

RECORDATION NO. 9311-A

LAW OFFICES

WHITE AND WILLIAMS

17TH FLOOR 1234 MARKET STREET
PHILADELPHIA, PENNSYLVANIA 19107

215-854-7000

DIRECT DIAL NUMBER
854-7060

SEP 26 1978 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9312-A Filed 1-25

SEP 26 1978 - 1 40 PM

September 15, 1978

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9307-A Filed & Recorded

SEP 26 1978 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, DC 20423

Dear Sir:

Enclosed herewith for recordation pursuant to the provisions of Section 2c of the Interstate Commerce Act, as amended, are the original and two (2) certified copies of an Assignment and Subordination Agreement dated April 7, 1978.

A general description of the railroad rolling stock covered by the enclosed document is as follows:

Twenty-five (25) 50-foot 70-ton boxcars bearing reporting marks and coded #ERES 9025 through #ERES 9049, both inclusive.

The above railroad rolling stock is covered by a Lease dated March 1, 1978 which Lease was recorded with the Interstate Commerce Commission on April 6, 1978 at 9:35 a.m. bearing recordation #9307.

The names and addresses of the parties to the enclosed document are as follows:

Borrower: Harvey Polly
(Assignor) d/b/a Railway Freight Car Services
1440 Broadway
New York, NY

Lessor: Railway Freight Car Services, Inc.
1440 Broadway
New York, NY

Lessee: Erie Western Railway
10 North Franklin Street
Huntingdon, Indiana 46750
Trans-Action Associates, Inc.
c/o Erie Western Railway
10 North Franklin Street
Huntingdon, Indiana 46750

INTERSTATE
COMMERCE COMMISSION
RECEIVED

SEP 25 1978

ADMINISTRATIVE SERVICES
MAIL UNIT

8-269A100

RECEIVED

SEP 26 1 34 PM '78

I.C.C.
FEE OPERATION BR.

Secretary
Interstate Commerce Commission
September 15, 1978
Page 2

Assignee: Central Penn National Bank
Five Penn Center Plaza
Philadelphia, PA 19103
Attn: Paul A. Pyfer, Vice President

The undersigned is agent for the above Assignee for the purpose of recording the enclosed document and has knowledge of the matter set forth therein.

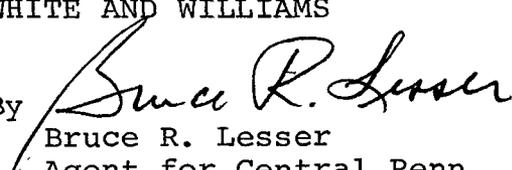
If possible, I would appreciate your recording a certified copy and returning the original and additional copy to the attention of the undersigned at the address shown above.

Enclosed please find our check in the amount of \$10., payable to your order, covering the required recordation fee.

Very truly yours,

WHITE AND WILLIAMS

By


Bruce R. Lesser
Agent for Central Penn
National Bank, Assignee

BRL/ak

Enclosures

P.S. Enclosed please find a self-addressed envelope for your convenience in returning the documents to us.

STATE OF *Indiana*)
COUNTY OF *Huntington* : ss.:

On this *24th* day of March, 1978, before me personally appeared Craig Burroughs, to me known, who being by me duly sworn, says that he is the President of Trans-Action Associates, Inc., 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean M. Vosburgh
Notary Public
A resident of Huntington
County, Indiana
My commission expires 11/18/81

RECORDATION NO. 9312A Filed 1425
SEP 26 1978 - 1 42 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9311-A Filed 1425

SEP 26 1978 - 1 40 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9307-A Filed & Recorded

SEP 26 1978 - 1 40 PM

ASSIGNMENT AND SUBORDINATION AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made the 7th day of April, 1978, by and among HARVEY POLLY, an individual domiciled in the State of Florida, d/b/a RAILWAY FREIGHT CAR SERVICES, a sole proprietorship ("Borrower"), RAILWAY FREIGHT CAR SERVICES, INC., a Delaware corporation ("Lessor"), ERIE WESTERN RAILWAY, an Indiana corporation, and TRANS-ACTION ASSOCIATES, INC., an Illinois corporation ("Lessee") and CENTRAL PENN NATIONAL BANK, a national banking association ("Bank").

W I T N E S S E T H :

I. Borrower is the owner of twenty-five (25) 50 foot, 70 ton Railroad Box Cars (the "Polly Cars") described in Exhibit "A" attached hereto and made a part hereof, and covered by the following Chattel Mortgage and Security Agreements:

(a) Chattel Mortgage and Security Agreement ("Chattel Mortgage A") given by Borrower to Bank in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), dated April 5, 1978, recorded at the Interstate Commerce Commission ("ICC") on April 6, 1978, at 1:20 P.M., recording number 9312.

(b) Chattel Mortgage and Security Agreement ("Chattel Mortgage B") given by Lessor to Bank in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), dated April 5, 1978, recorded at the ICC on April 6, 1978, at 1:20 P.M. recording number 9311. Chattel Mortgage A and Chattel Mortgage B are sometimes hereinafter jointly referred to as the ("Chattel Mortgages"). The Chattel Mortgages and all documents

secured thereby, including a Note dated April 5, 1978 in the amount of Eight Hundred and Fifty Thousand Dollars (\$850,000.00) ("Note"), made by Borrower and payable to Bank; the Guaranty of the Note by Lessee ("Guaranty"), dated April 5, 1978; and the Loan Agreement ("Loan Agreement"), by and between Borrower and Bank are sometimes hereinafter referred to as the "Loan Documents".

II. By a Freight Car Management Agreement dated March 1, 1978, by and between Borrower and Lessor, Borrower has, inter alia, given Lessor the right to lease the Cars.

III. Lessor has entered into a lease of fifty (50), 50 foot, 70 ton Railroad Box Cars (the "Cars"), twenty-five (25) of which are the Polly Cars, dated March 1, 1978, with Lessee (together with all renewals and extensions thereof, collectively referred to as the "Lease"), which Lease was recorded with the ICC on April 6, 1978, at 9:35 a.m., recordation number 9307.

IV. The parties desire to set out their understanding as to certain of their respective rights and obligations in the transactions above described.

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

1. Assignment to Bank. For the purpose of securing payment of the indebtedness evidenced by the Note and the payment of all other sums, with interest thereon, to become due and payable by Borrower or Lessor under the provisions of the Loan Documents or under the provisions hereof, and the performance and discharge of each and every obligation, covenant and agreement of Borrower or Lessor contained therein and herein, Borrower and Lessor hereby transfer, assign, set over and grant to Bank a security interest under the Uniform Commercial Code, as amended, in and to, all of Borrower's and Lessor's right, title and

interest in and to the Lease and all rights to monies and causes of action now or hereafter owing to, or arising in favor of, Borrower or Lessor from Lessee thereunder, and all cash and non-cash proceeds thereof, to have and to hold the same unto the Bank forever, or for such shorter period as may hereinafter be indicated.

2. Warranties and Representations.

a) Borrower and Lessor warrant and represent to Bank that the Polly Cars are not, as of the date hereof, subject to any other lease or agreement affecting the right to possess or use them.

b) Lessor and Lessee warrant and represent to Bank that (i) neither Lessor nor Lessee is in default under the terms of the Lease, (ii) said Lease is in full force and effect, (iii) no payments under the Lease have been anticipated, waived, released, discounted or otherwise discharged or compromised, (iv) Lessor has not received any deposits from Lessee, and (v) Lessee has no setoff or counterclaim against Lessor.

3. Payment of Rent and Other Monies under the Lease.

Lessor and Lessee understand and agree that until the Mortgage is satisfied of record, all payments now or hereafter due Lessor under the Lease, shall be paid to or at the direction of the Bank. Until further written notice from the Bank, Lessee is directed by Bank to pay all such sums to Lessor. Bank agrees that any payments received by it, pursuant to the terms hereof, which are due Lessor for cars other than the Polly Cars, shall be promptly remitted to Lessor.

4. Lease not to be modified, etc. Borrower, Lessor and Lessee agree that, without the prior written consent of the Bank, no obligation, covenant or agreement of Lessee under the Lease will be waived, excused, condoned or in any manner released or discharged; nor will said Lease be cancelled, terminated or surrendered, nor will any provisions thereof be modified, extended or in any way altered, nor will any prepayment of monies under the Lease be solicited, made or accepted.

5. Consent of Bank. Wherever in the Lease it is provided that the Lessor's consent or approval is required or that anything shall be done to the satisfaction of the Lessor, or any words of similar import, this shall be taken to mean that the approval, consent or satisfaction of the Bank shall be required. Lessee's rights under the Lease shall not be assigned or otherwise transferred, including a transfer by operation of law, without the prior written consent of Bank.

6. Nonlimitation of Bank's Rights under the Loan Documents. Nothing in this Agreement contained shall prejudice or be construed to prejudice the right of the said Bank to commence and prosecute, or to prevent the said Bank from commencing and prosecuting, any action which it may deem advisable, or which it may be entitled to commence and prosecute under the terms of the Loan Documents; or shall this Agreement be construed to waive any defaults now existing or which may occur under said Loan Documents; or be construed as granting a forbearance or extension of time of payment.

7. Nonassumption of Liability by Bank. Bank, by execution and acceptance of this Agreement or by making demand or collecting monies under the Lease, does not assume any liability or become liable in any manner whatsoever for the performance of any of the terms and conditions thereof,

unless and until Bank shall expressly assume such obligations in writing, and Bank shall not be liable for any act or omission of Lessor , or subject to any offsets or defenses which Lessee may have at any time against Lessor.

8. Notice to Bank. Wherever in the Lease it is provided that notice of any kind shall be given to the Lessor by the Lessee or to Lessee by Lessor this shall be taken to mean that a copy of such notice shall be given simultaneously to the Bank.

9. Notice of Breach. Lessee shall give Bank notice of any alleged breach by Lessor under the Lease and afford Bank a reasonable opportunity of at least thirty (30) days to cure any such alleged breach, but Bank, in no event, shall be obligated to cure such breach.

10. Subordination. Lessee agrees that the Lease is, and all of Lessee's rights thereunder are, and always shall be, subject and subordinate to the Loan Documents and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations or extensions thereof. Should Bank or any holder of the Loan Documents desire confirmation of such subordination, Lessee, upon written request, and from time to time, will execute and deliver, without charge and in form satisfactory to Bank or such holder, all instruments and/or documents that may be requested to acknowledge such subordination, in recordable form.

11. Modification. This Agreement may not be modified orally or in any other manner than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

12. Notices. Any notice given pursuant to this Agreement shall be valid only if given in writing, and shall be deemed sufficiently given if given by registered mail or certified mail with sufficient postage attached. Notice to the parties to this Agreement shall be addressed as follows:

Borrower: Harvey Polly
d/b/a Railway Freight Car Services
1440 Broadway
New York, NY
cc: William L. Weiss, Esquire
Weiss, Rothfarb & Chernofsky
6 East 43rd Street
New York, NY 10017

Lessor: Railway Freight Car Services, Inc.
1440 Broadway
New York, NY

Lessee: Erie Western Railway
10 North Franklin Street
Huntingdon, Indiana 46750
Trans-Action Associates, Inc.

Bank: Central Penn National Bank
5 Penn Center Plaza
Philadelphia, PA 19103
Attn: Paul A. Pyfer, Vice President
cc: LeRoy E. Perper, Esquire
White and Williams
1234 Market Street- 17th Fl.
Philadelphia, PA 19106

The date of any notice provided for in this Agreement shall be the date of deposit in the United States mails with sufficient postage, if given by certified mail; or the date of actual delivery to the above address of the party to be notified, if otherwise given. The person and place to

which notice may be given may be changed from time to time by the parties respectively upon written notice to the others, effective five (5) days after delivery of such notice.

13. Captions. It is agreed that the captions of this Agreement are for convenience only and are not a part of this Agreement, and do not in any way limit or amplify the terms and provisions of this Agreement.

14. Benefit and Binding Effect. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

15. Governing Law. The terms of this Assignment and Subordination Agreement and all rights and obligations hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20(c) of the Interstate Commerce Act.

16. Counterparts and Execution. This Assignment and Subordination Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed an original, and such counterparts, together, shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. It is contemplated that the execution of this Agreement by Lessee will occur subsequent to the execution by Borrower, Lessor and Bank. During

such period of time this Agreement shall be fully binding upon Borrower, Lessor and Bank.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Witness:

Will Weir

HARVEY POLLY, d/b/a
RAILWAY FREIGHT CAR SERVICES

By: [Signature]

Attest:

Will Weir
and Secy

RAILWAY FREIGHT CAR SERVICES, INC.

By: [Signature]

Attest:

Jeanne E. Burroughs

By: Craig E. Burroughs, Pres.

ERIE WESTERN RAILWAY

TRANS-ACTION ASSOCIATES, INC.

Attest:

Jeanne E. Burroughs
Secretary

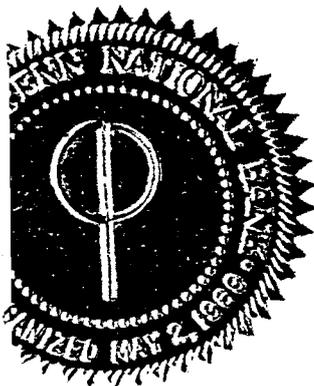
By: Craig E. Burroughs, Pres.

CENTRAL PENN NATIONAL BANK

Attest:

C. W. [Signature] VP

By: [Signature] V.P.



25 Railroad Cars Leased To and
Bearing Logo of Erie Western Railway

<u>Car Number</u>	<u>Car Name</u>
	LEASE CARS 9025-9049 SERIES
9025	50 FT, 70 TON BOX
9026	50 FT, 70 TON BOX
9027	50 FT, 70 TON BOX
9028	50 FT, 70 TON BOX
9029	50 FT, 70 TON BOX
9030	50 FT, 70 TON BOX
9031	50 FT, 70 TON BOX
9032	50 FT, 70 TON BOX
9033	50 FT, 70 TON BOX
9034	50 FT, 70 TON BOX
9035	50 FT, 70 TON BOX
9036	50 FT, 70 TON BOX
9037	50 FT, 70 TON BOX
9038	50 FT, 70 TON BOX
9039	50 FT, 70 TON BOX
9040	50 FT, 70 TON BOX
9041	50 FT, 70 TON BOX
9042	50 FT, 70 TON BOX
9043	50 FT, 70 TON BOX
9044	50 FT, 70 TON BOX
9045	50 FT, 70 TON BOX
9046	50 FT, 70 TON BOX
9047	50 FT, 70 TON BOX
9048	50 FT, 70 TON BOX
9049	50 FT, 70 TON BOX

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS.

Before me, a Notary Public in and for the Commonwealth and County aforesaid, personally appeared HARVEY POLLY, to me known to be the individual who executed the foregoing Assignment and Subordination Agreement on his behalf, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this 7th day of April, 1978.

Agatha Rocchia
Notary Public

My commission expires: 5/8/78

AGATHA ROCCHIA
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 8, 1978

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : ss.

Before me, a Notary Public in and for the Commonwealth and County aforesaid, personally appeared HARVEY POLLY, to me known to be the individual who executed the foregoing Assignment and Subordination Agreement on behalf of Railway Freight Car Services, Inc. and acknowledged to me that he is the President of Railway Freight Car Services, Inc. and that, being authorized to do so, he executed the said Assignment and Subordination Agreement on its behalf as the act and deed of the corporation, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this *7th* day of *April*, 1978.

Agatha Rocchia
Notary Public

My commission expires: *5/2/78*

AGATHA ROCCHIA
Notary Public, Philadelphia, Philadelphia Co.
Commission Expires May 8, 1978

STATE OF *Illinois*
COUNTY OF *Will*

:
SS.

Before me, a Notary Public in and for the State and County aforesaid, personally appeared *CRAIG E. BURROUGHS*, to me known to be the individual who executed the foregoing Assignment and Subordination Agreement on behalf of Erie Western Railway and acknowledged to me that he is the *PRESIDENT* of Erie Western Railway and that, being authorized to do so, he executed the said Assignment and Subordination Agreement on its behalf as the act and deed of the corporation, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this *7th* day of *April*, 1978.

Sharon Boyd

Notary Public

My commission expires:

My Commission Expires December 17, 1980

STATE OF *ILLINOIS* :
COUNTY OF *Will* : ss.

Before me, a Notary Public in and for the State and County aforesaid, personally appeared *CRAIG E. BURROUGHS*, to me known to be the individual who executed the foregoing Assignment and Subordination Agreement on behalf of Trans-Action Associates and acknowledged to me that he is the *PRESIDENT* of Trans-Action Associates and that, being authorized to do so, he executed the said Assignment and Subordination Agreement on its behalf as the act and deed of the corporation, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this *7th* day of *April*, 1978.

Sharon Dayd

Notary Public

My commission expires:

My Commission Expires December 17, 1980

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS.

The undersigned officer hereby certifies that she has examined the copy of the original instrument and that the attached is a true and correct copy of said original instrument in all respects.


Notary Public

My commission expires: 5/8/82

AGATHA ROCCHIA
Notary Public, Phila., Phila. Co.
My Commission Expires May 8, 1982