

RECORDATION NO. 6578 Filed & Recorded
MAY 4 1972 - 2 45 PM
INTERSTATE COMMERCE COMMISSION

GREENLEASE COMPANY
A DIVISION OF GREENVILLE STEEL CAR COMPANY

RAILROAD CAR SERVICE LEASE AGREEMENT

Effective this 22nd day of February, 1968, GREENLEASE COMPANY, A DIVISION OF GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (hereinafter referred to as "Lessor"), and ISLAND CREEK COAL COMPANY, a Delaware corporation (hereinafter referred to as "Lessee"), agree as follows:

1. Lessor will lease to Lessee the following described railroad freight train cars (hereinafter called the "Cars") for the term and at the monthly rental and other charges set forth herein:

<u>No. of Cars</u>	<u>Specifications</u>	<u>Description</u>
115	GSCCO Specification No. 4231 Revised March 26, 1968 (hereinafter in this Agreement referred to as "Specifications").	100-Ton Quadruple Hopper Cars; AAR Mechanical Designation HT; Road Nos. GSCX 6000-6114 incl.

The Cars will be delivered in one lot to Lessee f.o.b. tracks of Lessor at Greenville, Pennsylvania, with transportation prepaid by Lessor to Youngstown, Ohio, tracks of The Baltimore and Ohio Railroad Company, for arrival at Freeport, Ohio on or about November 1, 1968.

The Cars will be operated by Lessee as components of one unit train moving on lines of The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company between Freeport, Ohio and Essexville, Michigan or Erie, Michigan. Lessor's obligation as to delivery of Cars shall be subject to delays due to labor trouble, fires, delays of carriers or subcontractors, or other causes beyond the control of Lessor.

2. (a) The Term of this Lease shall commence on November 1, 1968, and shall extend for a period of ten (10) years and two months, terminating December 31, 1978, but subject to the provisions of Section 13 hereof.

(b) During the original Term of this Lease, and until each Car is returned to Lessor as hereinafter provided, Lessee will pay to Lessor rent for the Cars, except as otherwise specified herein, at the rate of \$100 per Car for the month of November, 1968 and at the rate of \$126.29 per Car for the month of December, 1968 and at the rate of \$168.39 per Car per month thereafter. Rent shall be paid at Lessor's office in Greenville, Pennsylvania, in advance on the first day of each month during the original Term of this Lease, and shall be prorated for less than whole months. The rent for each Car shall begin to accrue on the date such Car is delivered to Lessee at Freeport, Ohio. Adjustments in advance rentals shall

be made to reflect any rental paid in a previous month which was not due to Lessor by reason of the provisions of Sections 5 or 12 hereof. During the original Term of this Lease, the above rentals will remain firm and will not be changed.

3. (a) Lessee shall pay to Lessor, in addition to the rental above provided, in advance on the first day of each month during the Term of this Lease, and continuing until such Car is returned to Lessor, subject to the provisions of Section 13 hereof, a maintenance charge at the rate of \$41.69 per Car per month, subject to escalation as hereinafter provided. Maintenance charges shall be prorated for less than whole months. The maintenance charge for each Car shall begin to accrue on the date such Car is delivered to Lessee at Freeport, Ohio. Such advance maintenance payments shall be adjusted monthly when necessary to reflect any maintenance payment made in a previous month which was not due to Lessor by reason of the provisions of Sections 5 or 12 hereof. Such maintenance charge shall also be subject to adjustment at the end of each twelve-month period ending December 31 during the Term of this Lease, commencing with the twelve-month period ending on December 31, 1969, with respect to each Car by an annual mileage adjustment factor of \$3.65 (subject to escalation as hereinafter provided), which will be applied as follows: Lessee shall pay to Lessor the sum of \$3.65 for each thousand miles a Car shall be operated in excess of 72,000 miles during each such twelve-month period; and Lessor shall pay to Lessee the sum of \$3.65 for each thousand miles

a Car shall be operated less than 72,000 miles during each such twelve-month period. The Baltimore and Ohio Railroad and The Chesapeake and Ohio Railway Company will certify to Lessor the number of miles of car operation during each month. The aggregate net amount of the adjustment shall be computed by dividing the aggregate mileage of all Cars for each such twelve-month period by the average number of Cars in service during such period. For purposes of this computation, the mileage adjustment factor of \$3.65 shall be prorated with respect to the average annual mileage of each Car to the extent that such mileage is not an integral multiple of one thousand miles. Payment of such adjustments due to increased or decreased mileage shall be made within twenty (20) days after (i) the mileage for each such twelve-month period of the Term hereof shall have been certified by the Railroads, and (ii) Lessor shall have submitted to Lessee an itemized statement showing the amount of such adjustment.

(b) The maintenance charge and the annual mileage adjustment factor specified in subparagraph (a) of this Section 3 shall be subject to escalation as follows: in the event the reproduction cost price of a freight car, as set forth in Paragraph 3(a), Section B, Rule 112 of the Interchange Rules of the Association of American Railroads, Operations & Maintenance Department, Mechanical Division (or other similar rules which may be changed or established in the future by said Association), shall be increased or decreased at any time or from time to time during the Term of this Lease, the

said maintenance charge and annual mileage adjustment factor shall be increased or decreased in the same proportion that such reproduction cost price is increased or decreased, commencing on the effective date of such increase or decrease.

4. Any demurrage, track storage or detention charge imposed in connection with any Car covered by this Lease after delivery of such Car to Lessee under Section 1 hereof, shall be the liability of Lessee or consignee.

5. (a) Lessor warrants that on the date of delivery of each Car to Lessee hereunder such Car will comply with the Rules of Interchange of the Association of American Railroads (or any successor thereto) and with all applicable governmental laws, regulations and requirements and further warrants that the Cars will be built in accordance with the Specifications, free from defects in material and workmanship.

During the Term hereof, but subject to the provisions of Section 13 hereof, Lessor, at its own cost and expense, will cause the Cars to be repaired and maintained in serviceable operating condition in accordance with said Rules of Interchange and will comply with all such governmental laws, regulations and requirements and with said Rules of Interchange with respect

to the maintenance of the Cars. Lessor agrees to use its best efforts to repair and maintain, and to avoid all unreasonable delays with respect to the repair and maintenance of, the Cars so that there shall be available to Lessee throughout the original Term hereof one unit train of not less than 98 Cars capable of continuous operation in the service contemplated by this Lease.

There shall be permanently and conspicuously stencilled on each side of each Car the following words (with proper changes as from time to time may be required to protect the interests of Lessor or any assignee of Lessor), in letters at least one inch high:

GREENLEASE COMPANY, A DIVISION OF
GREENVILLE STEEL CAR COMPANY, OWNER
AND LESSOR

(b) If a Car is destroyed, Lessee may at its option, by notice in writing to Lessor,

(i) terminate this Lease as to such Car, in which event no further obligations of Lessor and Lessee hereunder with respect to such Car will arise effective the date the Car is destroyed; or

(ii) require Lessor to replace such Car, in which event the rental charges and maintenance charges on such

Car provided for in Sections 2 and 3 hereof shall cease and abate commencing the date the Car is destroyed, such abatement to continue until a replacement Car is delivered into Lessee's service at Freeport, Ohio. Replacement Cars shall be subject to all the terms and conditions of this Lease, except that (A) in the event Lessor replaces any such Car with a new Car (which shall be compatible as to use and service with the Car being replaced), the Term of this Lease shall at the option of Lessee (by election made by Lessee in writing prior to December 31, 1978) either (x) be extended, with respect to such replacement Car only, so that it continues for a period of 10 years from the date of replacement, or (y) be extended (for all Cars) for a period equal to the sum of all elapsed Car-days (being the number of days elapsed from the commencement of the Term of this Lease to the date of replacement) with respect to all replaced Cars, divided by the number of Cars subject to the Lease at the time when the Term of this Lease would otherwise have terminated; and (B) in the event Lessor replaces any such Car with a used Car (which shall be compatible as to use and service with the Car being replaced), the Term of this Lease shall automatically be extended as

to all Cars by the number of days equal to the aggregate number of days of abated rent divided by the number of Cars subject to the Lease at the time when the Term of this Lease would otherwise have terminated. Pending replacement of destroyed Cars, Lessor shall be under no liability other than to make such replacements as promptly as possible. If Lessee anticipates that at the end of the original Term of this Lease, it will no longer need to lease the Cars hereunder and so notifies Lessor in writing not less than six (6) months prior to the expiration of the original Term, Lessor will use its best efforts to lease to another person or persons such of the Cars, if any, which would otherwise be subject to this Lease after the end of the original Term for the period of any extension of such Term pursuant to clauses (A) or (B) above.

6. (a) If Lessee requires that any equipment or appliance on any Car be changed, replaced or added, other than as is Lessor's express responsibility under the first and second paragraphs of Section 5(a) hereof, then with the written consent of Lessor, Lessee may at its own cost and expense do or cause to be done such work. Any equipment or appliances installed or replacements made upon the Cars by Lessee shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor, without additional cost or expense to Lessor.

(b) Except as provided in Section 6(a), Lessee's sole obligation with respect to the care and maintenance of the Cars shall be to make the rental and maintenance payments required herein; provided, however, Lessee will be liable for loss of or damage to any Car, or parts thereof, if such loss or damage is due solely to the negligence of or misuse of Cars by Lessee or its sublessee, consignee or consignor, or due to damage in the unloading of Cars caused by car shakers, open flame heat, excessive radiant heat or other similar acts, or if such loss or damage occurs from any cause whatsoever (other than from owner responsibility as defined in the Rules of Interchange of the Association of American Railroads) while such Car is in the care, custody and control of Lessee or a sublessee while on the private tracks of Lessee or a sublessee, the amount of liability resulting from any such loss or damage to be in the same amount as though such Car had been subject to handling line liability under the Rules of Interchange of the Association of American Railroads.

7. Lettering or marking of any kind evidencing the operation of the Cars in Lessee's service may be placed upon any of the Cars by Lessee only with Lessor's prior written consent.

8. Lessee agrees to indemnify and save harmless Lessor against and from any charge or claim made against Lessor, and any expense or liability which Lessor may incur, arising out of the use or operation of the Cars by Lessee resulting in damage to property of others or injury to any person, unless such charge, claim, expense or liability is caused by the negligence of Lessor or by the negligence of the railroad carrier or by the negligence of the employees

or agents of either or by breach of Lessor's warranties set forth in the first paragraph of Section 5(a) hereof. Lessor agrees to indemnify and save harmless Lessee against and from any charge or claim made against Lessee, and any expense or liability which Lessee may incur, arising out of the use or operation of the Cars by Lessee resulting in damage to property of others or injury to any person caused by the negligence of Lessor or by the negligence of the employees or agents of Lessor or by breach of Lessor's warranties set forth in the first paragraph of Section 5(a) hereof.

9. While it is understood that the Cars are intended to be used exclusively in unit train service hereinbefore referred to, the parties agree that if for any reason any of such Cars are not needed in that service, Lessee may with the prior written consent of Lessor (which shall not be unreasonably withheld) sublease or otherwise utilize such Cars for other service, including hauling coal or similar commodities. Lessee will not permit or suffer any encumbrance or liens arising from claims against Lessee to be entered or levied upon any of the Cars. Lessee shall not assign its interest in this Lease without the prior written consent of Lessor, except that Lessee may without the consent of Lessor assign all of its interest in this Lease to a subsidiary or affiliated corporation or a corporation which results from a merger or consolidation of Lessee and which assumes all of the liabilities of Lessee, provided that no such assignment shall relieve Lessee of liability hereunder.

10. (a) Lessor may assign or mortgage all its right, title and interest in and to each of the Cars and/or all moneys payable to Lessor hereunder for financing purposes only, so long as the assignment or mortgage recognizes Lessee's right to continued and uninterrupted possession of the Cars upon compliance with the terms of this Lease. All of the provisions of this Lease for the benefit of Lessor shall inure to the benefit of and may be exercised by or on behalf of such assignee or mortgagee. All rental payments and maintenance charges due and to become due under this Lease and so assigned or mortgaged shall if directed by Lessor by a notice to Lessee be paid directly to such assignee or mortgagee. The right of any such assignee or mortgagee to the payment of assigned rentals and maintenance charges hereunder shall not be subject to any defense, counterclaim or set off which Lessee may have against Lessor, except as otherwise provided in Section 12 hereof.

(b) Lessor may also sell, assign and transfer all its right, title and interest in and to each of the Cars, and under this Lease, to another corporation, whether by written instrument or by operation of law, if such other corporation acquires all or substantially all the property of Lessor through purchase, liquidation, merger or consolidation, and assumes in writing to Lessee all obligations of Lessor hereunder, provided that no such purchase shall relieve Lessor of liability hereunder.

(c) Lessor will keep the Cars free of all liens and encumbrances (except a lien given to an assignee or mortgagee for financing purposes only as herein authorized), will not sell, assign, lease or otherwise dispose of the same (except as herein authorized), and will do nothing to disturb Lessee's full right of possession and enjoyment and the exercise of all of Lessee's rights with respect thereto as provided by this Lease.

(d) Lessor warrants that the Cars will be free from any defect in title, lien or encumbrance which would affect or interfere with the continuous and uninterrupted possession and enjoyment of the Cars by Lessee during the Term of this Lease, and Lessor will indemnify, protect and defend Lessee against all liabilities, damages and expenses arising out of any such interference.

(e) Lessor will indemnify, protect and defend Lessee against all liabilities and expenses that may arise out of charges of infringement of any patent alleged to cover any article, material or design employed in the manufacture of or incorporated into the Cars. Lessor will, at its own cost and expense, settle or defend all suits or proceedings arising out of, and will pay any costs and damages awarded against it or Lessee resulting from, charges of infringement of any such patent. In case an infringement

is found to exist by a court of competent jurisdiction and as a result thereof Lessee is enjoined from using the Cars, Lessor will, at its own cost and expense, either (i) procure for Lessee the right, including appropriate judicial sanction, to continue to use the Cars or (ii) modify the infringing Cars so that they do not infringe but remain suitable for the service contemplated by this Lease. Lessee will give prompt notice to Lessor of any claim known to Lessee from which liability may be charged against Lessor hereunder.

(f) Lessor will give Lessee full opportunity to inspect the Cars at all reasonable times during construction thereof at Lessor's manufacturing plant. After Lessor completes the construction of the first (sample) Car, Lessee will arrange for final inspection of such Car at Lessor's manufacturing plant without delay after the completion thereof, and Lessee's agent or representative will execute and deliver to Lessor the usual form of inspection certificate covering such Car if found to be completed in accordance with the Specifications, and such certificate shall be final and conclusive evidence that such Car conforms in workmanship, material, design and construction and in all other respects to the Specifications. However, the giving of such certificate with respect to the first (sample) Car shall not preclude Lessee from asserting any

claim against Lessor for breach of the warranties set forth in the first paragraph of Section 5(a) hereof. Lessor shall construct all other Cars to conform in workmanship, material, design and construction to such certificated Car.

11. The time of payment of rentals and maintenance charges is of the essence of this Lease. If (a) Lessee shall make default in the payment of rentals or maintenance charges for the Cars at the time when same become due and payable, or (b) Lessee shall fail to carry out and perform any other of its obligations hereunder and such default shall continue for ten (10) days after written notice of same by Lessor to Lessee, or (c) there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under any bankruptcy law or there shall be a trustee or receiver appointed of any part of Lessee's property or Lessee becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, then and in any of said events Lessor, at its election, (i) may terminate this Lease and repossess itself of the Cars, or (ii) may repossess itself of the Cars and re-let the same or any part thereof to others for such rent and upon such terms as may be reasonable under the circumstances, and if a sufficient sum shall not be thus realized after paying all expenses of retaking and re-letting the Cars and

collecting the rentals thereof to satisfy the rentals and charges herein reserved, Lessee will satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such retaking of the Cars. The aforesaid remedies of Lessor shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity.

12. If Lessor fails to carry out and perform any of its obligations hereunder and such default shall continue for ten (10) days after written notice of same by Lessee to Lessor, then Lessee, at its election, (a) may terminate this Lease and purchase all Cars leased hereunder upon payment of the amount which would be payable as destroyed value under the rules of the American Association of Railroads then in effect had each such Car been destroyed by an Association member at the time of such purchase, or (b) may terminate this Lease and purchase all Cars leased hereunder upon payment of an amount equal to the present value of the total unpaid rental for each such Car which would otherwise accrue during the Term of this Lease plus a residual value of \$1,500.00 for such Car; to determine the present value of the unpaid rental, the rent in respect of each monthly period shall be discounted on a 3% per annum basis compounded monthly from the rental payment due date for each such monthly period back to the date when payment is made pursuant to this clause (b), or (c) if Lessee is not deprived of the

continuous possession and use of the Cars, withhold rental and maintenance payments hereunder until such default is cured at which time Lessee shall pay all rental and maintenance accrued during the period of default, or if Lessee is deprived of the continuous possession and use of the Cars, the rental and maintenance payments hereunder shall abate during the period of such default and until such time as continuous possession and use of the Cars is restored to Lessee. If there shall be filed by or against Lessor a petition in bankruptcy or for reorganization under any bankruptcy law, or if there shall be a trustee or receiver appointed of any part of Lessor's property, or if Lessor becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, then and in any of said events Lessee, at its election, (i) may terminate this Lease or (ii) if a trustee or receiver has been appointed and accepts this Lease, may continue rental and maintenance payments until the expiration of the Term of the Lease for each Car. Each Car shall, upon full payment of the purchase price thereof under clauses (a) or (b) above, become Lessee's property without further payment or cost, and in such event, Lessor shall execute or cause to be executed such assignment or other documents as may be required to transfer all its right, title and interest therein to Lessee. The aforesaid remedies of Lessee shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity.

13. Lessee shall have an option, exercisable on not less than six (6) months' written notice to Lessor prior to the expiration

of the original Term hereof, to extend the Term of the Lease as to some or all of the Cars for a period not to exceed six (6) years, subject to the following:

(a) The monthly rental during the term of any extension shall be \$126.29 per Car, payable at Lessor's office in Greenville, Pennsylvania, in advance on the first day of each month during the term of such extension, and shall be prorated for less than whole months.

(b) Lessor may notify Lessee in writing not less than five (5) months prior to the expiration of the original Term hereof that it will not during any extension continue to maintain the Cars as provided in Section 5 hereof, and if Lessee elects to extend the term after receiving such notice, Lessee shall thereafter be solely responsible for the care and maintenance of the Cars during such extension.

(c) During any extension, Lessor will not be obligated to rebuild or replace Cars destroyed or permanently unfit for service, but this Lease shall terminate as to any such Cars on the date they are destroyed or removed from service.

(d) Lessee may terminate this Lease as to some or all of the Cars at any time during any extension by giving Lessor thirty (30) days' written notice of its intention to do so.

At the end of the original Term of this Lease or any extension thereof, Lessee will return the Cars to Lessor at the point on lines of The Baltimore and Ohio Railroad Company nearest to Greenville, Pennsylvania.

14. (a) Lessee will pay or cause to be paid all federal, state and local taxes, assessments and other governmental charges payable by Lessee or levied or assessed against Lessee in respect of the Cars, or the interest of Lessee therein, or the use or operation thereof, or the earnings of Lessee arising therefrom.

(b) Lessee will pay or cause to be paid or reimburse Lessor for all federal, state and local sales and use taxes levied or imposed upon Lessor and measured by any sale, use, operation, payment, shipment, delivery or transfer of title of the Cars under the terms of this Lease.

(c) Lessee will pay to Lessor an amount equal to the aggregate of all federal, state and local ad valorem property taxes of a type measured by the value of the Cars or the mileage thereon or the earnings therefrom, which would be payable by Lessor with respect to the Cars without regard to any other railroad equipment at the time owned by Lessor. It shall be the responsibility of Lessor to pay all such taxes and to file all governmental returns

and reports relating thereto. Lessor will annually certify to Lessee its computations of the amount payable by Lessee to Lessor hereunder, and Lessee will within thirty (30) days thereafter pay to Lessor such amount.

15. At any time during the Term of this Lease, Lessee will, if requested by Lessor, execute and acknowledge a Supplement to or Memorandum of this Lease, and any other and further instruments as Lessor may request, each to be solely for the purpose of confirming the lease of the Cars and the date of commencement of the Term hereof, and containing other appropriate terms and provisions not inconsistent with this Lease, in form for filing and recording with the Interstate Commerce Commission or any other governmental agency having jurisdiction, in order to publish notice of and to protect the title of Lessor to the Cars and its rights under this Lease.

16. Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail first class postage prepaid or delivered to a telegraph office charges prepaid, addressed as follows:

If to Lessor:

Greenlease Company
A Division of Greenville Steel Car Company
Greenville, Pennsylvania 16125

If to Lessee:

Island Creek Coal Company
Buckley Building
Cleveland, Ohio 44115

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

17. This Lease and all rights and obligations hereunder shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Pennsylvania, except that the parties shall be entitled to all rights conferred by Section 20c of Part I of the Interstate Commerce Act, as amended. Subject to the limitations on assignment contained herein, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

WITNESS the due execution hereof the day and year first set forth above.

Attest:

GREENLEASE COMPANY, A DIVISION
OF GREENVILLE STEEL CAR COMPANY
(Lessor)

James C. Brouse
Secretary

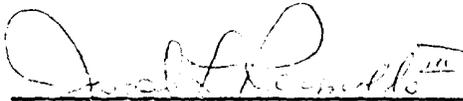
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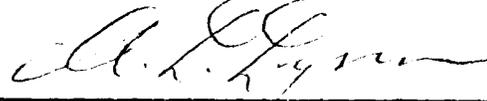
William H. H. H.
President

[CORPORATE SEAL]

Attest:

ISLAND CREEK COAL COMPANY (Lessee)


Assistant Secretary

By 
Executive Vice-President

[CORPORATE SEAL]

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 7th day of October, 19 68, before me personally appeared EDWIN HODGE, JR., to me personally known, who being by me duly sworn, says that he is the President of Greenlease Company, A Division of Greenville Steel Car Company, a Pennsylvania corporation, 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.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Nancy R. Lewis
Notary Public

[NOTARIAL SEAL]

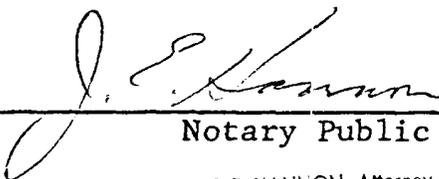
NANCY R. LEWIS, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires January 29, 1972

My Commission Expires:

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 1st day of November, 1965, before me personally appeared Al Lynn, to me personally known, who being by me duly sworn, says that he is the Executive Vice President of Island Creek Coal Company, a Delaware corporation, 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.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

J. E. HANNON, Attorney-at-Law
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 Ohio Revised Code

[NOTARIAL SEAL]

My Commission Expires:

