

GREENE & MARKLEY, P.C.

ATTORNEYS AT LAW

RICHARD T. ANDERSON, JR. †
SUSAN E. ANDERSON †
GARY L. BLACKLIDGL
FREDERICK M. BOSS †
STEPHEN T. BOYKE
DAVID A. FORAKER
S. WARD GREENE †
LINDA R. JOHANNSEN †
SANFORD R. LANDRESS

THE 1515 BUILDING — SUITE 600
1515 S W FIFTH AVENUE
PORTLAND, OREGON 97201-5449

TELEPHONE
(503) 295-2668

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(503) 224-8434
(503) 295-0837

FRANK G. MACMURRAY, JR.
MICHAEL G. MAGNUS*
CHARLES R. MARKLEY †
SANDRA L. MITCHELL
THOMAS M. RENN †
DAVID SLADER
BRENT G. SUMMERS

3-140A006

May 19, 1993

18240

MAY 20 1993 3:40 PM

OREGON AND WASHINGTON STATE BARS
OREGON AND CALIFORNIA STATE BARS
OREGON AND WISCONSIN STATE BARS
OREGON AND MINNESOTA STATE BARS
OREGON, CALIFORNIA AND TEXAS STATE BARS

INTERSTATE COMMERCE COMMISSION

Mrs. Mildred Lee
Recording Unit
Interstate Commerce Commission
12th and Constitution Avenue NW, #2303
Washington, DC 20423

Via Federal Express

Dear Mrs. Lee:

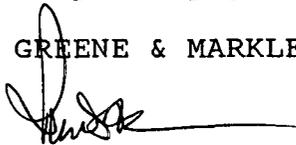
This office represents Bob Steele & Associates, Inc., lessor under a lease with the Southwestern Michigan Railroad Company, Inc., dba Kalamazoo Lake Shore & Chicago Railway.

Enclosed is the original Railroad Car Lease Agreement duly acknowledged by the parties. Please record this Railroad Car Lease Agreement pursuant to 49 USC § 11303. The original Agreement should be returned to this office. I have enclosed a self-addressed, mailing envelope for your convenience and our check in the sum of \$16 in payment of your fee.

This agreement has to be recorded promptly in order to fully protect the rights of the lessor. We would appreciate your immediately recording this document. Thank you for your courtesies in this matter.

Very truly yours,

GREENE & MARKLEY, P.C.



Richard T. Anderson, Jr.

MAY 20 3 31 PM '93
NOTOR PUBLIC UTILITY

RTA/nb
Encls.
cc: Mr. Robert Steele

GREENE & MARKLEY, P.C.

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May 24, 1993

†OREGON AND WASHINGTON STATE BARS
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‡OREGON, CALIFORNIA AND TEXAS STATE BARS

Mrs. Mildred Lee
Recording Unit
Interstate Commerce Commission
12th and Constitution Avenue NW, #2303
Washington, DC 20423

Via Federal Express

Re: Bob Steele & Associates, Inc./
Southwestern Michigan Railroad Company, Inc.,
dba Kalamazoo Lake Shore & Chicago Railway

Dear Mrs. Lee:

Pursuant to your conversation with my secretary this date, I enclose a copy of the Railroad Car Lease Agreement, the original of which was recorded May 20, 1993. Thank you for your assistance in this matter.

Very truly yours,

GREENE & MARKLEY, P.C.



Richard T. Anderson, Jr.

RTA/nb
Encl.

Interstate Commerce Commission
Washington, D.C. 20423

5/26/93

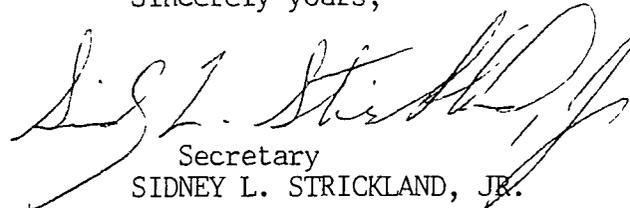
OFFICE OF THE SECRETARY

Richard T. Anderson
Greene & Markley
The 1515 Building Suite 600
Portland, Oregon 97201-5440

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 **5/20/93** at **3:40pm**, and assigned recordation number(s). **18240**

Sincerely yours,



Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

REGISTRATION NO. 18240 FILED 1993
MAY 20 1993 2:00 PM

RAILROAD CAR LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

A. PARTIES

The parties to this lease are Bob Steele & Associates, Inc., an Oregon corporation ("Lessor"), and Southwestern Michigan Railroad Company, Inc., dba Kalamazoo Lake Shore & Chicago Railway ("Lessee").

B. RECITALS

The parties hereby acknowledge and recite:

1. Lessor is the owner of the following railroad cars:

Two Bi-Level Railcars, Serial No. SP 3705 and SP 3707, together with any replacement parts, additions, repairs or accessories now or hereafter incorporated in or affixed to the railroad cars.

(hereinafter "Cars"). Lessee agrees to lease the Cars from Lessor upon the terms and conditions set forth in this agreement.

C. TERMS AND CONDITIONS

The parties hereby agree as follows:

1. Lease

Lessor hereby leases the Cars to Lessee and Lessee leases the Cars from Lessor.

2. Terms

This lease shall commence May 7, 1993 or when Lessor signs this lease, whichever date is later. The lease shall end on July 30, 1993. This is a short term lease and Lessee obtains no equity or ownership interest in the Cars as a result of this lease. Title to the cars shall at all times remain with Lessor. Lessee shall take no actions to impair or affect Lessor's ownership of the Cars.

3. Lease Payment

Lessee shall pay to Lessor for the lease of the Cars the sum of \$13,500. The sum of \$4,500 shall be paid upon execution of this agreement and prior to delivery of the cars to Lessee. The balance of \$9,000 shall be paid no later than June 6, 1993.

4. Use of Cars

Lessee may use the Cars for any and all lawful purposes it may determine, on trackage to be determined by the Lessee; provided, however, that in no event shall Lessee use or operate the Cars for any purpose other than that for which the Cars were originally intended or for purposes other than those for which the Cars may be fit and adequate. Lessee shall not charter, sublease or otherwise hire the Cars out to third parties. The rights of Lessee hereunder are not assignable.

Lessee shall at its own expense comply with all governmental laws, regulations and requirements, and with all rules with respect to the operation and use of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for the use of the Cars and shall bear all risk of failure to obtain such permissions, approvals and consents, or of cancellation thereof.

Lessee shall be liable to Lessor for any and all damage to the Cars during the term of this lease or during the time that Lessee, or its agents, is in possession or control of the Cars. Lessee shall be liable to Lessor for any and all loss suffered by Lessor as a result of this lease.

5. Delivery

The Cars are presently located on the tracks of Lessor at Banks, Oregon. Delivery under this agreement shall be deemed to have taken place when the lease is signed by lessor.

6. Condition of the Cars

Lessee acknowledges that it has inspected the Cars and the Cars are satisfactory to Lessee in every respect. Lessee leases the Cars AS IS. LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE CARS, THEIR MERCHANTABILITY OR SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THEIR DESIGN, THEIR CAPACITY, THEIR QUALITY, OR WITH RESPECT TO ANY CHARACTERISTICS OF THE CARS. LESSEE ASSUMES ALL RISKS, WHETHER KNOWN OR UNKNOWN, ASSOCIATED WITH THE USE AND OPERATION OF THE CARS AND ACCEPTS THE CARS WITH ALL FAULTS, WHETHER KNOWN OR UNKNOWN. Lessee specifically acknowledges that the Cars are leased solely for commercial or business purposes and not for personal, family, household or agricultural purposes. LESSEE ACKNOWLEDGES AND AGREES THAT IT HAS INSPECTED THE CARS AND THE CARS ARE SATISFACTORY TO LESSEE. LESSEE ACKNOWLEDGES THAT IT HAS SELECTED THE CARS BASED ON ITS OWN INDEPENDENT JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS OF LESSOR, OR ITS AGENTS.

7. Disclaimer of Liability/Indemnification

Lessee acknowledges and agrees that it shall have no remedy for consequential or incidental damages against Lessor and that Lessee assumes all risks associated with the lease of the Cars. Lessee agrees to indemnify and hold Lessor harmless from any and all loss, claims, damages, lawsuits or claims for damages, attorney fees or costs, or any liability whatsoever, for any reason whatsoever, arising from or related to this lease or the use and operation of the Cars. Lessee's agreement to indemnify shall extend to and include any costs, expenses or attorney fees incurred by Lessor.

8. Costs Borne by Lessee

All costs and expenses associated with, or incurred as a result of the Lessee's lease of the Cars, whether direct or indirect, shall be the full and complete responsibility of Lessee, including but not limited to the following which will be paid by Lessee:

(a) All costs and expenses incurred in removing, moving and returning the Cars to and from the location specified for delivery of the Cars or return of the Cars to Lessor;

(b) All cost and expense to maintain the Cars in good condition and repair and in accordance with all rules, regulations or laws of any governmental authority;

(c) Any tax of any kind whatsoever related to the Cars, whether for the use, operation or possession of the Cars. This includes but is not limited to all United States, state and local taxes, assessments and levies, withholdings and other charges payable to any government or taxing authority for any reason whatsoever.

9. Insurance

Lessee shall, at its own expense, provide and maintain insurance against loss, theft, damage or destruction of the Cars in an amount not less than the sum of \$225,000 for each of the Cars, for a total of \$450,000. Lessor shall be named as loss payee on any such insurance policy. Lessee shall also provide and maintain comprehensive, general, all-risk liability insurance, including but not limited to, product liability coverage, insuring Lessor and Lessee with a severability of interest indorsement, or its equivalent, against any and all loss or liability for all damages, either to persons or property or otherwise, which might result from or happen in connection with the condition, use, or operation of the Cars, with a limit of not less than \$1,000,000 total coverage per incident, with an insurer satisfactory to Lessor. Each policy shall expressly provide that

said insurance as to Lessor and its assigns shall not be invalidated by any act, omission, or neglect of Lessee and cannot be canceled without thirty days prior notice to Lessor. As to each policy, Lessee shall furnish to Lessor a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this paragraph. Lessor shall have no obligation to ascertain the existence of or provide any insurance coverage for the Cars or for Lessee's benefit.

10. Cars Free of Liens

Lessee shall keep the Cars free and clear of all levies, liens and encumbrances. Lessee shall pay all charges and taxes (local, state and federal) which may now or hereafter be imposed as a result of or related to Lessee's lease of the Cars.

11. Ownership of the Cars

The Cars are, and shall remain, the property of Lessor, and Lessee shall have no right, title or interest in the Cars except as expressly set forth in this lease. By this lease, Lessee acquires no ownership rights in the Cars. Upon the expiration, or earlier termination or cancellation of this lease, or in the event of a default under this lease, Lessee, at its expense, shall return the Cars in good condition and repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Cars to Tillamook, Oregon. Except for ordinary wear and tear, the Cars shall be in as good a condition as they were at the time of delivery pursuant to this lease.

12. Assignment by Lessor

Any assignee of Lessor shall have all of the rights but none of the obligations of Lessor under this lease. Lessee shall recognize and hereby consents to any assignment of this lease by Lessor, and shall not assert against the assignee any defense, counterclaim or setoff Lessee may have against Lessor. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, devisees, personal representatives, survivors, successors in interest and assigns of the parties hereto. Lessee's interest in the lease may not be assigned to any third party without the written consent of Lessor.

13. Time is of the Essence

Time is of the essence of this lease and this provision shall not be impliedly waived by the acceptance on occasion of late or defective performance.

14. Default

Lessee shall be in default if:

(a) Lessee shall fail to make any payment due under the terms of this lease by the due date set forth in this lease; or

(b) Lessee shall fail to observe, keep or perform any provision of this Lease; or

(c) Lessee has made any misleading or false statement, whether or oral or written, in connection with Lessee's application or request to lease the Cars, or with respect to Lessee's performance of this lease or the operation or use of the Cars; or

(d) The Cars or any part thereof shall be subject to any lien, levy, seizure, assignment, transfer, bulk transfer, encumbrance, application, attachment, execution, sublease, or sale without prior written consent of Lessor, or if Lessee shall abandon the Cars or permit any other entity or person to use the Cars without the prior written consent of Lessor; or

(e) Lessee ceases to exist; or

(f) Lessee defaults on any other agreement it has with Lessor; or Lessor deems itself insecure; or

(g) The Lessee causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy or insolvency law, or makes an assignment for the benefit of creditors or applies for or has a custodian, trustee or receiver appointed for Lessee's property; or

(h) Any guarantor of this lease defaults on any obligation to Lessor or any one of the above-listed events of default occur with respect to any guarantor or any such guarantor files or has filed against it a petition under the bankruptcy laws.

15. Remedies

If Lessee is in default, Lessor, with or without notice to Lessee, shall have the right to immediately exercise any and all rights and remedies allowed by law, including any one or more of the following remedies, concurrently or separately, and without any election of remedies being deemed to have been made:

(a) Lessor shall be entitled to immediate possession of the Cars. In order to obtain possession, Lessor may enter upon Lessee's premises and without any court order or

process of law may repossess and remove the Cars or render the Cars unusable without removal, either with or without notice to Lessee. Lessee hereby waives any trespass or right of action for damages by reason of any such entry, removal or disabling. Any such repossession shall not constitute a termination of this lease unless Lessor so notifies Lessee in writing;

(b) Lessor may require Lessee, at its expense, to return the Cars, in good condition and repair, by delivering the Cars to Banks, Oregon or such other location as Lessor may specify;

(c) Lessor may cancel or terminate this lease and may retain any and all prior payments paid by Lessee;

(d) Lessor may declare all sums due and to become due under this lease immediately due and payable, without notice or demand to Lessee;

(e) Lessor may sue for and recover from Lessee the sum of all unpaid rents and other payments due under the lease then accrued, all accelerated future payments due under this lease, and shall be entitled to immediate possession of the Cars.

(f) Lessee may pursue any other remedy available at law, by statute or in equity.

A default by Lessee under this lease shall not otherwise impair or affect any right or remedy that Lessor shall have, and any termination of the lease or Lessee's entitlement to possession shall not otherwise impair or affect any duty or responsibility of Lessee under this Lease, including but not limited to Lessee's duties relating to liability for damages or indemnification to Lessor.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, or by law or by equity provided or permitted, but each shall be cumulative of every other right or remedy given herein or now or hereafter existing by law or equity or by statute or otherwise, and may be enforced concurrently herewith or from time to time. No single or partial exercise by Lessor of any right or remedy hereunder shall preclude any other or further exercise of any other right or remedy.

^{16.7M}
17. Costs and Attorney Fees

In the event of any legal action with respect to this lease, the prevailing party in any such action shall be entitled to reasonable attorney fees, including attorney fees incurred at the trial level, including action in bankruptcy court, on appeal

or review, or incurred without action, suits, or proceedings, together with all costs and expenses incurred in pursuit thereof.

^{17 X^m}
18. Entire Agreement; No Oral Modifications; No Waiver

This instrument constitutes the entire agreement between Lessor and Lessee. No provision of this Lease shall be modified or rescinded unless in writing signed by a representative of Lessor. Waiver by Lessor of any provision hereof in one instance shall not constitute a waiver as to any other instance.

^{18 X^m}
19. Severability

This lease is intended to constitute a valid and enforceable legal instrument and no provision of this lease that may be deemed unenforceable shall in any way invalidate any other provision or provisions hereof, all of which shall remain in full force and effect.

^{19 X^m}
20. Choice of Law

This lease shall be considered to have been made in the State of Oregon and shall be interpreted in accordance with the laws and regulations of the State of Oregon. Lessee agrees to jurisdiction in the State of Oregon in any action, suit or proceedings regarding this lease, and concedes that it, and each of them, transacted business in the State of Oregon by entering into this lease. In the event of any legal action with regard to this lease, Lessee agrees that venue may be laid in Multnomah County, Oregon or the U. S. District Court for the District of Oregon to the extent those courts have subject matter jurisdiction.

^{20 X^m}
21. Lessor's Right of Inspection

Lessor shall have a reasonable right of inspection of the Cars at reasonable hours, days, times and places, and upon reasonable notice to Lessee.

^{21 X^m}
22. Notice

Any notice required or permitted under this lease shall be deemed given when deposited in the United States Mail to the following addressed persons at the following addresses:

Southwestern Michigan Railroad Company, Inc.
P.O. Box 178
Paw Paw, Michigan 49079

Bob Steele & Associates, Inc.
10285 NW Roy Road
Cornelius, Oregon 97113

22 *km*
23. Marking of the Cars

Lessee shall not change or alter any markings on the Cars without the express written permission of Lessor.

23 *km*
24. Further Assurances

Lessee will promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request, in order to more effectively carry out the intent of the parties under this lease, and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder, including without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdiction.

24 *km*
25. Delivery Deposit

Lessee shall pay \$5,000 to Lessor prior to movement of the cars. This sum shall be a security deposit held by Lessor. So long as the cars are returned pursuant to the terms of this lease with no further liability by Lessee, then the \$5,000 may be used to defray the Lessee's cost of returning the cars to Banks, Oregon. If Lessee exercises the purchase option pursuant to paragraph 26 of this agreement then the \$5,000 may be applied as part of the purchase price.

25 *km*
26. Purchase Option

So long as Lessee is not in default under this lease, Lessee is granted the right to purchase the cars for the sum of \$276,000. The option may be exercised at any time prior to July 30, 1993 by delivery of the total sale price in cashier's check to Lessor. Lessor shall deliver a bill of sale for the cars. Any such bill of sale shall convey the cars to Lessee subject to all the terms and disclaimers as set forth in paragraph 6 of this

This option shall terminate and expire if not exercised by July 30, 1993, and it shall not be extended without separate written agreement of the parties.

agreement. Any duties imposed on Lessee pursuant to this lease shall survive and continue after any such sale of the cars.

LESSOR:

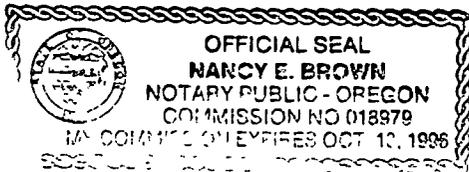
BOB STEELE & ASSOCIATES, INC.

By [Signature]
Title: Pres
Date: 5-19-93

STATE OF OREGON)
County of Multnomah) ss.

On this 19th day of May, 1993, before me personally appeared Bob Steele, to me personally known, who, being by me duly sworn, said that he is president of BOB STEELE & ASSOCIATES, INC. and that said instrument was signed and sealed on behalf of said corporation as duly authorized; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
NOTARY PUBLIC FOR OREGON



LESSEE:

SOUTHWESTERN MICHIGAN RAILROAD COMPANY, INC.

By [Signature]
Title: Chairman and CEO
Date: May 7, 1993

STATE OF MICHIGAN)
County of VAN BUREN) ss.

On this 7th day of May, 1993, before me personally appeared Kevin McKinney, to me personally known, who, being by me duly sworn, said that He is Chairman and CEO of SOUTHWESTERN MICHIGAN RAILROAD COMPANY, INC. and that said instrument was signed and sealed on behalf of said corporation as duly authorized; and He acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
NOTARY PUBLIC FOR _____

clients\2312\002\leasc.ag/nb

Elaine M. Page
ELAINE M. PAGE, NOTARY PUBLIC
VAN BUREN COUNTY, STATE OF MICHIGAN
MY COMMISSION EXPIRES 1-11-97