

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

1700 East Golf Road
Schaumburg, Illinois 60173-5860

Direct Dial: (708) 995-6819
Facsimile: (708) 995-6846



PLEASE STAMP AND RETURN TO SANTA FE

19056

November 7, 1994

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th and Constitution, N. W.
Washington, DC 20423

Re: The Atchison, Topeka and Santa Fe Railway Company
Recordation of Lease (Interim Use Agreement) Dated
October 1, 1994, with Thrall Car Manufacturing Company

Dear Mr. Williams:

Enclosed herewith please find an original and two (2) counterparts of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Interim Use (Lease) Agreement dated as of October 1, 1994, between Thrall Car Manufacturing Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document.

The name and addresses of the parties to this document are:

Lessor:

Thrall Car Manufacturing Company
2521 State Street
Chicago Heights, Illinois 60411

Lessee:

The Atchison, Topeka and Santa Fe Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173-5860

CNS/EQUIPTR/SERIESBB.COR

A Santa Fe Pacific Company

Counterparts - Schauburg

*RECORDED
INDEXED
NOV 10 1994
FBI - CHICAGO*

Mr. Vernon A. Williams
November 7, 1994
Page 2

The equipment covered by the Interim Use (Lease) Agreement consists of fifty (50) Thrall Car Manufacturing Company 100-ton Coil Steel Cars, bearing Nos. ATSF 92050 to 92099 (both inclusive).

For the convenience of the parties, I have enclosed two (2) additional counterparts of the Interim Use Agreement, which I would like to have returned to me bearing the recordation information.

Enclosed please find Check No. 4284, dated November 7, 1994, for the amount of \$21.00 for payment for the Commission's prescribed recordation fee.

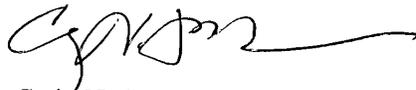
A short summary of the enclosed document to appear in the Commission's Index is:

Primary Document

Interim User Agreement dated as of October 1, 1994, between Thrall Car Manufacturing Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee") relating to fifty (50) Thrall Car Manufacturing Company 100-ton Coil Steel Cars bearing Road Nos. ATSF 92050 to 92099 (both inclusive).

If you have any questions or comments concerning this request, please contact me.

Very truly yours,



Craig N. Smetko
General Attorney

CNS:cns
Enclosures

cc: Ellen F. Lang, Esq.

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

11/10/94

Craig M. Smetko
General Attorney
The Atchison, Topeka And Santa
Fe Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173-5860

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 11/10/94 at 2:30PM, and
assigned recordation number(s). 19056.

Sincerely yours,

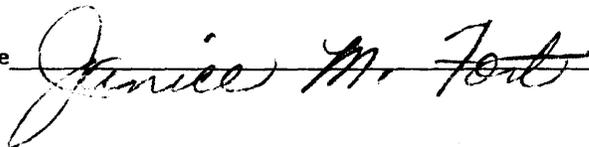


Vernon A. Williams
Secretary

Enclosure(s)

\$ 21.00 The amount indicated at the left has been received in payment of a fee
in connection with a document filed on the date shown. This receipt is issued for the
amount paid and in no way indicates acknowledgment that the fee paid is correct. This is
accepted subject to review of the document which has been assigned the transaction number
corresponding to the one typed on this receipt. In the event of an error or any questions
concerning this fee, you will receive a notification after the Commission has had an
opportunity to examine your document.

Signature



19056

INTERIM USE AGREEMENT

BY AND BETWEEN

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

AND

THRALL CAR MANUFACTURING COMPANY

Effective as of October 1, 1994

THIS AGREEMENT, dated as of October 1, 1994, between THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Thrall"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("ATSF").

W I T N E S S E T H:

WHEREAS, Thrall and ATSF contemplate entering into an agreement dated as of October 2, 1994 (the "Purchase Agreement") calling for Thrall to manufacture and deliver to ATSF, and ATSF to accept and pay for fifty (50) 100-ton Coil Steel Cars (collectively, the "Cars"); and

WHEREAS, ATSF intends to finance the purchase of the Proposed Cars from Thrall pursuant to one or more permanent forms of financing or to lease the Cars (the "Financing"), but deliveries of certain of the Cars are scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Cars pending establishment of such Financing and the purchase under the Purchase Agreement, solely as a bailee thereof, and Thrall is willing to grant such temporary custody and possession to ATSF upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Thrall, as lessor, hereby agrees to deliver the Cars to ATSF, as lessee, FOB Thrall's Clinton, Illinois, plant, as of the date each of them is released from manufacturing, for acceptance by ATSF in Clinton, Illinois. ATSF covenants to Thrall that the Financing will be established, and the purchase price for the Cars paid as required by the Purchase Agreement. Except for those provisions of this Agreement which, in order to be given effect should survive termination, this Agreement shall automatically terminate with respect to a Car upon the first to occur of (a) December 15, 1994, or (b) the date the purchase price of a Car is paid to Thrall, in either event without further action by or notice to either party hereto.
2. Upon receipt of each Car in Clinton, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Car under this Agreement. During the term hereof for so long as the purchase price shall not have been paid, title to the Cars shall remain in Thrall with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of Thrall's delivery of bills of sale to the party which has paid the purchase price therefor. The parties agree that upon notice from ATSF, this Agreement may be terminated prior to the date to be specified in Section 1 above, if contemporaneously with any such termination the purchase under the Purchase Agreement is consummated and the purchase price and all rent due hereunder is paid to Thrall.

3. On the date this Agreement terminates with respect to any Car, ATSF agrees to pay to Thrall, as rent for such Car, a sum calculated as follows:
 - (a) for the period from the date hereof until November 30, 1994, no rent shall be due; and
 - (b) for the period from November 30, 1994 to December 15, 1994, the rent shall be \$13.50 per Car per day.
4. ATSF shall permit no liens or encumbrances (other than the usual interchange of traffic rules) of any kind to attach to the Cars and it agrees to:
 - (a) indemnify and save Thrall harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise by, through or under ATSF during the time any of the Cars are in the possession of ATSF; and
 - (b) pay any and all taxes (excluding any tax measured by Thrall's net income and any franchise, capital, net worth or similar tax imposed on Thrall, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or Thrall, because of Thrall's ownership or because of the use, operation, management or handling of the Cars during the term of this Agreement.

The obligations of ATSF described in this Section 4 shall survive termination of this Agreement.

5. ATSF shall, at its option, repair or promptly pay to Thrall an amount equal to the purchase price (as set forth in the Purchase Agreement) for any of the Cars which may be damaged or destroyed by any cause during the term of this Agreement.
6. ATSF acknowledges that it takes its possessory interest in the Cars subject to those provisions of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities. Risk of loss or damage to a Car shall pass to Buyer at such time as such Car leaves Seller's facility in Clinton, Illinois.
7. If during the term of this Agreement any markings on the Cars shall at any time be removed, defaced or destroyed, ATSF shall promptly cause the same to be restored or replaced.
8. In the event ATSF shall fail to perform any of its obligations hereunder, Thrall may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Cars may be and take possession of all or any Cars, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, Thrall may use the Cars for any purposes whatsoever, and may sell and deliver the Cars to others upon such terms as Thrall may

see fit in its sole discretion, it being understood and agreed that, without limiting the foregoing, ATSF shall be liable to Thrall for an amount equal to all losses, costs and expenses of Thrall incident to such sale including, but not limited to, the expenses of withdrawing the Cars from the Service of ATSF, providing for the care and custody of the Cars, preparing the Cars for sale, and selling the Cars. ATSF shall pay the foregoing amounts from time to time upon demand by Thrall.

9. ATSF and Thrall each represent and warrant to the other that:
- (a) it is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;
 - (b) the execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument being upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;
 - (c) the rights of Thrall as herein set forth and the title of Thrall to the Cars are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and
 - (d) no governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Cars hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.
10. ATSF agrees that the execution by Thrall of this Agreement or the delivery by Thrall of the Cars as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Cars in accordance with the terms of the Purchase Agreement.
11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Car shall constitute acceptance of such Car hereunder, and any warranty or other time period set forth in the Purchase Agreement applicable to such Car shall be deemed to commence from the date of Thrall's release of the Cars from manufacturing in Clinton, Illinois.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

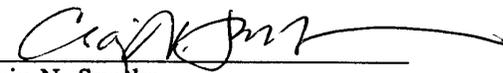
IN WITNESS WHEREOF, each party hereto has caused this Interim Use Agreement to be executed by its authorized representative in Illinois, as of the 1st day of October, 1994.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

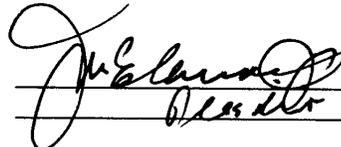
By: 
Title: L. STEVEN VOLLMER
Assistant Vice President - Finance

[CORPORATE SEAL]

ATTEST:

By: 
Craig N. Smetko
Assistant Secretary

THRALL CAR MANUFACTURING COMPANY

By: 
Title: J. E. Landrum
President

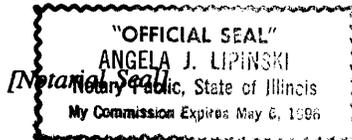
[CORPORATE SEAL]

ATTEST:

By: 

State of Illinois)
) ss:
County of Cook)

On this 7th day of NOVEMBER, 1994, before me personally appeared L. STEVEN VOLLMER, to me personally known, who, being by me duly sworn, says that he is ASST. V.P. - FINANCE of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

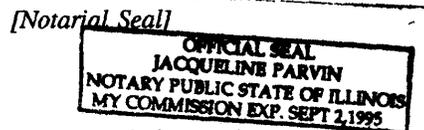


Angela J. Lipinski
Notary Public

My Commission expires: May 6, 1996

State of Illinois)
) ss:
County of Cook)

On this 8th day of November, 1994, before me personally appeared John E. Carroll, Jr., to me personally known, who, being by me duly sworn, says that he is President of THRALL CAR MANUFACTURING COMPANY, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



My Commission expires: 9-2-95

Jacqueline Parvin
Notary Public

EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of October 2, 1994 has been accepted in Clinton, Illinois, by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the Interim Use Agreement dated October 1, 1994, between Thrall Car Manufacturing Company and ATSF this _____ day of _____, 1994.

Description of Equipment

Number of Units

Description

Road Numbers

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____

Title: _____