

RECORDATION NO. 5685 Filed & Recorded

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SUBLEASE OF RAILROAD EQUIPMENT INTERSTATE COMMERCE COMMISSION

THIS SUBLEASE, made as of the 25th day of July, 1970, by and between George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the property of the PENN CENTRAL TRANSPORTATION COMPANY, Debtor, ("Sublessor"), and DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, ("Sublessee").

W I T N E S S E T H:

WHEREAS, Sublessor represents and warrants that GATX-Armco-Boothe ("GATX"), by Lease of Railroad Equipment dated as of March 1, 1970, ("Basic Lease"), a conformed copy of which is attached hereto and marked Exhibit A, leased to Sublessor the units of railroad equipment ("Equipment") described in Annex A attached hereto, for a term of fifteen (15) years beginning on the date defined in the Basic Lease; and

WHEREAS, Sublessor further represents and warrants that the said Lease Agreement is now in full force and effect, and that the Sublessor has the authority, power, and right to sublease the Equipment;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, Sublessor and Sublessee agree as follows:

1. LEASE. Sublessor leased to Sublessee and Sublessee leases and hires from Sublessor the aforesaid Equipment described in Annex A attached hereto.

2. INCORPORATION OF PROVISIONS OF BASIC LEASE ATTACHED HERETO AND MARKED EXHIBIT A. All of the terms, provisions, covenants and conditions contained in the aforesaid Basic Lease are hereby made a

part of this Sublease (except as otherwise herein expressly provided for, in which cases the terms of the Sublease shall exclusively govern the relationships between the Sublessor and Sublessee), and such rights and obligations as are contained in the said Exhibit A are hereby imposed upon the respective parties hereto, the Sublessor being substituted for the Lessor where appropriate and the Sublessee being substituted for the Lessee where appropriate.

3. SUBORDINATION. Notwithstanding the non-occurrence of an "Event of Default" hereunder, all of the rights of the Sublessee, including but not limited to the right of possession, are hereby expressly subject to and subordinate to all of the rights and remedies of GATX provided for in the Basic Lease.

4. EXCEPTIONS TO PROVISIONS OF BASIC LEASE.

A. Section 4 is changed to provide for the following markings on the Equipment:

"THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, SECURITY-OWNER
PENN CENTRAL TRANSPORTATION COMPANY
LESSEE AND SUBLESSOR"

B. Section 7 is changed to require annual reports by April 1 of each year.

C. Because of the corporate relationship between Sublessor and Sublessee on the date of this agreement the opinion of counsel described in Section 14 will not be required of Sublessee.

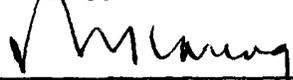
D. In Section 15 the term, Lessor, shall continue to mean GATX, and the term, Lessee, shall mean Sublessor. All benefits accruing to Sublessor under this section shall also accrue to Sublessee, and all obligations of or detriments to Sublessor under this section shall in like manner be obligations of or detriments to Sublessee.

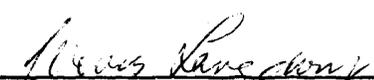
E. Section 18 is changed to provide that all notices to either party shall be given at Room 1338, Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention: Assistant Vice President-Corporate.

IN WITNESS WHEREOF Sublessor and Sublessee have executed these presents the day and year first above written.

George P. Baker, Richard C. Bond, Jervis
Langdon, Jr. and Willard Wirtz
Trustees of the Property of
PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

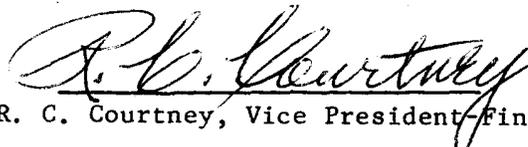
WITNESS:


Assistant Secretary

By 
One of the Trustees

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

Attest:


R. C. Courtney, Vice President Finance

By 
Charles L. Towle, President

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF PHILADELPHIA :

Jervis Langdon, Jr., being duly sworn, deposes and says that he is a Trustee of the property of Penn Central Transportation Company, Debtor, and is duly authorized by his fellow Trustees to execute the foregoing instrument on their and his behalf.

Jervis Langdon, Jr.

Sworn to and subscribed
before me this 17th day
of ~~September~~, 1970.
November

Charles E. Cassel, Jr.
Charles E. Cassel, Jr.
Notary Public, Philadelphia, Philadelphia
Co. My Commission Expires July 10, 1971.

A N N E X A
DESCRIPTION OF EQUIPMENT

<u>Quantity</u>	<u>Description of Unit</u>	<u>Numbered</u>	<u>Unit Price</u>	<u>Total Price</u>
10	Box Cars, 60 feet in length and of 100 tons capacity	220880 to 220889, both inclusive	\$25,780.	\$257,800.

ANNEX B TO SUBLEASE
CERTIFICATE OF DELIVERY

Certificate of Delivery issued pursuant to the Sublease for Railroad Equipment (the "Sublease" dated as of July 15, 1970, between Penn Central Transportation Company ("Sublessor") and Detroit, Toledo and Ironton Railroad Company ("Sublessee").

Sublessor hereby accepts and subleases to Sublessee and Sublessee hereby accepts and subleases from Sublessor the following Units pursuant to the Sublease:

<u>Description of Unit</u>	<u>Quantity</u>	<u>Number</u>
60-foot 100-ton Box Cars		

The Delivery Date of such Units is the date of this Certificate.

Sublessee confirms that the Units listed herein:

1. Have been accepted by Sublessee at
2. Are in good order; and
3. Are marked as showing Lessor's and Sublessor's interest in accordance with Section 4B of the Sublease.

The Sublessee warrants that the Units described herein are new and that no original use thereof has commenced prior to the date hereof.

All of the terms used herein which are defined in the Sublease are used herein as so defined.

By _____
Authorized Representative of
PENN CENTRAL TRANSPORTATION
COMPANY,

Sublessor

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY,
Sublessee

By _____

Date

LEASE OF RAILROAD EQUIPMENT

by and between

GATX-ARMCO-BOOTHE

and

PENN CENTRAL TRANSPORTATION COMPANY

Dated as of March 1, 1970

LEASE OF RAILROAD EQUIPMENT dated as of March 1, 1970, between GATX-ARMCO-BOOTHE, an Ohio general partnership consisting of GATX /BOOTHE CORPORATION, a Delaware corporation, and ARMCO/BOOTHE CORPORATION, an Ohio corporation, sole general partners (said partnership being hereinafter called the Lessor and said partners being hereinafter called the Partners), and PENN CENTRAL TRANSPORTATION COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, BROOKE/TRICIA CORPORATION (hereinafter called the Company) and the Lessee have entered into Conditional Sale Agreements dated as of March 1, 1970 (hereinafter called the Conditional Sale Agreements), with J. A. ZERBE and R. J. YOUNG, and W. O. BREM and T. K. HAND, JR., respectively (hereinafter referred to as the Owners), wherein the Owners have agreed to acquire, sell and deliver to the Company the railroad equipment described in Schedule A hereto;

WHEREAS, the Lessor has acquired, subject to the terms and conditions of the Conditional Sale Agreements, all the Company's right, title and interest in said equipment and under the Conditional Sale Agreements;

WHEREAS, the Owners have assigned or will assign their respective interests in the Conditional Sale Agreements to THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to December 31, 1970 (hereinafter called the

Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under a Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Owners a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for the Units subject to this Lease 60 consecutive quarterly-annual payments, payable on the business day next preceding January 28, April 28, July 28, and October 28 (each such business day being hereinafter called a Payment Date) in each year commencing July 28, 1970. Such payments, if any, made on Payment Dates occurring prior to the earlier of the last Closing Date under the Conditional Sale Agreements (as defined in the Conditional Sale Agree-

ments) and December 31, 1970 (the earlier of such dates being hereinafter called the Cut-Off Date) shall each be in the amount of \$513,667.66 less the amount, if any, payable by the Lessee on such Payment Date pursuant to the last paragraph of Paragraph 4 of the Finance Agreement dated as of March 1, 1970 among the Vendor, as Agent, the Lessee, as Guarantor, and the parties named in Schedules A and B thereto. Such payments made on Payment Dates occurring after the Cut-Off Date shall each be in an amount equal to 2.8386% of the aggregate Purchase Price (as such term is defined in the Conditional Sale Agreements) of all Units subject to this Lease. If such aggregate Purchase Price (hereinafter called the Aggregate Purchase Price) shall be other than the aggregate base price set forth in Schedule A hereto (hereinafter called the Aggregate Base Price) of the units of railroad equipment described therein the rental payments made on July 28, 1970 and October 28, 1970, shall be adjusted as provided for in the next succeeding sentence of this paragraph to an amount equal to 2.8386% of the Aggregate Purchase Price (such adjusted rental payments being hereinafter called the Adjusted Rental Payments). If the Aggregate Purchase Price is in excess of the Aggregate Base Price, the Lessee shall pay to Lessor on January 28, 1971 an amount equal to the sum of the excess of each of the Adjusted Rental Payments over \$513,667.66, plus interest; if the Aggregate Purchase Price is less than the Aggregate Base Price the Lessor shall pay to Lessee on January 28, 1971 an amount equal to the sum of the excess of \$513,667.66 over each of the Adjusted Rental Payments, plus interest. Interest as used in the preceding sentence of this paragraph shall be computed at the rate of 8.5% per annum compounded quarterly and shall accrue from the due dates of each of the rental payments with respect to which an amount is paid by the Lessor or the Lessee under the preceding sentence of this paragraph, as the case may be (July 28, 1970 and October 28, 1970), to

January 28, 1971. Notwithstanding the foregoing, any and all sums paid by the Lessee pursuant to its guaranty obligations set forth in Article 6 of the Conditional Sale Agreements not attributable to an Event of Default (as hereinafter defined) hereunder shall be thereupon deemed to have been paid in reduction or satisfaction, to the extent thereof, of any rental payments then or thereafter due or payable by the Lessee to the Lessor under this Lease.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays in the City of Philadelphia.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Philadelphia Clearing House funds (including but not limited to the payments required under § 6 hereof) for the account of the Lessor, care of the Vendor at its office at Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101 (or to any assignee of the Vendor pursuant to Section 6 of the Agreements and Assignments between the respective Owners and the Vendor, dated as of March 1, 1970, under which the Conditional Sale Agreements are being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Company under the Conditional Sale Agreements accrued on the Payment Date (as defined in the Conditional Sale Agreements) next succeeding the date such payments are due hereunder and, so long as no event of default under the Conditional Sale Agreements shall have occurred and be continuing, any balance shall be promptly paid to the Lessor in immediately available San Francisco funds by wire transfer to the account of GATX-Armco-Boothe, 1970, account no. 0075-019497 at Wells Fargo Bank, N. A., Market-Montgomery Office, 4 Market Street, San Francisco, California 94104 or to such other place as Lessor shall specify in writing.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason

of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Owners or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final quarterly-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Conditional Sale Agreements, are subject to the rights of the Vendor under the Conditional Sale Agreements. If an event of default should occur under a Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease or under a Conditional Sale Agreement in its capacity as guarantor or

otherwise. Anything to the contrary herein contained notwithstanding, the Lessee agrees that in the event of such termination by the Vendor, the Lessee shall remain liable under this Lease to the same extent as if an Event of Default hereunder (as defined in § 9 hereof) had occurred and the Lessor had terminated this Lease pursuant to § 9 hereof.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“The First Pennsylvania Banking and Trust Company, Security-Owner”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a

claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and/or its Partners for collection or other charges and will be free of expense to the Lessor and/or its Partners with respect to the amount of any local, state or federal or Canadian (Dominion or Provincial) taxes (other than any federal income tax or any Canadian [Dominion or Provincial] income tax [to the extent that the Lessor and/or its Partners receives credit therefor against their respective United States federal income tax liabilities] payable by the Lessor and/or its Partners in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the states and cities in which the Lessor and/or its Partners, as the case may be, have their principal places of business without apportionment to any other states or cities, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The

Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operations thereof or upon the earnings arising therefrom or upon the Lessor and/or its Partners solely by reason of the Lessor's ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor and/or its Partners directly and paid by the Lessor and/or its Partners, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Company and/or the Lessor shall become obligated to make any payment to the Owners or the Vendor pursuant to Article 10 of a Conditional Sale Agreement not covered by the foregoing paragraph of this § 5 (hereinafter called Additional Obligations), the Lessee shall pay on demand such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as shall be equal to such Additional Obligations.

Any determination, from time to time, by a firm of independent certified public accountants designated by Lessor and approved by Lessee (which approval shall not be unreasonably withheld and which approval is hereby irrevocably given to either Haskins & Sells or Ernst & Ernst) that Lessee is obligated to pay Lessor a specific amount under this § 5 shall be final and binding on the parties hereto and their assigns.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the

Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or in the opinion of the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight business days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor with respect thereto. On the business day next preceding the January 28 or July 28 next succeeding such notice (or, in the event such January 28 or July 28 shall occur within five business days after such notice, on the business day next preceding the following January 28 or July 28) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below; *provided, however*, that the first payment in respect of a Casualty Occurrence shall in no event be made prior to January 28, 1971; and *provided, further*, that payment shall be made on the business day next preceding April 28, 1985, for any Casualty Occurrence for which payment has not been made prior to the business day next pre-

ceding April 28, 1985. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of the date payment is required to be made in respect thereof shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

Payment Date	Percentage	Payment Date	Percentage
1/28/71	100.40%	7/28/78	76.71%
7/28/71	100.18	1/28/79	73.58
1/28/72	99.77	7/28/79	70.25
7/28/72	99.16	1/28/80	66.73
1/28/73	98.36	7/28/80	63.01
7/28/73	97.36	1/28/81	59.10
1/28/74	96.17	7/28/81	54.99
7/28/74	94.79	1/28/82	50.70
1/28/75	93.20	7/28/82	46.20
7/28/75	91.43	1/28/83	41.51
1/28/76	89.47	7/28/83	36.62
7/28/76	87.31	1/28/84	31.55
1/28/77	84.95	7/28/84	26.27
7/28/77	82.40	1/28/85	20.81
1/28/78	79.65	4/28/85 (and thereafter)	18.00

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before April 15, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

Within 120 days of the close of each fiscal year of the Lessee during the term of this Lease, Lessee shall furnish Lessor a copy of its balance sheet and income statement on an unconsolidated basis and the Form "A" Annual Report filed with the Interstate Commerce Commission. The balance sheet and income statement referred to herein shall

be certified by the public accounting firm regularly used by Lessee or, if no such financial statements are so certified, by the chief financial officer of Lessee.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements

at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Company, the Lessor and the Vendor against any charge or claim made against the Company, the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Company, the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in Article 22 of the Conditional Sale Agreements and § 16 of this Lease. The Lessee further agrees to indemnify and save

harmless the Company, the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreements and such default shall continue for 20 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insol-

vency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreements), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60

days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee within five business days of notice by the Lessor to the Lessee of the amount due hereunder and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover from the Lessee within five business days of notice by the Lessor to the Lessee of the amount due hereunder (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals

for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a discount at a rate equal to the lesser of 7.77% per annum and Manufacturers Hanover Trust Company's prime commercial loan rate in effect on the date of such termination on 90-day loans to responsible and substantial corporate borrowers (such prime rate being hereinafter called the Prime Rate), compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) in the event of a sale or other disposition of the Lessor's interest in a Unit after the occurrence of an Event of Default, not as a penalty but as liquidated damages for the acceleration of the recapture of the Rapid Amortization Deduction (as hereinafter defined) in respect of such Unit, an amount equal to the percentage set forth in the following schedule opposite the time period during which such Unit is sold or otherwise disposed of multiplied by the Purchase Price of such Unit:

SCHEDULE

Date of Sale or Other Disposition	Percentage
From date of delivery through 1/28/71 ...	1.67
1/29/71 through 7/28/71	2.95
7/29/71 through 1/28/72	4.11
1/29/72 through 7/28/72	5.14
7/29/72 through 1/28/73	6.03
1/29/73 through 7/28/73	6.81

Date of Sale or Other Disposition	Percentage
7/29/73 through 1/28/74	7.47
1/29/74 through 7/28/74	8.00
7/29/74 through 1/28/75	8.44
1/29/75 through 7/28/75	8.77
7/29/75 through 1/28/76	8.98
1/29/76 through 7/28/76	9.10
7/29/76 through 1/28/77	9.12
1/29/77 through 7/28/77	9.05
7/29/77 through 1/28/78	8.90
1/29/78 through 7/28/78	8.64
7/29/78 through 1/28/79	8.33
1/29/79 through 7/28/79	7.92
7/29/79 through 1/28/80	7.47
1/29/80 through 7/28/80	6.94
7/29/80 through 1/28/81	6.37
1/29/81 through 7/28/81	5.74
7/29/81 through 1/28/82	5.05
1/29/82 through 7/28/82	4.32
7/29/82 through 1/28/83	3.58
1/29/83 through 7/28/83	2.81
7/29/83 through 1/28/84	2.02
1/29/84 through 7/28/84	1.21
7/29/84 through 1/28/85	0.81
1/29/85 and thereafter	0.00

For all purposes of this Lease the term Rapid Amortization Deduction shall mean the full amortization deduction with respect to a Unit provided for in section 184 of the Internal Revenue Code of 1954 or in a successor section thereto, based upon the Full Purchase Price of such Unit. For all purposes of this Lease the term Full Purchase Price shall mean with respect to a Unit the Purchase Price of such Unit plus an allocable share of the commission of \$65,150 paid by Lessor in connection with the transactions contemplated by this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumula-

tive, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and

risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. It is understood and agreed that the term "Lessor" wherever used in this Lease, including but not limited to the use thereof in §§ 2, 5, 9 and 15, shall include any such assignee.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but,

without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them; *provided however*, that the Lessee shall have the right, without the consent of the Lessor, to sublease any Unit to any corporation at least 80% of the capital stock of which is owned by the Lessee, but only to the extent that such subleasing shall not adversely affect the Rapid Amortization Deduction of the Lessor with respect to the Full Purchase Price of any Unit. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase or Renewal Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (i) to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for an additional period of five years commencing on the scheduled expiration of the term of this Lease or extended term hereof, as the case may be, at a rental payable in 20 quarterly-annual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 1.4193%; during the second five-year period, .9462%; and during the final five-year period, .7097% (it being agreed that no such extended term shall extend beyond April 28, 2000); such quarterly-annual payments to be made on the business day next preceding January 28, April 28, July 28 and October 28 in each year of the extended term and (ii) to purchase all, but not fewer than all, the Units then covered by this Lease at the end

of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may

designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Units abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termina-

tion of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 14. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and has been duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada (and the Lessee has caused or has made appropriate provision to cause notice of such deposit to be duly given promptly after such deposit in the *Canada Gazette* pursuant to said Section 148); and such filing, recording and deposit will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 15. *Federal Income Taxes.* It is the intent of the parties to this Lease that the Lessor shall at all times be considered to be the owner and original user of all the Units which are subject to this Lease and as the taxpayer which places such Units in service for all Federal income tax purposes and that the Partners shall be entitled, with respect to the Full Purchase Price (as defined in § 9 of this Lease) of the Units, to the full benefit of the Rapid Amortization Deduction (as defined in § 9 of this Lease) and to such other deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954 (hereinafter called the Code) to an owner and original user of the Units who places the Units in service. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing intent and that each of such corporations will file such returns, take

such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of this intent. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether the Partners are entitled to the full benefit of the Rapid Amortization Deduction with respect to the Full Purchase Price of the Units.

The Lessee represents, agrees and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code and at all times thereafter through December 31, 1975, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code the Units will not have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of section 184 of the Code from commencing with the Lessor and no investment credit, depreciation or other tax benefits will be claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times through December 31, 1975 "a domestic common carrier by railroad" within the meaning of section 184(d)(1)(A) of the Code, and (iv) through December 31, 1975, each Unit will, within the meaning of section 184(d)(1)(A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

When it is provided at any time in this § 15 that Lessor shall receive any amount "on an after-tax basis," or that Lessor shall pay an amount "on an after-tax basis," the computation shall be made with respect to the Partners' taxes and on the assumption that the Partners' Federal,

State and local taxes computed by reference to net income or excess profits which are applicable to such receipt or payment are as set forth below and that, unless otherwise noted, the taxable period for the determination of relevant tax rates is the taxable year of the Partner whose tax liability is involved in the Final Determination (as hereinafter defined) in which or with which ends the taxable year of Lessor in which the right of the Lessor to receive a payment under this § 15 or computed under this § 15 accrues (or the obligation of the Lessor to make a payment accrues) for Federal income tax purposes.

The Federal, State and local taxes computed by reference to net income or excess profits referred to in the immediately preceding sentence are as follows:

(a) The highest effective Federal income tax and excess profits tax rate generally applicable to domestic corporations, including therein the effect of any applicable surtax, surcharge and/or any other Federal tax or charge related to net income or excess profits, or related to any tax on net income or excess profits (hereinafter referred to as the "Federal Tax Rate");

(b) The sum of the highest effective generally applicable rates of tax imposed by New York State and New York City on net income and/or excess profits of corporations organized under the laws of New York State and doing business entirely within New York City, including therein the effect of any applicable surtax, surcharge and/or other New York State and/or New York City tax or charge related to net income or excess profits or related to any tax on net income or excess profits (hereinafter referred to as the "State Tax Rate");

(c) New York State and New York City taxes referred to in paragraph (b) above are deductible in computing Federal Income tax.

The provisions of § 5 of this Lease shall continue to be applicable to all payments computed under this § 15 to be made by Lessee except those provisions of § 5 of this Lease relating to Federal, State and City taxes measured by net income or excess profits.

For purposes of this § 15, a Final Determination shall mean:

(i) an agreement with the Internal Revenue Service (hereinafter called the IRS), *provided*, that if the Lessee has requested the Lessor to contest a proposal of the IRS and has indemnified the Lessor and its Partners for all liabilities and expenses in connection therewith and provided such reasonable security therefor as the Lessor may request, an agreement with the IRS shall not be a Final Determination unless the Lessee consents thereto;

(ii) a court decision (including a decision of the United States Tax Court), which may not be further appealed for any reason; or

(iii) an opinion of the Lessor's outside counsel, Messrs. Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison (or such other of its outside counsel reasonably satisfactory to Lessee) (hereinafter referred to as "Counsel"), that there is no bona fide claim which Lessor or one of its Partners could assert with respect to a matter covered by this § 15.

If there is a Final Determination with respect to any taxable year of a Partner that the Partners, or either of them, shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed, all or any portion of the Rapid Amortization Deduction with respect to any Unit by reason of:

(a) Any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee

(or any officer, employee or agent thereof) contained herein, in the Conditional Sale Agreements, in the Assignments (as defined in the Conditional Sale Agreements), in the Finance Agreement (as defined in the Assignments), or otherwise made in writing in connection herewith or therewith, shall, in the opinion of Counsel, be fraudulent, untrue, incorrect, inaccurate or misleading in whole or in part; or the Lessee (or any officer, employee or agent thereof) shall, in the opinion of Counsel, fail to state any material fact in connection with the transactions contemplated hereby or thereby; or the Lessee shall take any action in respect of its income tax returns or otherwise which, in the opinion of Counsel, shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof), in the opinion of Counsel, shall take any other action whatsoever which shall cause the loss or disallowance of any portion of the full Rapid Amortization Deduction; or

(b) The failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or the Conditional Sale Agreements, the Assignments or the Finance Agreement; or

(c) Any use of such Unit which prevents such Unit from being "qualified railroad rolling stock" within the meaning of section 184(d) of the Code;

Lessee shall pay to Lessor within 5 days of receipt of written notice from Lessor of such Final Determination or within 5 days of receipt of written notice from Lessor of payment to the IRS (or any successor thereto) with respect to such Final Determination, whichever is later, on an after-tax basis an amount equal to the difference between the

Rapid Amortization Deduction with respect to such Unit and the depreciation and/or amortization deduction with respect to such Unit which is allowed to the Partners for such taxable year, multiplied by the Federal Tax Rate for the taxable year of the Partner whose tax liability is involved in which or with which ends the taxable year of Lessor with respect to which the Final Determination is made, plus any interest payable by the Partners, or either of them, with respect to the Final Determination.

If there is a Final Determination with respect to any taxable year of a Partner that the Partners or either of them must pay a minimum tax as provided by section 56 of the Code with respect to their having claimed all or any portion of the Rapid Amortization Deduction with respect to a Unit as a result of the inability of the Partners, or either of them, to compute liability for such tax on a consolidated basis with the affiliated group of corporations of which it is a member within the meaning of section 1504 of the Code (hereinafter referred to as the "Tax Preference Tax"), the Lessee shall, within 5 days of receipt of written notice from Lessor of such Final Determination, or within 5 days of receipt of written notice from Lessor of payment to the IRS (or any successor thereto) with respect to such Final Determination, whichever is later, pay Lessor on an after-tax basis an amount equal to such Tax Preference Tax for such taxable year of such Partner, plus any interest payable by the Partners, or either of them, with respect to the Final Determination.

If (a) Lessee has made all payments required by this Lease, and (b) the Lessee has made payments to Lessor by reason of the loss of any part or all of the Rapid Amortization Deduction with respect to a Unit, and (c) the amount of the deductions of the Lessor for depreciation or amortization with respect to a Unit are greater than such deductions would be but for the disallowance of part or all of

such Rapid Amortization Deduction or gain on sale or other disposition of such Unit is less (or loss is greater) than such gain (or loss) would have been but for the disallowance of part or all of such Rapid Amortization Deduction (the aforementioned tax benefits being hereinafter referred to as "Taxable Income Benefits"), within 5 days of the date on which a Partner files an original Federal income tax return reflecting a Taxable Income Benefit or, if such a return is not filed, within 5 days of the receipt by a Partner of a Tax Benefit (as hereinafter defined) from the IRS (or any successor thereto) pursuant to a Final Determination that Lessor is entitled to a Taxable Income Benefit, Lessor shall pay to Lessee:

(i) on an after-tax basis an amount equal to the amount of the Taxable Income Benefit reflected on such return or received by a Partner, as the case may be, multiplied by the lower of the lowest Federal Tax Rate for any of the calendar years 1970 through 1976 and the Federal Tax Rate for the taxable year of such Partner with respect to which the Taxable Income Benefit relates (hereinafter referred to as the "Tax Benefit") plus

(ii) any interest received by the Partners with respect to a Final Determination relating to the Taxable Income Benefit.

In computing the amount payable by Lessor to Lessee on an after-tax basis neither the Federal Tax Rate nor the State Tax Rate may exceed the lowest Federal Tax Rate or the State Tax Rate, as the case may be, for any of the calendar years 1970 through 1976.

If Lessor or any Partner has paid Lessee an amount because a Partner filed an original Federal income tax return which reflected a Taxable Income Benefit with respect to a Unit and there is a Final Determination that such Partner is not entitled to such Taxable Income Benefit or some part thereof with respect to such Unit, Lessee shall

pay to Lessor on an after-tax basis an amount equal to the Tax Benefit previously paid by Lessor to Lessee with respect to the disallowed Taxable Income Benefit, plus any interest payable by such Partner with respect to such Final Determination.

Lessor shall give Lessee prompt notice of any assertion or proposal by the IRS with respect to the matters set forth in this § 15, but except as provided in the next succeeding sentence of this paragraph neither the Partners nor Lessor shall have any obligation to contest any such assertion or proposal. Lessor agrees that if, in the opinion of its Counsel a bona fide claim to any tax with respect to which Lessee is required to indemnify Lessor hereunder exists, Lessor and its Partners shall, upon request and at the expense of Lessee, take all such legal and appropriate action deemed reasonable by such Counsel in order to sustain such claim and/or to minimize the amount of any disallowance of a deduction. Neither Lessor nor its Partners shall be obligated to take such legal and appropriate action unless the Lessee shall have first indemnified Lessor and its Partners for all liabilities and expenses in connection therewith and shall have furnished Lessor and its Partners with such reasonable security therefor as may be requested. The Lessor and its Partners may take such action prior to making payment of the amounts claimed pursuant to a notice of proposed disallowance or may make such payment and then sue for a refund. In the latter event, if the Final Determination shall be adverse to Lessor, its Partners or either of them, Lessee shall pay to Lessor interest on the amount of the tax paid pursuant to such Final Determination, computed at a rate equal to $\frac{1}{2}\%$ per annum above the Prime Rate (as defined in § 9 of this Lease), compounded quarterly, from the date of payment of such tax to the date on which payment is made by Lessee to Lessor in accordance with the provisions of this § 15.

Unless the terms of this Lease or any waiver of the terms hereof specifically provide otherwise by express ref-

erence to this § 15 the obligation of the Lessee and the Lessor to make the payments provided for herein shall not be reduced or eliminated. The obligations contained in this § 15 shall survive the expiration or other termination of the Lease.

Any obligation under this § 15 of the Lessor to pay any amount to the Lessee may be assumed by either or both of its Partners without the consent of the Lessee and upon any such assumption the Lessor shall not be liable with respect to the obligations assumed.

Any determination, from time to time, by a firm of independent certified public accountants designated by Lessor and approved by Lessee (which approval shall not be unreasonably withheld and which approval is hereby irrevocably given to either Haskins & Sells or Ernst & Ernst) that Lessee is obligated to pay Lessor, or that Lessor or its Partners are obligated to pay Lessee, a specific amount under this § 15 shall be final and binding on the parties hereto and their assigns.

On or before the first Closing Date occurring under either Conditional Sale Agreement, the Lessor, as a condition to its obligation to lease the Units to the Lessee hereunder, shall have received the written opinion of Messrs. Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison addressed to the Lessor to the effect that for Federal income tax purposes and upon such review as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. under the Code the Lessor will be entitled to elect to take the Rapid Amortization Deduction with respect to 100% of the Full Purchase Price of the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreements and any assignment hereof or thereof to be duly filed and recorded with the

Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada and to cause notice of such deposit to be duly given in the *Canada Gazette* pursuant to said Section 148. The Lessee will undertake the filing, recording and depositing and re-filing, re-recording and redepositing required of the Lessor under Article 21 of the Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreements or the first assignment thereof by the Owners; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel; *provided, however*, the Lessee will pay the reasonable fees and disbursements of Lessor's Counsel not in excess of \$25,000 incurred in connection with this Lease and all of the transactions referred to or contemplated herein.

§ 17. *Interest on Overdue Rentals, Damages and Other Obligations.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals, damages or other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10½% per annum, compounded quarterly, of the overdue rentals, damages or other obligations for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to or otherwise received by a party at the following specified addresses:

if to the Lessor, at One Maritime Plaza, San Francisco, California 94111, Attention of Contracts Administration;

if to the Lessee, at Six Penn Center Plaza, Philadelphia, Pa. 19104;

or at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this

Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of March 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

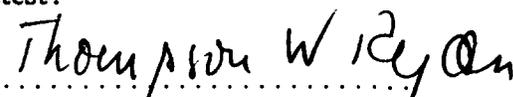
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GATX-ARMCO-BOOTHE, by
GATX/BOOTHE CORPORATION, a
general partner.

by 
.....
Vice President.

[CORPORATE SEAL]

Attest:


.....
Assistant Secretary

PENN CENTRAL TRANSPORTATION
COMPANY

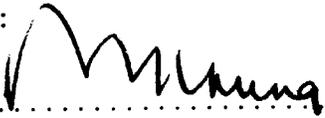
by 

~~Assistant Vice President.~~

TREASURER

[CORPORATE SEAL]

Attest:



Assistant Secretary.

Illinois
STATE OF ~~NEW YORK~~ }
COUNTY OF NEW YORK } ss.:

On this *17th* day of April, 1970, before me personally appeared *E. S. Yocum*, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me, did for himself depose and say that he is a Vice President of GATX/BOOTHE CORPORATION; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said corporation is a general partner of GATX-Armco-Boothe, a general partnership organized under the Uniform Partnership Law of the State of Ohio; that the foregoing instrument was executed on behalf of and with authorization of said partnership by such corporation acting by authority of its Board of Directors; and he did duly acknowledge to me that the foregoing instrument was so executed as the free act and deed of said partnership.

Dannie Mae Taylor
Notary Public
My Commission expires Dec. 4, 1972

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *17th* day of April, 1970, before me personally appeared *J. H. Schlaffer* to me personally known, ~~Assistant~~ **TREASURER** who, being by me duly sworn, says that he is an ~~Assistant~~ **TREASURER** Vice President of PENN CENTRAL TRANSPORTATION COMPANY, that one of the seals 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.

William J. O'Neill
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

WILLIAM J. O'NEILL
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 26, 1972

SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
52'6" 100-Ton Gondola Cars	500	578750- 579249	\$14,200	\$ 7,100,000
65' 70-Ton Gondola Cars	51	592000- 592050	18,250	930,750
60' 100-Ton Box Cars	90	220880- 220889 220893- 220946 275386- 275398 279031- 279043	25,780	2,320,200
60' 100-Ton Box Cars	79	220947- 221025	23,000	1,817,000
50' 100-Ton Box Cars	14	210939- 210952	19,543	273,602
86' 100-Ton Box Cars	47	295713 ⁷⁰ 295759 ⁷⁰	28,400	1,334,800
60' 100-Ton Box Cars	32	275412- 275443	25,359	811,488
Cabooses	55	18545- 18599	15,367	845,185
50' 70-Ton Air Pak Cushion Cars	55	264596- 264650	22,848	1,256,640
55' 100-Ton Coil Steel Cars	65	752735- 752799	21,633	1,406,145
			Aggregate Base Price	\$18,095,810