of the rentals reserved herein and of the mutual covenants and agreements contained in this Lease, it is hereby agreed:

1. LEASE: TERM.

(a) Lease. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, upon the terms and conditions herein set forth, the railroad cars described in Schedule A attached hereto, hereinafter collectively referred to as "Cars" and individually referred to as the "car", and to pay Lessor during the term of this Lease the rent set forth in Paragraph 7 of this Lease.

(b) Term. The term of the Lease shall commence on December 31, 1979, and shall terminate December 31, 1984, or such later date as the initial term of the Prime Lease shall end, unless sooner terminated in accordance with this Lease or unless extended pursuant to written agreement between the parties, but in no event shall the term of this Lease be longer than the term of the Prime Lease.

2. Delivery. Lessor has delivered said cars and Lessee acknowledges receipt thereof and that the same are in satisfactory condition for use under this Lease.

3. Disclaimer of Warranty. Lessor makes to Lessee no warranty or representation, express or implied, of merchantability or otherwise, including, but not limited to: the fitness, design or condition of the Cars; the quality or capacity of the Cars; the workmanship of the Cars; that the Cars will satisfy the requirements of any law, rule, specification or contract pertaining thereto; any guaranty or warranty against patent infringement or latent defects; and any other representation or warranty whatsoever, express or implied. Lessor agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of the Cars or any parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights.

4. Use and Possession. During the term of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each car from the date the Lease becomes effective and may use the Cars upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic but at all times subject to the terms and conditions of this Lease; provided, however, that at all times the Cars shall be used only in the United States of America or in Canada.

5. Transportation Costs and Duties. Lessor shall be liable for and shall pay or reimburse Lessee for any transportation costs, including but not limited to switching charges, freight rates and demurrage or storage charges.

6. Taxes. Lessor shall be liable for and shall pay and reimburse any payment of: (a) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars or this Lease; and (b) all taxes, duties or imports assessed or levied on the Cars or this Lease by a foreign country or a governmental subdivision thereof. Lessee shall be liable for and shall pay and reimburse for payment of: (a) all Federal, State or other governmental property taxes assessed or levied against the Cars during the term of this Lease; and (b) all taxes or charges assessed or levied against its interest as Lessee of the Cars.

7. Rent.

(a) Maximum Rent. Schedule A attached hereto sets forth as Maximum Rent a figure reflecting the maximum per car per month amount ever to be received by Lessor under this Lease. The Maximum Rent constitutes a figure which will never exceed the minimum per car per month costs incurred by Lessor in connection with the furnishing of the Cars. Actual monthly payments by Lessee shall be made three (3) months in arrears at a per car rate of \$60 less than the Maximum Rent figure set forth in the schedule and the tariff.

Until there is a leasing tariff in effect authorizing payment of the increased rental figure shown in Schedule A, the maximum amount ever to be received by Lessor will be \$340 per car per month.

(b) Accounting and Adjustments. If, at any time, Lessee's earnings (amounts actually received by Lessee) as a result of any authorized sublease of the Cars, shall be less than an amount computed by multiplying Maximum Rent by the number of car-months accumulated, Lessor will pay to Lessee the difference as billed. Semiannually during the term of the Lease there will be an accounting between the parties. If, for any such period, the earnings of the Lessee from any authorized sublease of the Cars, shall exceed the Maximum Rent multiplied by the accumulated car-months, the Lessee shall make a further payment to the Lessor, provided that such payment shall not exceed the smaller of the excess earnings as defined above or the amount which, when added to the payments already made under paragraph (a) hereof, shall equal the Maximum Rent, it being expressly understood that subject to paragraph 8(a) hereof Lessor shall never receive more than the Maximum Rent which, as indicated, shall never exceed its actual costs. As part of each accounting, Lessor shall furnish Lessee with a document, certified by Lessor's principal accounting officer, showing its actual costs incurred in connection with the Cars during the covered period and the amounts received from Lessee under this Lease for the same period. For periods in which Lessee compensates Lessor on an average per car per month basis less than Maximum Rent, Lessee shall furnish Lessor with a document, certified by an officer of Lessee, setting forth the earnings of the Cars. The intent of this Lease is to

assure that the amounts received by Lessor shall never exceed its costs but should such ever occur Lessor shall immediately refund the difference to Lessee.

#### 8. Maintenance and Repairs

(a) Maintenance. Lessee, during the term of this Lease, promptly and with due diligence, shall keep and maintain the Cars and the interior lading equipment, special interior linings or removable parts and provide such repair work or other work or materials as is necessary to maintain the same, in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes or additions to the Cars or their equipment and appliances to the extent necessary or required from time to time; (a) by the Interchange Rules; and (b) by applicable laws and regulations of any state or governmental body, including specifically but not exclusively, the Interstate Commerce Commission. All earnings in excess of \$495 per car per month will be applied against future maintenance expenses. All maintenance expenses in excess of such amounts will be promptly billed to and paid by Lessor. Lessee shall provide underlying detail of repairs as requested.

(b) Loss, Theft or Destruction of Cars. In the event any car is lost, stolen, destroyed or, in the judgment of Lessee, damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise Lessor of such occurrence. Lessee shall pay to Lessor the AAR depreciated value settlement made by Lessee with the railroad responsible for its destruction and from which Lessee has collected the settlement, and rental obligations as set forth in paragraph 7 of this Lease shall cease as of the date of destruction. It is understood that Lessee shall be required to make such payment to Lessor only after Lessee has collected settlement from the responsible railroad, and Lessee agrees to use its best efforts to collect such settlement.

(c) Abatement: Replacement. In the event a car becomes unfit for service and requires repairs, such car, after a period of five (5) days from the date when such car is made empty, will not be subject to the terms set forth in paragraph 7 of this Lease until the date such car is repaired and released for service. Lessor may, at any time and from time to time, replace any car which has been lost, stolen, destroyed or damaged beyond economic repair, with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or future documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Cars which have been lost, stolen, destroyed or damaged, or to include any Replacement Cars within the terms and provisions of this Lease.

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 in the Cars, or 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, encumbrance or legal process.

10. Indemnity. Lessee agrees to indemnify Lessor and save it harm-

less from any charge, loss, claim, suit, expense or liability which Lessor may suffer or incur by reason of its ownership interest and which arises in connection with the use or operation of a car or the Cars during the term of this Lease, and without regard to how such charge, loss, claim, suit, expense or liability arises, except when caused by Lessor's negligence. The foregoing indemnity shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

11. Marking. Cars bear Doniphan, Kensett & Searcy Railway Company's reporting marks and numbers and appropriate marks to identify the underlying owner and Lessor which shall be maintained during the term of this Lease. Lessee shall promptly replace any such marking which may be removed, destroyed or rendered illegible in whole or in part. Except for numbering and stenciling as provided herein, Lessee shall keep the Cars free from any marking or labeling which might be interpreted as a claim of ownership by Lessee or any Sublessee or other party receiving any rights as Sublessee or otherwise through Lessee and will not change, or permit to be changed, the identifying road numbers on any of the Cars; provided, however, that Lessee may permit the Cars to be lettered or marked in an appropriate manner for convenience of identification of the interest of Lessee or any Sublessee or to indicate the nature of the service furnished thereby. At the termination of this Lease, the DK&S marks shall be removed at Lessor's cost.

12. Per Diem. Lessor agrees that Lessee or any Sublessee may collect and retain any and all per car hire charges applicable to the Cars, it being expressly understood that, in the event of a sublease to a railroad, no per car hire charges shall accrue while any car is on the lines of such railroad.

13. Inspection; Inventory. During the term of this Lease, Lessor, or a party designated by Lessor, shall have the right, at Lessor's own cost and expense, to inspect the Cars at a reasonable time or times wherever the Cars may be. Lessee shall, upon request of Lessor, but no more than once every year, furnish to Lessor two (2) copies of an accurate inventory of all Cars subject to this Lease.

14. Return of Cars. Upon the expiration or termination of this Lease, Lessee agrees to return the Cars, at the expense of Lessor, to the original point of delivery or to any other point designated by Lessor. The Cars shall be so returned free of all liens and charges, except as otherwise herein provided, and in the same or as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, and with all the same type and character of devices, appliances or appurtenances with which the Cars were equipped at time of delivery to Lessee. However, the preceding sentence shall not be binding upon Lessee for any car which has been destroyed or damaged beyond economic repair, as previously provided herein, or which has been modified by agreement of the parties, during the term of this Lease.

15. Default. Any one of the following shall constitute an event of default: (a) Lessee shall fail to make any payment of rent when the same shall become due and such failure shall continue unremedied for a period of thirty (30) days; or (b) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it

hereunder and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by Lessor; or (c) Lessee shall admit in writing its inability to pay its debts or shall have made a general assignment for the benefit of creditors; or shall have been adjudicated bankrupt; or shall have filed a voluntary petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors; or shall have filed an answer to a creditor's petition or other petition filed against it (admitting the material allegations thereof) for an adjudication in bankruptcy or for a reorganization; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of its property or assets; or such receiver, trustee or custodian shall have been appointed for any of its property or assets (otherwise than upon application or consent of Lessee) and such receiver, trustee or custodian so appointed shall not have been discharged within sixty days after the date of his appointment; or if an order shall be entered, and shall not be dismissed or stayed within sixty (60) days from its entry, approving any petition for a reorganization of Lessee; or (d) an attachment or execution is levied upon Lessee's property in or interest under this Lease which is not satisfied or released or stayed within thirty (30) days thereafter; or (e) Lessee shall cease to do business as a going concern and its pertinent obligations are not assumed by its parent or affiliated company.

16. 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 Lessee's enforcement of its remedies hereunder; or (b) declare this Lease terminated and recover from Lessee all amounts then due and payable plus all damages sustained by Lessor by reason of the breach of any covenant of the Lease other than the covenant to pay rent; or (c) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free of any right of Lessee to use the Cars for any purposes whatsoever. No remedy referred to in this paragraph is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any event of default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent event of default.

17. Termination. In addition to the termination rights set forth in other paragraphs of this Lease, Lessor may terminate this Lease at any time by delivery of thirty (30) days prior written notice to Lessee. If in the judgment of Lessee, in good faith and reasonably exercised, it should become necessary to amend or terminate this Lease in order to comply with any legal requirement, including specifically any rule, regulation or order of a court or regulatory agency, Lessee shall give written notice thereof to Lessor. If, in Lessee's judgment, amendment of this Lease would accomplish compliance with such legal requirement, rule, regulation or order of a court or regulatory agency, Lessee's notice shall specify the necessary amendment and Lessor shall have the option to accept such amendment or terminate this Lease and shall notify Lessee of such choice within thirty (30) days after Lessor's receipt of Lessee's notice. If Lessor elects to terminate this Lease, or if Lessee's initial notice specifies termination as the only method of compliance with such legal requirement, rule, regulation or order of a

court or regulatory agency, such termination shall be effective thirty (30) days after the receipt of the applicable notice.

18. Assignment and Sublease; Binding Effect. This lease and all rights of Lessor hereunder shall be assignable by Lessor without Lessee's prior consent but Lessee shall not be obligated to any assignee of Lessor except after written notice of such assignment from Lessor. Without prior written consent of Lessor, Lessee shall not assign this Lease or its interests hereunder or enter into any sublease with respect to all or any part of the Cars except that Lessee may sublease the Cars to the Doniphan, Kensett & Searcy Railway Company or any successor or affiliated company. This Lease should be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Notices. All notices required or permitted to be delivered to any party shall be in writing, and shall be deemed to be given, unless either party hereto has notified the other in writing of a change, when personally delivered to an officer of the other party or when deposited in the United States mails, certified or registered and postage prepaid as follows: (a) If to Lessor: Wilmington, Delaware, 19898; (b) if to Lessee: 210 North 13th Street, St. Louis, Missouri, 63103.

20. Severability. If any provision hereof be invalid under any applicable law, such provision shall be inapplicable and deemed omitted but the remaining provisions hereof shall be given effect in accordance with the intent hereof.

21. Waiver; Amendment. No waiver by either party of any provision hereof shall constitute a waiver of any other matter. The Lease may only be amended by a writing signed by both Lessor and Lessee.

22. Counterparts and Headings. This Lease may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The paragraph headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease.

23. Recording. Lessee, without expense to Lessor, will cause this Lease and all amendments, or supplements, thereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act.

24. When this Lease becomes effective it shall cancel and supersede, without prejudice to accrued liability, that certain lease between the parties dated October 31, 1974, amended September 29, 1976, relating to the same subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

E. I. DUPONT DE NEMOURS  
& COMPANY, INC.

By R. S. M. D'Amiel  
President

ASSIST. DIRECTOR - TRANSPORTATION & DISTRIBUTION DEPT.  
ATTEST:

Ray W. Sawyer  
Assistant Secretary

AMERICAN REFRIGERATOR TRANSIT  
COMPANY

By Robert A. Dunning  
President and General Manager

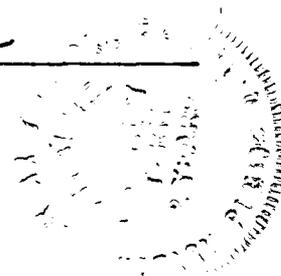
ATTEST:  
H. J. Versey  
Assistant Secretary

STATE OF DELAWARE     )  
                                  ) : SS  
COUNTY OF             )

On this 18 day of Jan., 1980, before me personally appeared R. E. Mc DONALD to me personally known, who being by me duly sworn says that he is ASSIST DIRECTOR - T. + D. DEPT of E. I. DuPont De Nemours & Company, Inc., and ROGER W. ARRINGTON to me personally known to be the ASSISTANT Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret Vanore  
Notary Public

My Commission expires: 4/22/81



STATE OF MISSOURI )  
 ) : SS  
CITY OF ST. LOUIS )

On this *31st* day of *DECEMBER*, 1979, before me personally appeared Robert J. Dunne, Jr., to me personally known, who being by me duly sworn says that he is President and General Manager of American Refrigerator Transit Company, and *W. J. Herold* to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

My Commission expires: May 19, 1981

Commissioned within and for the County of St. Louis,  
Missouri, which adjoins the City of St. Louis,  
Missouri, where this act was performed.



E. I. DUPONT DE NEMOURS & COMPANY, INC., LESSOR

AMERICAN REFRIGERATOR TRANSIT COMPANY, LESSEE

SCHEDULE A

<u>CARS</u>	<u>DESCRIPTION</u>	<u>LESSEE'S MARKS</u>	<u>MONTHLY RENT PER CAR</u>
20	52'5" I.L., 70 Ton RBL Cars	ARDP 787000- ARDP 787019, Inc.	MAXIMUM RENT \$435