

6812

RECORDATION NO. _____ Filed & Recorded

NOV 27 1972 - 12 00 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT, dated November 27, 1972, between XTRA, INC., a Massachusetts corporation (the "*Company*"), having its principal office at 150 Causeway Street, Boston, Massachusetts, party of the first part, and TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA (the "*Agent*"), having its principal office at 730 Third Avenue, New York, New York, as agent for itself and other holders of the Notes, party of the second part,

WHEREAS, the Company has determined to make and issue \$8,000,000 principal amount of its 8 $\frac{3}{4}$ % Secured Notes due January 31, 1988 (the "*Notes*") pursuant to a Purchase Agreement between the Company and the Agent dated August 1, 1972 (the "*Purchase Agreement*") and to secure the prompt payment of the principal of and interest and premium, if any, on all the Notes, and the due performance of the provisions herein and in the Notes and the Purchase Agreement contained by executing and delivering to the Agent, as agent, a Security Agreement in the terms of this instrument, creating the security interest hereinafter described, for the pro-rata benefit of the holders of the Notes, according to the principal and interest then unpaid in respect of the Notes, to secure the payment thereof and the due performance of the covenants, agreements and conditions in the Notes and the Purchase Agreement contained; and

WHEREAS, the execution of this instrument has been duly authorized by the Company and all things necessary to constitute this instrument a valid security instrument and pledge have been done and performed;

NOW, THEREFORE, THIS SECURITY AGREEMENT WITNESSETH: That to secure the payment of the principal of and interest and premium, if any, on the Notes, according to their tenor and effect, and the due performance of the covenants, agreements and conditions in the Notes and the Purchase Agreement contained, the Company, party of the first part, in consideration of the premises and of the purchase and acceptance of the Notes by the Agent, and of the sum of One Dollar lawful money of the United States of America to it duly paid by the Agent at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged,

has executed and delivered these presents and has granted, sold, warranted, conveyed, assigned, transferred, pledged, set over and created a security interest in, and by these presents does hereby grant, sell, warrant, convey, assign, transfer, pledge, and set over unto the Agent, party of the second part, and to its successors and their assigns forever, as agent as aforesaid, and hereby creates a security interest in the Agent, as such agent, in the following property (herein collectively called the "*Security*"):

I

Fifty 1500 h.p. diesel electric yard switching locomotives (model SW-1500), railroad road nos. 9510 through 9559 (such locomotives and any substitutions therefor being herein called the "*Equipment*") and all proceeds (the "*Proceeds*") of the conversion, voluntary or involuntary, of any Equipment into cash or liquidated claims, including without limitation proceeds of insurance and condemnation awards.

II

All of the estate, right, title and interest of the Company as lessor under that certain lease dated November 8, 1971 by and between the Company and George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, as trustees of the property of Penn Central Transportation Company, Debtor, and the successors of said trustees, as lessees, (hereinafter called "*Tenant*"; said lease, as the same may be amended or supplemented in a manner permitted thereby, being herein called the "*Lease*"), together with all rights, powers, privileges, options and other benefits of the Company under the Lease, including without limitation the immediate and continuing right to receive and collect (and to apply the same to the payment of the principal of and interest and premium, if any, on the Notes) all rents, income, revenues, issues and profits now or hereafter payable or receivable under the Lease or pursuant to any of the provisions thereof, and all insurance proceeds, condemnation awards, moneys and security now or hereafter payable or receivable under the Lease or pursuant to any of the provisions thereof, whether payable as rents or as the purchase price for any property or otherwise and whether payable prior or subsequent to the maturity date of the Notes, and the right to execute and deliver, as agent and attorney-in-fact of the Company, an acceptance or rejection of any offer by the Tenant to purchase any property or part thereof and appropriate instruments necessary for the purchase and transfer, assignment or conveyance of any property upon the purchase

thereof pursuant to the Lease and to perform all other necessary or appropriate acts as said agent and attorney-in-fact with respect to such purchase and conveyance, and to make all waivers and agreements, to give all notices, consents and releases, to take such action upon the happening of a default under the Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of the Lease or by law, and to do any and all other things whatever which the Company is or may become entitled to do under the Lease.

III

Any and all property, securities, notes and other evidences of indebtedness and cash that may from time to time hereafter by delivery to the Agent for the purpose hereof, or otherwise, be in any wise subjected to the lien hereof or be expressly granted, sold, warranted, conveyed, assigned, transferred, pledged or set over by the Company or any other person to and with the Agent as and for additional security under this Security Agreement.

To HAVE AND TO HOLD the Security, unto the Agent, as agent for the respective holders from time to time of the Notes, or any thereof, and unto its successors and assigns forever.

The Agent is acting hereunder solely to hold and to enforce the security interest hereby created for the equal pro rata benefit of each and every person who may be or become the holders of the Notes, without preference, priority or distinction.

THIS SECURITY AGREEMENT FURTHER WITNESSETH that the Company has agreed and covenanted and hereby does agree and covenant with the Agent and its successors and assigns as agent for the respective holders from time to time of the Notes or any thereof, as follows:

§ 1. COVENANTS.

§ 1.01. *Warranty of Title.* The Company represents and warrants that it has good and marketable title free of liens to the property presently subjected to the lien of this Security Agreement, that it has good right and lawful authority to convey, assign and pledge the same as provided in and by this Security Agreement and that the Company will defend the title to the Security and every part thereof to the Agent, its successors as agent and its and their assigns forever, for

the benefit of the holders of the Notes, against the claims and demands of all persons whatsoever.

§ 1.02. *Situs of Properties.* The Company hereby represents that its chief place of business is within the State of Massachusetts and that the Security is in the possession of the Tenant.

§ 1.03. *To Assemble Security.* The Agent, upon the written request of the holders of a majority in principal amount of the Notes then outstanding, may require the Company to assemble the Security and make it available to the Agent at a place to be designated by the Agent which is reasonably convenient to the Company and the Agent.

§ 1.04. *Recording, Etc.* The Company will cause this Security Agreement and all instruments supplemental hereto or in respect hereof, to be promptly recorded or filed and to be kept recorded or filed and entered in such manner and in such places as may be required by law in order to make effective the security interest of this Security Agreement and to maintain the security interest hereof and will pay all taxes and fees incidental thereto.

§ 2. SECURITY.

§ 2.01. *Possession and Use of Security.* Unless an Event of Default, as defined in the Purchase Agreement, shall have happened and be continuing, the Company shall be entitled to possess, manage, operate, use and enjoy and to remain in the actual and undisturbed possession of the Security and to receive, take and use the rents, income and profit thereof, except the Proceeds. Upon the receipt of any Proceeds, the Company shall hold such Proceeds in trust for the Agent and shall notify the Agent of such receipt, and the Agent may, at its option, within 30 days of such notice, direct the Company to apply such Proceeds to the prepayment, pursuant to the Purchase Agreement, of an equal principal amount of Notes. If the Agent does not make such direction, the Company may add such Proceeds to its general funds.

§ 2.02. *Power of Sale following Event of Default; Suits for Enforcement.* In case one or more of the Events of Default shall happen and shall not have been remedied, the Agent, by agents or attorneys, with or without entry, but only upon the written request of the holders of a majority in principal amount of the Notes then outstanding, shall

(a) to the extent permitted by applicable law sell to the highest bidder all and singular the Security, such sale to be made at public auction, or at private sale at such place or places and at such time or times and upon such terms as the Agent may fix in compliance with law;

(b) collect and receive all earnings, income, rents, issues and profits payable to the Company pursuant to the Lease;

(c) proceed to protect and enforce its rights and the rights of the holders of the Notes under this Security Agreement, by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for the enforcement of this Security Agreement, or for the enforcement of any other legal or equitable right, as such holders shall deem most effectual to enforce any of the rights hereunder.

In case of any sale of the Security, or any part thereof, following an Event of Default, whether made under the power of sale herein granted or by virtue of judicial proceedings, the principal of and accrued interest on all the Notes then outstanding, if not already due, shall immediately become due and payable, anything in the Notes or in this Security Agreement to the contrary notwithstanding.

The purchase money, proceeds and avails of any such sale shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to the Agent, its agents, attorneys and counsel, and of all charges, expenses and liabilities incurred (and all advances made) by the Agent in executing any power hereunder;

Second: To the payment of the whole amount then due and unpaid upon the Notes then outstanding, for principal, the premium, if any, and interest, with accrued interest on the principal, and with interest (so far as may be lawful) on the overdue installments of interest at the rate of nine and three-quarters per cent. (9¾%) per annum; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then to the payment of such principal and interest, without pre-

ference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably accordingly to the aggregate so due for such principal and the accrued and unpaid interest, at the date fixed by the Agent for the distribution of such moneys; and

Third: The surplus, if any, shall be paid to the Company, its successors, or assigns, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

§ 2.03. *Directions by Noteholders.* Anything herein contained to the contrary notwithstanding, the holders of at least a majority in principal amount of the Notes at the time outstanding (reference being made to § 3.02) shall have the right, at any time, by instrument or instruments in writing executed and delivered to the Agent, to direct the method, time and place of conducting all proceedings to be taken hereunder; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of this Security Agreement, and the Agent shall be under no obligation of any kind to act hereunder unless such holders shall have delivered a written request to the Agent to exercise the powers hereinbefore granted or to institute such action, suit or proceedings, and said holders shall have tendered to the Agent reasonable security or indemnity against the costs, expenses and liabilities to be incurred by compliance with such request.

All rights of holders of Notes hereunder are subject to the express condition that any instruction or demand hereunder and any action taken by the Agent on the basis thereof shall be binding on all holders of Notes if such instruction or demand is given or made by the holder or holders of at least a majority in principal amount of the Notes at the time outstanding.

§ 2.04. *No Limitation on Suits on Notes; Remedies Cumulative; Delay not to Impair Remedies.* Nothing in this Security Agreement or in the Notes contained shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay when due and at the place therein expressed the principal of and interest and premium, if any, on the Notes to the respective holders of the Notes, or affect or impair the right of action, which is also absolute and unconditional, of such holders to enforce such payment.

No remedy herein conferred upon or reserved to the Agent or to the holders of the Notes is intended to be exclusive of any other remedy

but each and every such remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay of the Agent or of any holder of Notes in exercising and no omission to exercise any right or power arising upon the happening of any Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or an acquiescence therein.

§ 2.05. *Discharge.* Upon payment in full of the Notes, the security interest created by this Security Agreement shall terminate and the Company shall be entitled to the return of such of the Security as may then be held by the Agent hereunder. The Agent may rely conclusively on a written statement of the holders of a majority in principal amount of the Notes as to the payment of the Notes.

§ 3. THE AGENT.

§ 3.01. *The Agent.* The Agent agrees to act in accordance herewith and shall have no duties hereunder except as expressly set forth herein. The Agent may consult with legal counsel and the opinion of such counsel shall be full and complete authorization and protection as to any action taken or omitted by it in good faith in accordance with such opinion. Whenever the Agent shall deem it necessary or desirable that any fact or matter be proved or established to it in connection with its functions hereunder, such fact or matter may be deemed to be conclusively proved or established by a statement of the Company or the holders of a majority in principal amount of the Notes then outstanding and such statement shall be full warrant to the Agent for any action taken or omitted to be taken in good faith hereunder; but the Agent in its discretion may require other evidence of such fact or matter. The Agent shall not be liable hereunder except for its own gross negligence or wilful misconduct. At any time on thirty days prior notice to the other parties the Agent may resign its duties hereunder or may be replaced hereunder by the holders of a majority in principal amount of the Notes then outstanding and in any such event such holders shall appoint a successor Agent hereunder. Upon the acceptance of such appointment by any successor the resigning or replaced Agent shall be succeeded hereunder by the successor which shall become vested with and shall succeed to all of the rights of the Agent hereunder. The resigning or replaced Agent shall do whatever may be necessary or desirable to confirm such rights in its successor.

The Agent shall not be personally obligated in respect to the Notes, by reason of the execution and delivery of this Security Agreement or otherwise.

§ 3.02. *Agent May Hold Notes.* The Agent may acquire and hold Notes and otherwise deal with the Company, or with any person having relations with the Company, in the same manner and to the same extent and with like effect as though it were not such Agent. Whenever it is provided herein that the Agent shall act upon the direction of a majority in principal amount of the Notes then outstanding, the written direction of the Agent, as the holder of Notes, shall be of the same effect as the written direction of any other holder of the Notes and if the Agent is itself the holder of a majority in principal amount of the Notes at the time outstanding its own direction shall constitute full authority to the Agent as to the method, time and place for the taking or continuing of proceedings to be taken hereunder, subject, however, to the provisions of § 2.03.

§ 3.03. *Compensation.* The Company covenants to pay to the Agent reasonable compensation for all services rendered hereunder, and to pay its reasonable advances, expenses, and counsel fees incurred in and about the performance of powers and duties hereunder, and the costs and expenses of defending against any liability in the premises of any character whatsoever, except actions against the Agent in which it shall be adjudged liable for gross negligence or wilful misconduct.

§ 4. MISCELLANEOUS.

§ 4.01. *Counterparts.* This Security Agreement may be executed in any number of counterparts any one of which may be treated for all purposes as one original, and all counterparts shall constitute but one and the same instrument.

§ 4.02. *Notices.* Any notice or other communication given in respect of any matter relating to this Security Agreement shall be in writing and shall be delivered personally or by telegraph or be sent by United States certified mail, postage prepaid, if to any holder of Notes, to the address of such holder specified in writing by such holder and, if to the Company or the Agent, to the respective addresses specified below (or to such other address as such party may hereafter designate by notice in writing) :

Company: XTRA, Inc.
150 Causeway Street
Boston, Massachusetts 02114

Agent: Teachers Insurance and Annuity Association of America
730 Third Avenue
New York, New York 10017
Attention: Securities Division

Any notice or other communication given by mail shall be deemed to have been completed when deposited in a United States post office and any notice or other communication given by telegraph shall be deemed to be completed when received.

IN WITNESS WHEREOF, XTRA, Inc., party of the first part, has caused this Security Agreement to be signed in its corporate name by its Chairman or Vice Chairman and its corporate seal to be hereunto affixed and attested by its Clerk or an Assistant Clerk and TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, party of the second part, has caused this Security Agreement to be signed in its corporate name by INVESTMENT OFFICER and VICE PRESIDENT and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day and year first above written.

XTRA, Inc.

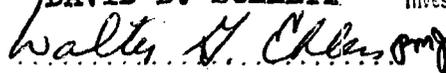
By 
Chairman

Attest:


Clerk

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA

By 
DAVID B. BULLETT Investment Officer

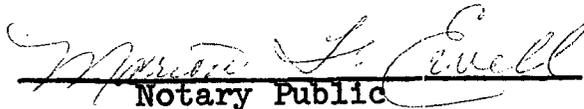
By 
WALTER G. EHLERS VICE PRESIDENT

Attest:



STATE OF MASSACHUSETTS)
COUNTY OF SUFFOLK)

On this 22nd day of November, 1972, before me personally appeared John F. Prendiville, to me personally known, who being by me duly sworn, says that he is the Chairman of Xtra, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Seal]

My Commission expires September 1, 1978

STATE OF NEW YORK

COUNTY OF NEW YORK

On this 22nd day of November, 1972, before me personally appeared Walter G. Ehlers, to me personally known, and being by me duly sworn, says that he is a Vice President of Teachers Insurance and Annuity Association of America, 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 Trustees and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Michelle O'Connor

Notary Public

MICHELLE O'CONNOR
NOTARY PUBLIC, State of New York
No. 41-2937525
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1973

[Seal]