

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON L. NEUENSCHWANDER
EXECUTIVE VICE PRESIDENT
& GENERAL COUNSEL

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PITTSBURGH, PA. 15219
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October 11, 1979

19889
RECORDATION NO. Filed 1425

No.

9-2334241

OCT 15 1979 - 3 00 PM

Date

OCT 15 1979

INTERSTATE COMMERCE COMMISSION

Fee

50.00

ICC Washington, D. C.

RECEIVED
 OCT 15 1979
 FEDERAL BUREAU OF INVESTIGATION
 U.S. DEPARTMENT OF JUSTICE

Miss Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Miss Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303(a) of the Interstate Commerce Act are duplicate originals and three additional copies of Railroad Equipment Lease, dated as of September 13, 1979, covering 110 used railroad freight cars. The names and addresses of the parties to the transaction are as follows:

OWNER: The Pittsburgh & Lake Erie Railroad Company
Smithfield and Carson Streets
Pittsburgh, Pennsylvania 15219

LESSEE: Montour Railroad Company
Smithfield and Carson Streets
Pittsburgh, Pennsylvania 15219

The following is a general description of the railroad equipment covered by said document:

| <u>No. of Units</u> | <u>Description</u> | <u>A.A.R. Mechanical Designation</u> | <u>Identifying Road Nos.</u> |
|---------------------|--|--------------------------------------|------------------------------|
| 110 | 52' 6" 70-ton steel floor gondolas, friction bearing | GB | MTR 100-209, inclusive |

Also enclosed is Pittsburgh & Lake Erie Railroad Company Voucher No. 103455, dated September 17, 1979, in the amount of \$50.00, payable to the United States Treasurer, to cover the filing fee prescribed by the Commission in its rules and regulations.

Miss Agatha L. Mergenovich
Secretary

-2-

October 11, 1979

Please acknowledge receipt at your earliest convenience by stamping and returning to me a duplicate original and two copies of the document.

Very truly yours,

Richard A. Perach

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

10/30/79

OFFICE OF THE SECRETARY

Richard A Porach, Atty.
The Pittsburgh & Lake Erie RR. Co.
324 P&LE Terminal Building
Pittsburgh, PA 15219

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 10/15/79 at 3:00pm, and assigned re-
recording number (s) 10889

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

19889
RECORDATION No. Filed 1425

OCT 15 1979 - 3 00 PM

RAILROAD EQUIPMENT LEASE

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT AND LEASE, dated as of the 13th day of September , 1979, by and between THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY, hereinafter called "P&LE", and the MONTOUR RAILROAD COMPANY, hereinafter called "Montour".

W I T N E S S E T H :

WHEREAS, P&LE is the owner of all of the capital stock of Montour; and

WHEREAS, Montour desires to obtain certain heavy duty gondola equipment in order that traffic over its line may be properly transported, and

WHEREAS, P&LE is the owner of certain 70-ton gondola cars, more particularly described in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, P&LE proposes to lease the said 70-ton gondola cars to its wholly owned affiliate, Montour, at the rental, for the term and upon the conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto covenant and agree as follows:

1. Lease of Cars. P&LE shall lease to Montour and Montour shall and does hereby lease from P&LE one hundred ten (110) 70 - ton gondola cars (any one of said cars hereinafter referred to as "Car", and more than one or all of which are hereinafter referred to as "Cars"), bearing numbers as set forth in Exhibit A. The lease shall become effective as to any Car immediately upon its acceptance by Montour at a point on its line.

2. Additional or Substitute Cars. In the event that P&LE shall furnish to Montour for lease other gondola cars in addition to or in substitution for any of the Cars described in Exhibit A hereto, such other cars, upon acceptance by Montour, shall be included as Cars under this Agreement and Lease and shall be subject to all of the terms and conditions hereof in all respects as though they had been part of the Cars initially described herein.

3. Possession and Use. During the term of this lease, so long as Montour is not in default of the provisions hereunder, Montour shall be entitled to possession of each Car and the same may be used upon the lines of any other railroad in normal interchange service for the uses for which they are designed. All per diem time and mileage charges payable for the use of the Cars shall be accounted for by P&LE and paid over to Montour.

4. Term. This Agreement and Lease shall continue in effect for an initial term of one (1) year which shall commence on the date hereinabove written. If Montour has fully performed all of its obligations under this Agreement and Lease, the lease of the Cars shall continue under all the provisions herein contained for additional periods of one (1) year each until this Agreement and Lease shall be terminated upon six (6) months' written notice given by either party to the other, or at such earlier date as may be mutually agreed to by the parties.

5. Rental. As rental for the use of each Car, Montour shall pay P&LE for such use from the date of this Agreement and Lease at the rate of \$300.00 per year. Montour shall make annual payments of the aforesaid rental to P&LE within fifteen (15) days from the end of each year.

6. Title. Montour shall not by reason of this Agreement and Lease or any action taken hereunder acquire or have any right or title in and to the Cars except as to the rights herein expressly granted to it as lessee.

7. Maintenance. From the time of delivery of the Cars by P&LE to Montour until the Cars have been accepted by P&LE from Montour at the termination of the lease, maintenance of the Cars shall be provided in accordance with the following:

- (a) At times when Cars are on the lines of Montour, Montour will make routine inspection and make

such minor repairs as may be required at its sole cost and expense;

(b) Cars returned to Montour with defect cards or otherwise requiring other than minor repairs will be directed by Montour to P&LE via Montour Junction and P&LE will make such repairs as are necessary at no cost to Montour. All payments made under applicable Association of American Railroads Interchange Rules for defect card repairs made by P&LE shall be retained by P&LE. Montour will confer with P&LE Equipment Department regarding disposition of any Car received by Montour in damaged condition without a defect card affixed thereto; and

(c) The cost of all repairs made upon Cars by railroads other than the parties hereto and billable to the owning railroad under applicable Association of American Railroads Interchange Rules shall be borne and paid by Montour.

8. Additions to Cars. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall be immediately vested in P&LE without cost or expense to P&LE.

9. Taxes. Montour shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes, levied or assessed during the continuance of this lease upon the Cars or the interest of Montour

therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against P&LE on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of P&LE therefrom, Montour will promptly pay or reimburse P&LE for the same except that Montour shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings protect the validity or amount of such levy or assessment.

10. Prohibition Against Liens. Montour shall pay or set aside and discharge any and all sums claimed by any party by, through or under Montour and its successors and assigns which, if unpaid, might become a lien or a charge upon the Cars. Montour shall not be required, however, to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title in and to the Cars.

11. Identification of Cars. At all times during the continuance of this lease, Montour will cause each Car to bear only the initials of Montour and the number assigned to it and appearing thereon as of the date of its delivery by P&LE. Montour shall further cause each side of such Cars to bear, in letters not less than one inch (1") in height, the following legend:

"LEASED BY MONTOUR RAILROAD COMPANY FROM THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, OWNER, UNDER LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO SECTION 11303(a) OF THE INTERSTATE COMMERCE ACT."

In the event that any of such markings or legends shall at any time prior to the termination of the lease be removed, defaced or destroyed, Montour shall immediately cause the same to be restored or replaced.

12. Indemnity. Montour agrees to indemnify, defend and save P&LE, its officers and employees, harmless from and against all expenses, damages, claims, actions or liabilities based upon personal injuries, death or property damage arising out of or in connection with the condition, operation or use of any of the Cars upon the line of Montour. Whenever Cars are operated on lines of railroads other than Montour, P&LE will indemnify, defend and save Montour, its officers and employees, harmless from and against all expenses (including litigation and counsel fees), damages, claims, actions or liabilities based upon personal injuries, death or property damage arising out of or in connection with the condition, operation or use of the Cars upon such railroad lines.

13. Loss or Destruction of Cars. Montour shall forthwith advise P&LE of all occurrences in which any Car shall be lost, destroyed or irreparably damaged beyond economic repair from any cause whatsoever at any time during the term of this lease, and all sums due or payments made in accordance

with the prevailing rules applicable thereto in the Field Manual of the Interchange Rules prescribed by the Association of American Railroads, shall be paid over to P&LE. Upon payment of such settlement this Agreement and Lease shall terminate as to such Car as of said date and Montour shall be entitled to salvage, if any.

14. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to paragraph 13 hereinabove), Montour shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of the same to be made to P&LE at Montour Junction, Pa. Montour shall return all Cars to P&LE in as good condition (ordinary wear and tear excepted) as when the same were delivered to Montour. Until such time as each Car has been redelivered to P&LE, Montour shall make all payments and perform all obligations and requirements of Montour under all other provisions of this lease as though such termination had not occurred.

15. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) Montour shall default or fail for a period of thirty (30) days in the observance or performance of any agreement required to be observed or performed on its part under this Agreement and Lease, and said default or failure shall continue for a

period of thirty (30) days after the giving of written notice thereof by P&LE;

(b) A decree or order shall be entered by a court having jurisdiction in the premises adjudging Montour a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under the Federal Bankruptcy Act or any other applicable Federal or State law;

(c) The institution by Montour of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (b), or the making by Montour of a general assignment for the benefit of creditors.

16. Remedies. P&LE shall have the right in the event of default by Montour to terminate this Agreement and Lease immediately by giving notice to Montour, and P&LE may, without any notice of demand, take or cause to be taken immediate possession of the Cars and sell or otherwise dispose of the same, provided, however, that such retaking shall not be deemed a waiver of P&LE's right to receive payment of all sums payable by Montour to P&LE under this Agreement and Lease or any other rights or remedies conferred upon P&LE under applicable laws.

17. Recording. Immediately upon execution, P&LE shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

18. Sublease and Assignment. Montour shall not assign or sublease this lease or any of the Cars without the prior written consent of P&LE. P&LE may assign and reassign all or part of its rights under this lease without the consent of Montour if said assignment or reassignment does not diminish, interfere or prejudice the right of Montour with this lease, and P&LE shall give to Montour notice of any such assignment or reassignment.

19. Successors and Assigns. The covenants, conditions and agreements contained in this Agreement and Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in paragraph 18 hereof).

20. Governing Laws - Amendments. The terms of this Agreement and Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania. The terms of this Agreement and Lease and the rights and obligations of the parties hereto may not be amended or terminated orally, but only by agreement in writing by the party against whom the enforcement of such amendment or termination is sought.

N WITNESS WHEREOF, the parties hereto have caused this Agreement and Lease to be executed by their duly authorized officers as of the day and year first above written.

WITNESS:

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

Mark Rieder

By

H. S. Allgair
President

WITNESS:

MONTOUR RAILROAD COMPANY

H. E. Krupa

By

D. M. Mettler
President

EXHIBIT A

No. of Cars: 110

Description
of Cars: 70-ton Gondola Cars

Identifying
No.:

| <u>P&LE</u> | <u>Montour</u> | <u>P&LE</u> | <u>Montour</u> | <u>P&LE</u> | <u>Montour</u> |
|-----------------|----------------|-----------------|----------------|-----------------|----------------|
| 9226 | 100 | 9369 | 128 | 10276 | 156 |
| 9365 | 101 | 9791 | 129 | 10022 | 157 |
| 9597 | 102 | 10232 | 130 | 10252 | 158 |
| 10349 | 103 | 10207 | 131 | 9547 | 159 |
| 10055 | 104 | 10418 | 132 | 9058 | 160 |
| 10129 | 105 | 10104 | 133 | 10398 | 161 |
| 9035 | 106 | 10337 | 134 | 10089 | 162 |
| 9796 | 107 | 10320 | 135 | 9030 | 163 |
| 9464 | 108 | 10298 | 136 | 10078 | 164 |
| 10361 | 109 | 10204 | 137 | 9196 | 165 |
| 10064 | 110 | 10220 | 138 | 9994 | 166 |
| 9078 | 111 | 9693 | 139 | 9100 | 167 |
| 10322 | 112 | 9728 | 140 | 9072 | 168 |
| 9303 | 113 | 9073 | 141 | 9013 | 169 |
| 9430 | 114 | 9398 | 142 | 10463 | 170 |
| 9039 | 115 | 10258 | 143 | 9224 | 171 |
| 9335 | 116 | 10043 | 144 | 10445 | 172 |
| 9088 | 117 | 9005 | 145 | 77635 | 173 |
| 9236 | 118 | 9694 | 146 | 9325 | 174 |
| 9379 | 119 | 10350 | 147 | 10044 | 175 |
| 10460 | 120 | 9755 | 148 | 9501 | 176 |
| 9825 | 121 | 9086 | 149 | 9650 | 177 |
| 9348 | 122 | 9692 | 150 | 9738 | 178 |
| 10378 | 123 | 9359 | 151 | 10405 | 179 |
| 9911 | 124 | 9745 | 152 | 10182 | 180 |
| 10265 | 125 | 10420 | 153 | 9431 | 181 |
| 10271 | 126 | 10433 | 154 | 9205 | 182 |
| 10434 | 127 | 9759 | 155 | 10020 | 183 |

| <u>P&LE</u> | <u>Montour</u> |
|-----------------|----------------|
| 9761 | 184 |
| 9941 | 185 |
| 9367 | 186 |
| 10218 | 187 |
| 10412 | 188 |
| 10137 | 189 |
| 10146 | 190 |
| 10015 | 191 |
| 9811 | 192 |
| 9274 | 193 |
| 10428 | 194 |
| 9714 | 195 |
| 10128 | 196 |

| <u>P&LE</u> | <u>Montour</u> |
|-----------------|----------------|
| 10477 | 197 |
| 9285 | 198 |
| 10250 | 199 |
| 9510 | 200 |
| 9491 | 201 |
| 9483 | 202 |
| 9882 | 203 |
| 9225 | 204 |
| 9218 | 205 |
| 9141 | 206 |
| 9583 | 207 |
| 10486 | 208 |
| 10423 | 209 |

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY)

SS:

On this 13th day of September, 1979,
before me, the undersigned Notary Public, personally appeared
H.G. ALLYN, JR. who, being duly sworn, acknowledged that he
is President of The Pittsburgh & Lake Erie Railroad Company,
that he executed the foregoing instrument for and on behalf
of said corporation, and that the execution of the foregoing
instrument was the free act and deed of said corporation.

Donald E. Miller

Notary Public

Notary Public, Pittsburgh, Allegheny County
My Commission Expires **June 20, 1982**