

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT AND LEASE dated as of the 1st day of July, 1972, by and between THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, hereinafter called "P&LE", and the CLINCHFIELD RAILROAD COMPANY, hereinafter called "Clinchfield".

W I T N E S S E T H:

1. Lease of Cars. P&LE agrees to lease to Clinchfield and Clinchfield agrees and does hereby lease from P&LE 364 steel hopper cars (any one of said cars hereinafter referred to as "Car" and more than one or all of which are hereinafter referred to as "Cars"), bearing numbers as set forth on Exhibit A, attached hereto and made a part hereof. The lease shall become effective as to any Car immediately upon its acceptance pursuant to paragraph 3 hereof.

2. Delivery of Cars. P&LE shall deliver the Cars as promptly as is reasonably possible from time to time in groups of no less than ten. Delivery of any Car to Clinchfield shall be effective upon the date when such Car has been accepted in interchange by a connecting railroad at such point as is designated by Clinchfield.

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INTERSTATE COMMERCE COMMISSION

3. Condition of Cars - Acceptance.- All Cars delivered hereunder shall be in satisfactory condition for movement in normal interchange service and shall be transported without cost to P&LE to such point on the line of the Clinchfield as Clinchfield shall designate. It is understood that Clinchfield inspected all of the Cars on the lines of P&LE prior to the date of this Agreement and Lease and that in accordance with such inspection, Clinchfield agrees to accept the same as to condition upon delivery as provided hereunder except that Clinchfield shall not be responsible for damage which may have occurred to any Car subsequent to said inspection but prior to delivery.

4. Use and Possession. During the term of this lease, so long as Clinchfield is not in default of the provisions hereunder, Clinchfield shall be entitled to possession of each Car from the date the lease becomes effective as to such Car, and the same may be used on its own property or lines and upon the lines of any other railroad in normal interchange service; provided, however, that the Cars shall be used only in the United States of America or Canada and for the uses for which they were designed.

5. Term. This lease shall be for an initial term which shall commence on the date of delivery by P&LE of the first Car as provided in paragraph 2 hereof and shall terminate

on June 30, 1973. If Clinchfield has fully performed all of its obligations under this Agreement and Lease, Clinchfield may, by written notice to P&LE given no later than thirty (30) days prior to the conclusion of the preceding term, renew this lease for up to but not exceeding three (3) additional terms of one (1) year each. During any additional term or terms all of the provisions and conditions of this Agreement and Lease shall continue in effect.

6. Rental. As rental for the use of each Car, Clinchfield shall pay P&LE for each day of such use from the date of delivery thereof in accordance with the provisions of paragraph 2 hereof, an amount equal to the prevailing Daily Time Charge prescribed by the Interstate Commerce Commission for railroad freight cars of the same value and age as the Cars leased hereunder. Clinchfield shall make monthly payments of the aforesaid rental to P&LE within fifteen (15) days from the end of each month. In the event that during the term of this Agreement and Lease the prescribed Daily Time Charge applicable to the Cars leased hereunder shall be revised in any respect, the rental hereunder shall be increased or decreased accordingly as of the effective date of such revision.

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

8. Maintenance. During the continuance of this lease, Clinchfield shall promptly and with due diligence keep and maintain the Cars in good working order and repair, and make all replacements and repairs to the Cars or their equipment and appliances to the extent required by presently effective Interchange Rules of the Association of American Railroads and laws and regulations of any Federal, State or governmental body or department. In the event that any modifications are made in said Interchange Rules, laws or regulations during the term of this lease which would require expenditures exceeding ten percent (10%) of the value of any Car or Cars, Clinchfield shall have the right, upon written notice thereof, to terminate this Agreement and Lease with respect to any or all of the Cars affected by said modifications upon redelivery thereof in accordance with paragraph 16 hereof. Except as provided in the preceding sentence and in paragraph 15 hereof with respect to the loss or destruction of Cars, all of the foregoing maintenance and replacements shall be provided at the sole cost and expense of Clinchfield and without any reduction or abatement in rent or other loss, cost or expense to P&LE.

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

10. Taxes. Clinchfield shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes, levied or assessed during the continuance of this lease upon the Cars or the interest of Clinchfield therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against P&LE on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of P&LE therefrom, Clinchfield will promptly pay or reimburse P&LE for the same except that Clinchfield shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings protest the validity or amount of such levy or assessment.

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

12. Identification of Cars. At all times during the continuance of this lease, Clinchfield will cause each Car

to bear the number assigned to it and appearing thereon as of the date of its delivery. Upon acceptance of any Car, Clinchfield shall have the right, during the continuance of this lease, to replace the P&LE markings thereon with Clinchfield markings. With respect to each Car upon which reporting markings are so changed, Clinchfield shall plainly, distinctly and conspicuously stencil on each side of such Cars, in letters not less than three-quarter inch (3/4") in height, the following legend:

"THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, LESSOR"

Upon termination of this lease for any reason, Clinchfield shall restore P&LE markings to all Cars prior to their redelivery to P&LE. All changes in markings made upon the Cars as provided herein shall be performed at the sole cost and expense of Clinchfield.

13. Maintenance of Trust Information. On pages one through seven of Exhibit A are listed a total of 239 Cars which are included in groups of equipment acquired under the terms of various equipment trust agreements and leases. Clinchfield shall maintain on each of such Cars the assigned trust numbers and metal plates, indicating ownership by a trustee bank, according to the term of any applicable equipment trust agreements and leases.

14. Indemnity. Clinchfield hereby agrees to indemnify, defend and save P&LE harmless from and against all expenses, damages, claims, actions or liabilities based upon personal injuries, death or property damage arising out of or in connection with the condition, operation or use of all or any of the Cars from and after their delivery to Clinchfield until their redelivery to P&LE, whether or not due to the negligence, in whole or in part, of P&LE, Clinchfield, or of P&LE and Clinchfield.

15. Loss or Destruction of Cars. In the event that any Car shall be lost, destroyed or irreparably damaged beyond economic repair from any cause whatsoever at any time during the term of this lease, Clinchfield shall be relieved of its obligation to pay rentals in respect of such Car from the date of such occurrence. Clinchfield shall forthwith advise P&LE of such occurrences and shall make prompt settlement for each such Car by payment in cash to P&LE of a sum calculated, as of the date of said loss, destruction or damage, in accordance with the prevailing rules applicable thereto in the Field Manual of the Interchange Rules prescribed by the Association of American Railroads, plus any unpaid rental and charges as herein provided to such date. Upon payment of such settlement this Agreement and Lease shall terminate as to such Car as of said date and Clinchfield shall be entitled to salvage, if any.

16. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to paragraph 15 hereinabove), Clinchfield shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of the same to be made to P&LE at the nearest point or points on the lines of P&LE where cars are normally interchanged with connecting railroads. Clinchfield shall return all Cars to P&LE in as good condition (ordinary wear and tear excepted) as when the same were accepted by Clinchfield and in furtherance of this obligation, Clinchfield and P&LE shall perform a joint inspection of all Cars prior to redelivery, each party to assume the expense of its own inspection. Such repairs as may be determined by said joint inspection to be required to place the Cars in as good condition (ordinary wear and tear excepted) as when accepted under this lease will be performed by Clinchfield at its sole expense prior to redelivery to P&LE. Until such time as each Car has been redelivered to P&LE, Clinchfield shall continue to pay rental at the rate being paid immediately prior to termination of this lease and Clinchfield shall make all other payments and perform all obligations and requirements of Clinchfield under all provisions of this lease as though such termination had not occurred.

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

- (a) Non-payment by Clinchfield within ten (10) days after written notice to Clinchfield from P&LE of default in payment of rental or any other sum required to be paid hereunder by Clinchfield;
- (b) Clinchfield shall default or fail for a period of thirty (30) days in the observance or performance of any agreement required to be observed or performed on its part under this Agreement and Lease, except as referred to in the foregoing clause (a), and said default or failure shall continue for a period of thirty (30) days after the giving of written notice thereof by P&LE;
- (c) A decree or order shall be entered by a court having jurisdiction in the premises adjudging Clinchfield a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under the Federal Bankruptcy Act or any other applicable Federal or State law;
- (d) The institution by Clinchfield of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to

the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (c), or the making by Clinchfield of a general assignment for the benefit of creditors.

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

19. Recording. Clinchfield, immediately upon execution and without expense to P&LE, shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act.

20. Sublease and Assignment. Clinchfield shall not assign or sublease this lease or any of the Cars without the prior written consent of P&LE. P&LE may assign and reassign all or part of its rights under this lease, including the rent to be paid, without the consent of Clinchfield if said assignment or reassignment does not diminish, interfere or prejudice

the rights of Clinchfield under this lease, and P&LE shall give to Clinchfield notice of any such assignment or reassignment.

21. Successors and Assigns. The covenants, conditions and agreements contained in this Agreement and Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in paragraph 20 hereof).

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

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

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

WITNESS:

J. H. Kusembo

By

H. S. Allen, Jr.
President

CLINCHFIELD RAILROAD COMPANY

WITNESS:

Beverly N. Lane

By

J. D. Moore, Jr.
General Manager

STATE OF TENNESSEE)
)
COUNTY OF UNICOI) ss:

On this 4th day of December, 1972, before me, the undersigned Notary Public, personally appeared T. D. MOORE, JR., who, being by me duly sworn, acknowledged that he is the General Manager of Clinchfield Railroad Company; that he executed the foregoing instrument for and on behalf of said company and that the execution of the foregoing instrument was the free act and deed of said company.



Notary Public

My commission expires:
by Commission Expires
June 23, 1976

PITTSBURGH AND LAKE ERIE RAILROAD THIRD
EQUIPMENT TRUST OF 1957, DATED AUGUST 15, 1957

72024

PITTSBURGH AND LAKE ERIE RAILROAD FOURTH
EQUIPMENT TRUST OF 1957, DATED NOVEMBER 1, 1957

70029	70198
70032	70200
70035	70217
70062	70219
70096	70221
70103	70248
70107	70252
70143	70254
70154	70260
70168	70280
70188	70334
70189	70335
70192	70339
70193	70357
70194	70364
70197	

PITTSBURGH AND LAKE ERIE RAILROAD EQUIPMENT
TRUST OF 1958, DATED FEBRUARY 1, 1958

70378	70604
70395	70622
70408	70684
70442	70697
70464	70725
70471	70727
70477	70733
70478	70748
70495	70769
70498	70782
70529	
70534	
70535	
70548	
70559	

PITTSBURGH AND LAKE ERIE RAILROAD SECOND
EQUIPMENT TRUST OF 1958, DATED MAY 15, 1958

70832	71149
70838	71150
70867	71151
70928	71182
71008	71203
71011	71252
71014	71276
71039	71279
71091	71315
71097	71320
71109	71365
71129	71376
71147	71395

PITTSBURGH AND LAKE ERIE RAILROAD THIRD
EQUIPMENT TRUST OF 1958, DATED OCTOBER 15, 1958

71429	71707
71467	71717
71485	71725
71490	71744
71523	71763
71544	71774
71573	71794
71587	71832
71592	71867
71599	
71609	
71654	71875
71661	71887
71666	71893
71672	71929
	71943
71685	71950
71687	71964
71688	72076
71706	

PITTSBURGH AND LAKE ERIE RAILROAD EQUIPMENT
TRUST OF 1959, DATED MAY 1, 1959

72115	72330
72193	72348
72233	72375
72234	72378
72237	72390
72240	72406
	72407
72277	72421
72288	72425
72311	72426
	72461

PITTSBURGH AND LAKE ERIE RAILROAD SECOND
EQUIPMENT TRUST OF 1959, DATED AS OF SEPTEMBER 15, 1959

72533	72771
72571	72790
72572	72799
72578	72807
72597	72810
72602	72842
72654 ✓	72874
72661	72886
72678	72920
72679	72928
72681	72953
72728	72985
72729	73522
72741	73532
72744	

PITTSBURGH AND LAKE ERIE RAILROAD EQUIPMENT
TRUST OF 1960, DATED AS OF OCTOBER 1, 1960

	73424		
73213	73427	73753	73999
73243	73433	73761	74003
73245	73439	73778	74011
73293	73441	73793	74042
73301	73442	73801	
73312	73447	73815	
73323	73455	73825	
73324	73459	73842	
73325	73511	73871	
73328	73553	73876	
73347	73568	73891	
73368	73634	73897	
73390	73637	73904	
73392	73650	73906	
	73659		
73395	73677	73908	
73399	73698	73913	
73400	73700	73915	
73402	73705	73922	
73406	73717	73935	
73412	73718	73946	
73421	73724	73968	
	73733	73976	

CARS NOT UNDER TRUSTS

68030	68467	68880	69313	
68035	68470	68881	69327	69748
68040	68474	68899 ^{HE-01} 69899 ^{201.1}	69349	69793
68054	68479	68918	69355	69804
68056	68512	68963	69378	69807
68072	68530	68988	69379	69826
68111	68583	68997	69380	69844
68114	68601	68998	69395	69851
68121	68607	69056	69461	69882
68128	68633	69061	69465	69896
68130	68635	69084	69504	69931
68136	68652	69126	69532	69934
68149	68659	69138	69535	69945
68171	68666	69192	69542	69970
68196	68683	69204	69550	69997
68209	68725	69215	69552 69559	73004
68257	68725	69216	69560	73026
68295	68729	69240	69566	73035
68305	68746 68747	69245	69568	73104
68321	68769	69249	69592	73115
68335	68795	69275	69599	73120
68347	68803	69283	69602	73187
68370	68815	69286		73189
68398	68849	69301	69656	
68427	68872	69308	69660	
68433	68877	69309		