

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

600 GRANT STREET

P. O. BOX 536

PITTSBURGH, PA. 15230

December 19, 1978

CERTIFIED MAIL

RECORDATION NO. 6856-A Filed 1425

No. 8-360A034

Date DEC 26 1978

Fee \$10.00

DEC 26 1978 - 10 40 AM

Mr. H. G. Homme, Jr.
Secretary

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D.C. 20423

ICC Washington, D. C.

Re: Recordation of Documents

Dear Mr. Homme:

Pursuant to the provisions of 49 USC §11303 (formerly §20c of the Act), enclosed herewith for recordation by the Commission is an original and two executed counterparts of the following agreement:

Railroad Equipment Improvement Agreement, dated as of May 1, 1978 between Mellon National Leasing Corporation (owner) and Elgin, Joliet and Eastern Railway Company (EJ&E).

The above referenced instrument constitutes an amendment to an Equipment Lease Agreement, dated as of January 2, 1973, as amended, between Mellon National Leasing Corporation and Elgin, Joliet and Eastern Railway Company which was recorded pursuant to §20c on January 15, 1973 and assigned Recordation No. 6856.

The names and addresses of the parties to the Railroad Equipment Improvement Agreement are:

Mellon National Leasing Corporation
Suite 3629
Mellon Bank Building
Pittsburgh, Pennsylvania 15219

Elgin, Joliet and Eastern Railway Company
P.O. Box 536
Pittsburgh, Pennsylvania 15230

The equipment covered by the Railroad Equipment Improvement Agreement consists of three hundred eighty-four (384) 55-ton railroad gondola cars, which are more fully described in Exhibit A which is attached hereto.

DEC 28 10 38 AM '78
FEE 00.00
100

Mr. H. G. Homme, Jr.
Page 2

Please return the original and one executed counterpart
of the Railroad Equipment Improvement Agreement to:

Michael T. Reilly, Esq.
Elgin, Joliet and Eastern Railway Company
P.O. Box 536
Pittsburgh, Pennsylvania 15230

A money order in the amount of \$10.00 is enclosed to
cover the required recordation fee.

Sincerely,

Michael T. Reilly
Michael T. Reilly
Attorney

MTR/rja

Enclosures

DEC 26 1978 - 10 40 AM

RAILROAD EQUIPMENT IMPROVEMENT AGREEMENT INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT IMPROVEMENT AGREEMENT dated as of May 1 , 1978 between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, a corporation of the States of Illinois and Indiana (hereinafter called "EJ&E") and MELLON NATIONAL LEASING CORPORATION (hereinafter called the "Owner").

WHEREAS, the Owner is the owner of the railroad equipment described in Schedule A hereto (hereinafter called the "Cars") which are to be modified and improved by EJ&E in accordance with the specifications (the "Specifications") therefor identified in Schedule B hereto; and the Owner proposes to pay for such improvements of the Cars in the manner and upon the terms and conditions hereinafter provided; and

WHEREAS, the Owner and EJ&E have entered into two Equipment Lease Agreements dated as of January 2, 1973 and January 3, 1973 wherein the Owner, as Lessor, leases the Cars to EJ&E at the rental and for the terms and upon the conditions therein provided, (hereinafter called the "Lease Agreements"); and

WHEREAS, the Owner and EJ&E propose to amend the Lease Agreements in certain respects as a result of the modifications and improvements to the Cars, a draft of which amendments (the "Amendments") is attached hereto;

NOW,..THEREFORE, in consideration of the promises and of the covenants and agreements hereinafter set forth, the Owner and EJ&E hereby agree as follows:

1. Modifications to the Cars. EJ&E agrees to modify and improve the Cars, in accordance with the Specifications, for the Owner. The design, quality, and component parts used in making the improvements to the Cars will conform to all Federal regulatory requirements and to all standards recommended by the Association of American Railroads reasonably interpreted by EJ&E as being applicable to railroad equipment of the character of the Cars for service on the lines of EJ&E as of the date of this Agreement.

2. Delivery. EJ&E presently has possession of the Cars pursuant to the Lease Agreements. Following completion of the improvements in accordance with the Specifications, EJ&E will deliver the Cars to an authorized representative of the Owner at times and places to be mutually agreed upon by the Owner and EJ&E.

The Owner agrees to appoint an authorized representative or representatives at the place or places of delivery of the Cars, and to cause such representative or representatives, as and when Cars are tendered for inspection and acceptance by EJ&E in accordance with this § 2, to inspect the same and, if such Cars are found to be in good order, to acknowledge such fact by executing and delivering to EJ&E one or more certificates ("Certificate of Acceptance").

From the time EJ&E commences making the improvements to the Cars until such delivery of the Certificate of Acceptance by the Owner, the responsibility and risk of loss with respect thereto shall be borne by EJ&E in accordance with the terms of the Lease Agreements and EJ&E further agrees to indemnify and save harmless the Owner against any charge or claim made against the Owner, and against any expense or liability (including but not limited to reasonable counsel fees and expenses and patent liabilities) which the Owner may incur in any manner by reason of its ownership of or which may arise in any manner with respect to such Cars or the modification thereof, and to indemnify and save harmless the Owner against any claim or suit arising therefrom resulting in damage to property or injury to any person.

3. Payment for Improvements to the Cars. The Owner agrees that upon completion of the improvements to all the cars, which shall occur before December 29, 1978, the Owner will pay to EJ&E \$3,118.00 per car for all cars delivered and accepted, providing the Owner shall have first received, in form and substance satisfactory to the Owner, all of the following:

- (1) A Certificate or Certificates of Acceptance (in the form attached) of the character specified in § 2 hereof for such Cars;
- (2) an invoice covering the total price of the improvements to the Cars being paid for;

- / (3) "an opinion of counsel for EJ&E to the effect that this Agreement has been duly authorized, executed and delivered by EJ&E and constitutes a valid, legal and binding agreement of EJ&E enforceable in accordance with its terms;
- / (4) the execution of the Amendments in substantially the form attached hereto accompanied by an opinion of counsel for EJ&E to the effect that the Amendments have been duly authorized, executed and delivered by EJ&E and constitute valid, legal and binding agreements of EJ&E enforceable in accordance with their terms.

4. Warranty. EJ&E warrants that the Cars will be reconstructed in accordance with the requirements, specifications and standards set forth or referred to in § 1. hereof and warrants that the reconstructed Cars will be free from defects in material, workmanship and design, under normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

for a period
of

5. Continuation of Lease Agreements. During the period of time when the Cars are being modified and improved, the respective Lease Agreements shall continue in full force and effect and EJ&E will make the rental payments required thereunder until the effective date of the Amendments.

6. Notices. Any notice permitted or required to be given by either party hereto to the other shall be in writing and deemed to be properly served if delivered, or addressed and deposited in the United States certified mails, first-class postage prepaid, as follows:

If to EJ&E:

✓ Adm:
Elgin, Joliet and Eastern Railway Company
P. O. Box 536
Pittsburgh, Pennsylvania 15230

If to Owner:

Mellon National Leasing Corporation
Suite 3629
Mellon Bank Building
Pittsburgh, Pennsylvania 15219

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

*Asgmt
express
perm. to S.*

7. Successors and Assigns. As used herein the terms "EJ&E" and "Owner" shall be deemed to include the successors and assigns of EJ&E and the Owner; provided, however, that no assignment by either party shall relieve such party from any of its obligations hereunder and that no assignment by either party shall be valid unless or until such party notifies the other party thereof in writing.

IN WITNESS WHEREOF, EJ&E and the Owner, each pursuant to due corporate authority, have caused this Agreement

to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY Lessee

MELLON NATIONAL LEASING CORPORATION
Lessor

By *J. M. Kraetch*
Title: VICE PRESIDENT - FINANCE
(SEAL)

By *[Signature]*
Title: Harry R. Leggett
President (SEAL)

By *William C. Zeiper*
Title: ASSISTANT SECRETARY

By *Eleanor C. Nelson*
Title: Secretary

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF ALLEGHENY)

On this 18th day of December, 1978, before me personally appeared V. W. Kraetsch, to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of Elgin, Joliet and Eastern Railway 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.

Dorothy M. Tellep
Notary Public

DOROTHY M. TELLEP, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA.
MY COMMISSION EXPIRES
DECEMBER 18, 1978

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF ALLEGHENY)

On this 18th day of December, 1978, before me personally appeared Harry R. Leggett, to me personally known, who, being by me duly sworn, says that he is President of Mellon National Leasing Corporation, 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.

Dorothy M. Tellep
Notary Public

DOROTHY M. TELLEP, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA.
MY COMMISSION EXPIRES
DECEMBER 18, 1978

CERTIFICATE OF ACCEPTANCE

The undersigned, acting as the duly authorized representative of Mellon National Leasing Corporation (Mellon Leasing), Owner under a Railroad Equipment Improvement Agreement dated as of May 1, 1978, hereby accepts delivery of the following railroad equipment to Mellon Leasing as such Owner:

_____ standard guage
55-ton steel floor gondola cars, serial numbers
_____, inclusive.

The undersigned further, acting as the duly authorized representative of the Elgin, Joliet and Eastern Railway Company (EJ&E), Lessee under an Equipment Lease Agreement, as amended to the date hereof, with Mellon Leasing dated January __, 1973, certifies (1) that he or persons acting under his supervision and direction have inspected such cars and have found them to be in compliance with the provisions of the Lease, and (2) that said cars have been delivered to and accepted by EJ&E, as Lessee under the said Lease, as amended to the date hereof.

SCHEDULE A

Quantity: 384

Type: 55-ton wood floor railroad gondola cars

Road Numbers: Elgin, Joliet and Eastern Railway
1000 to 1389 inclusive; excluding
the following:

1153
1159
1183
1268
1277
1339

SCHEDULE B

A. Improvement Specifications:

Specifications of Elgin, Joliet and Eastern Railway
Company dated attached hereto

B. Price	<u>Per Unit</u>	<u>Total</u>
Cost of Improvements	\$3,118	\$1,197,312

First Amendment
to
Equipment Lease Agreement
dated as of January 3, 1973,
as amended April 24, 1973,
between

Mellon National Leasing Corporation ("Lessor")
Elgin, Joliet and Eastern Railway Company ("Lessee")

WHEREAS, Lessor and Lessee entered into the above
Equipment Lease Agreement (the "Lease") pursuant to which
Lessor leased to Lessee 136 fifty-five ton wood floor railroad
gondola cars; and

WHEREAS, there are 133 cars in service and subject
to the Lease as of the date hereof (the "Cars"); and

WHEREAS, Lessee has requested Lessor's permission
to replace the wood floors in the Cars with new steel floors;
and

WHEREAS, Lessor is willing to (1) consent to
Lessee's request and (2) pay the cost of installing the new
steel floors, all subject to the terms and conditions hereinafter
set forth;

NOW, THEREFORE, in consideration of the mutual
undertakings contained herein, Lessor and Lessee hereby
agree as follows:

1. Lessor consents to the removal of the existing
wood floors in each of the Cars and the replacement of such
wood floors with steel floors (the "Improvements") in accordance
with Lessee's specifications. From and after the date of
this Amendment as used in the Lease, "Cars" shall refer to
the Cars as modified by the Improvements.

2. The first sentence of Section 2 of the Lease is amended to read as follows: "The Lease term shall commence on the date the Lessor makes payment to the Lessee for the Cars pursuant to the Reconstruction Agreement (such date being hereinafter called the "Initial Payment Date") and shall end fourteen years after the Initial Payment Date."

3. The first sentence of Section 3 of the Lease is amended to read as follows:

"Rent for the Cars shall be payable as follows: 32 equal consecutive quarterly payments of \$21,647.86, commencing on the Initial Payment Date and continuing thereafter on each successive quarterly anniversary of the Initial Payment Date and 32 consecutive quarterly payments of \$146.00 per Car for each of the Cars commencing on April 24, 1979 and continuing thereafter on each successive quarterly anniversary of such date.

4. There is added to the Lease, a new Section 21 which reads as follows:

21. FEDERAL INCOME TAXES. Lessor, as the owner of the Cars, shall be entitled to such deductions, credit and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereafter called the "Code"), to an owner of property, including without limitation, an allowance for an investment tax credit equal to ten percent (10%) of Lessor's Cost of the Improvements. Accordingly, Lessee represents and warrants that (i) within the meaning of Section 48(b) of the Code and the Improvements will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c) (1) of the Code from commencing with the Lessor and (ii) at all times during the term of this Lease, the Improvements will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If there shall be a disallowance, elimination, recomputation, reduction or disqualification (hereinafter called "Loss"), in whole or in part, of such investment tax credit, Lessee shall, within ten days after receipt of written request from Lessor pay to Lessor as additional rent an amount which, after deduction of federal, state and local income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent, is equal to such Loss of such investment tax credit.

If there shall be a Loss, in whole or in part, of the claimed depreciation deduction for the Improvements or any part thereof based on the purchase price (cost) of the Improvements to Lessor, Lessee shall, after written request of Lessor pay to Lessor additional rent to compensate Lessor for the consequent lost cumulative deferral of income tax liability, which may exist thereafter from time to time, as determined by Lessor. Such additional rent shall be an amount which, after deduction of federal, state and local income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent will, in the reasonable opinion of Lessor, cause Lessor's net yield in respect of such Improvements to equal the net yield that Lessor would have received if Lessor had not suffered a Loss with respect to the claimed depreciation deduction. Such additional rent shall be paid commencing with the first periodic rental payment due after Lessor notifies Lessee of the required additional rent.

Notwithstanding the provisions of the two immediately preceding paragraphs of this Section 21, Lessee shall not be required to make any payment on account of any Loss due solely to (1) the failure of Lessor to have any federal income tax liability against which to apply such investment tax credit or the inability of Lessor or the affiliated group of which it is a member to utilize the investment tax credit as a result of the limitation imposed by Section 46(a)(2) of the Code, (2) the failure to properly claim such investment tax credit and depreciation in the tax returns filed by Lessor or the affiliated group of which it is a member, or (3) the sale or disposition of the Cars or the Lease by Lessor prior to any default by Lessee.

In the event the Internal Revenue Service proposes an adjustment to investment tax credits or depreciation deductions claimed on an United States corporation income tax return of Lessor or the affiliated group of which it is a member, which adjustment, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 21, Lessor hereby agrees to exercise in good faith its best efforts, determined by Lessor, in its sole discretion to

be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent, to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustment and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustment including without limitation (A) reasonable attorneys' accountants' engineers' and like professional fees and disbursements, and (B) in the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, an amount equal to interest at 120% of the prime borrowing rate of Mellon Bank, N.A. from time to time on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rent for such period is payable. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid an amount equal to interest at the rate of 12% per annum while such tax payment was contested by Lessor, any interest on such refund paid to the Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

Lessee's agreement to pay any sums which may become payable pursuant to this Section 21 shall survive the expiration or other termination of this Agreement.

5. Schedule A to the Lease is hereby amended and restated to read as provided on Annex I hereto.

6. Schedule B to the Lease is hereby amended and restated to read as provided on Annex II hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the first day of May 1978.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY Lessee

MELLON NATIONAL LEASING CORPORATION
Lessor

By _____
Title:

By _____
Title:

(SEAL)

(SEAL)

By _____
Title:

By _____
Title:

ANNEX I

SCHEDULE A

Quantity: 133

Type: 55-ton steel floor railroad gondola cars

Lessee's Road
Numbers: See "New Car No." listing on Attachment
One attached hereto

Price:	<u>Per Unit</u>	<u>Total</u>
Price per car prior to Improvements	\$4,240	\$563,920
Cost of Improvements	3,118	414,694

Reconstruction
Specifications: See Schedule B of Railroad Equipment
Improvement Agreement dated as of May 1, 1978

Delivery Schedule
(estimated): December 29, 1978

ATTACHMENT ONE

<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>
1254	34986	1280	34916	1304	35042
1255	35083	1281	35191	1305	35291
1256	34956	1282	35149	1306	35287
1257	35244	1283	35284	1307	35334
1258	35242	1284	35257	1308	35301
1259	35366	1285	35038	1309	35240
1260	35205	1286	35390	1310	35385
1261	34957	1287	34989	1311	34993
1262	35333	1288	34994	1312	35349
1263	35016	1289	34903	1313	35164
1264	35129	1290	35272	1314	35114
1265	35253	1291	35108	1315	35045
1266	35298	1292	35209	1316	35082
1267	35047	1293	35369	1317	35263
1269	34924	1294	35393	1318	35019
1270	34929	1295	34912	1319	35058
1271	35342	1296	35228	1320	35051
1272	35080	1297	34923	1321	35288
1273	35380	1298	35267	1322	35159
1274	35186	1299	35300	1323	35286
1275	35269	1300	34918	1324	35305
1276	34928	1301	34921	1325	35104
1278	35138	1302	35009	1326	34980
1279	35075	1303	35297	1327	35234

ATTACHMENT ONE

<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>
1328	35079	1354	35292	1379	35341
1329	35165	1355	35150	1380	35096
1330	35184	1356	35336	1381	35308
1331	35062	1357	35251	1382	34960
1332	35388	1358	35128	1383	35311
1333	34996	1359	35299	1384	35119
1334	35392	1360	34982	1385	35188
1335	35271	1361	35175	1386	35352
1336	34987	1362	35318	1387	35015
1337	34973	1363	34955	1388	34959
1338	35337	1364	34949	1389	35056
1340	35213	1365	35285		
1341	35157	1366	35126		
1342	35217	1367	35125		
1343	34904	1368	35061		
1344	35259	1369	35335		
1345	35003	1370	35084		
1346	34972	1371	35295		
1347	35358	1372	35048		
1348	35121	1373	35094		
1349	35190	1374	35172		
1350	35140	1375	35229		
1351	34927	1376	34944		
1352	35359	1377	35087		
1353	35070	1378	35088		

ANNEX II

"Casualty Value" of any unit of the cars as of any particular date shall mean the product derived from multiplying (i) the percentage figure opposite the notation for the appropriate time period as set forth in the tables appearing below by (ii) the original purchase price of such unit and the value of improvements made to the original unit.

CASUALTY VALUE TABLE

<u>Unit Value</u>					<u>Original</u>	<u>Improvements</u>
					<u>\$4,240</u>	<u>\$3,118</u>
Before Payment No.				1	100.0000%	
Thereafter	But	Before Payment	No.	2	99.0499	
"	"	"	"	3	98.0153	
"	"	"	"	4	96.8965	
"	"	"	"	5	95.6933	
"	"	"	"	6	94.4060	
"	"	"	"	7	92.6362	
"	"	"	"	8	91.5771	
"	"	"	"	9	90.0356	
"	"	"	"	10	88.4100	
"	"	"	"	11	86.7004	
"	"	"	"	12	84.9061	
"	"	"	"	13	83.0279	
"	"	"	"	14	78.4889	
"	"	"	"	15	76.4415	
"	"	"	"	16	74.3101	
"	"	"	"	17	72.0935	
"	"	"	"	18	69.7924	
"	"	"	"	19	67.4073	
"	"	"	"	20	64.9381	
"	"	"	"	21	62.3838	
"	"	"	"	22	57.1699	
"	"	"	"	23	54.4470	100.0000%
"	"	"	"	24	51.6395	100.0000%
"	"	"	"	25	48.7480	100.0000%
"	"	"	"	26	45.7719	99.9054
"	"	"	"	27	42.7118	99.6944
"	"	"	"	28	39.5666	99.3670
"	"	"	"	29	36.3374	98.9232
"	"	"	"	30	30.4478	98.3629
"	"	"	"	31	27.0495	97.6862
"	"	"	"	32	23.5670	96.8931
"	"	"	"	33	20.0000	95.9836
"	"	"	"	34	20.0000	94.9577
"	"	"	"	35	20.0000	93.8154
"	"	"	"	36	20.0000	92.5566
"	"	"	"	37	20.0000	91.1815
"	"	"	"	38	20.0000	83.2796
"	"	"	"	39	20.0000	81.6716
"	"	"	"	40	20.0000	79.9472
"	"	"	"	41	20.0000	78.1064
"	"	"	"	42	20.0000	76.1492
"	"	"	"	43	20.0000	74.0755
"	"	"	"	44	20.0000	71.8854
"	"	"	"	45	20.0000	69.5789
"	"	"	"	46	20.0000	60.7457
"	"	"	"	47	20.0000	58.2064
"	"	"	"	48	20.0000	55.5507
"	"	"	"	49	20.0000	52.7785
"	"	"	"	50	20.0000	49.8899
"	"	"	"	51	20.0000	46.8849
"	"	"	"	52	20.0000	43.7635
"	"	"	"	53	20.0000	40.5257
"	"	"	"	54	20.0000	30.7612
"	"	"	"	55	20.0000	27.2906
"	"	"	"	56	20.0000	23.7035
Thereafter					20.0000	20.0000

First Amendment
to
Equipment Lease Agreement
dated as of January 2, 1973,
between
Mellon National Leasing Corporation ("Lessor")
Elgin, Joliet and Eastern Railway Company ("Lessee")

WHEREAS, Lessor and Lessee entered into the above Equipment Lease Agreement (the "Lease") pursuant to which Lessor leased to Lessee 254 fifty-five ton wood floor railroad gondola cars; and

WHEREAS, there are 251 cars in service and subject to the Lease as of the date hereof (the "Cars"); and

WHEREAS, Lessee has requested Lessor's permission to replace the wood floors in the Cars with new steel floors; and

WHEREAS, Lessor is willing to (1) consent to Lessee's request and (2) pay the cost of installing the new steel floors, all subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual undertakings contained herein, Lessor and Lessee hereby agree as follows:

1. Lessor consents to the removal of the existing wood floors in each of the Cars and the replacement of such wood floors with steel floors (the "Improvements") in accordance with Lessee's specifications. From and after the date of this Amendment as used in the Lease, "Cars" shall refer to the Cars as modified by the Improvements.

2. The first sentence of Section 2 of the Lease is amended to read as follows: "The Lease term shall commence on the date hereof and shall end January 1, 1987.

3. The first sentence of Section 3 of the Lease is amended to read as follows:

"Rent for the Cars shall be payable as follows: 32 equal consecutive quarterly payments of \$42,612.63 commencing on the date hereof and continuing thereafter on each successive quarterly anniversary of the date hereof and 32 consecutive quarterly payments of \$146.00 per Car for each of the Cars commencing on January 2, 1979 and continuing thereafter on each successive quarterly anniversary of such date."

4. There is added to the Lease, a new Section 21 which reads as follows:

21. FEDERAL INCOME TAXES. Lessor, as the owner of the Cars, shall be entitled to such deductions, credit and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereafter called the "Code"), to an owner of property, including without limitation, an allowance for an investment tax credit equal to ten percent (10%) of Lessor's Cost of the Improvements. Accordingly, Lessee represents and warrants that (i) within the meaning of Section 48(b) of the Code and the Improvements will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c) (1) of the Code from commencing with the Lessor and (ii) at all times during the term of this Lease, the Improvements will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If there shall be a disallowance, elimination, recomputation, reduction or disqualification (hereinafter called "Loss"), in whole or in part, of such investment tax credit, Lessee shall, within ten days after receipt of written request from Lessor pay to Lessor as additional rent an amount which, after deduction of federal, state and local income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent, is equal to such Loss of such investment tax credit.

If there shall be a Loss, in whole or in part, of the claimed depreciation deduction for the Improvements or any part thereof based on the purchase price (cost) of the Improvements to Lessor, Lessee shall, after written request of Lessor pay to Lessor additional rent to compensate Lessor for the consequent lost cumulative deferral of income tax liability, which may exist thereafter from time to time, as determined by Lessor. Such additional rent shall be an amount which, after deduction of federal, state and local income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent will, in the reasonable opinion of Lessor, cause Lessor's net yield in respect of such Improvements to equal the net yield that Lessor would have received if Lessor had not suffered a Loss with respect to the claimed depreciation deduction. Such additional rent shall be paid commencing with the first periodic rental payment due after Lessor notifies Lessee of the required additional rent.

Notwithstanding the provisions of the two immediately preceding paragraphs of this Section 21, Lessee shall not be required to make any payment on account of any Loss due solely to (1) the failure of Lessor to have any federal income tax liability against which to apply such investment tax credit or the inability of Lessor or the affiliated group of which it is a member to utilize the investment tax credit as a result of the limitation imposed by Section 46(a)(2) of the Code, (2) the failure to properly claim such investment tax credit and depreciation in the tax returns filed by Lessor or the affiliated group of which it is a member, or (3) the sale or disposition of the Cars or the Lease by Lessor prior to any default by Lessee.

In the event the Internal Revenue Service proposes an adjustment to investment tax credits or depreciation deductions claimed on an United States corporation income tax return of Lessor or the affiliated group of which it is a member, which adjustment, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 21, Lessor hereby agrees to exercise in good faith its best efforts, determined by Lessor, in its sole discretion to

be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent, to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustment and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustment including without limitation (A) reasonable attorneys' accountants' engineers' and like professional fees and disbursements, and (B) in the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, an amount equal to interest at 120% of the prime borrowing rate of Mellon Bank, N.A. from time to time on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rent for such period is payable. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid an amount equal to interest at the rate of 12% per annum while such tax payment was contested by Lessor, any interest on such refund paid to the Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

Lessee's agreement to pay any sums which may become payable pursuant to this Section 21 shall survive the expiration or other termination of this Agreement.

5. Schedule A to the Lease is hereby amended and restated to read as provided on Annex I hereto.

6. Schedule B to the Lease is hereby amended and restated to read as provided on Annex II hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the first day of May 1978.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY Lessee

MELLON NATIONAL LEASING CORPORATION
Lessor

By _____
Title:

By _____
Title:

(SEAL)

(SEAL)

By _____
Title:

By _____
Title:

ANNEX I
SCHEDULE A

Quantity: 251
Type: 55-ton steel floor railroad gondola cars
Lessee's Road
Numbers: See "New Car No." listing on Attachment
One attached hereto

Price:	<u>Per Unit</u>	<u>Total</u>
Price per car prior to Improvements	\$4,240	\$1,064,240
Cost of Improvements	3,118	782,618

Reconstruction
Specifications: See Schedule B of Railroad Equipment
Improvement Agreement dated as of May 1, 1978

Delivery Schedule
(estimated): December 29, 1978

ATTACHMENT ONE

<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>
1000	35239	1025	34922	1050	35278
1001	35256	1026	35063	1051	35111
1002	34902	1027	35344	1052	35224
1003	35399	1028	35160	1053	34988
1004	35204	1029	35367	1054	35162
1005	35273	1030	35037	1055	35148
1006	35243	1031	34983	1056	35022
1007	35254	1032	35145	1057	35151
1008	35074	1033	35258	1058	35028
1009	35391	1034	35092	1059	35378
1010	34940	1035	35198	1060	35279
1011	35057	1036	35173	1061	35185
1012	35105	1037	35043	1062	35098
1013	35068	1038	35281	1063	35383
1014	35218	1039	34975	1064	35033
1015	35389	1040	35324	1065	35375
1016	35036	1041	35071	1066	34917
1017	35356	1042	35099	1067	35176
1018	35133	1043	35325	1068	35127
1019	35329	1044	35250	1069	35245
1020	35328	1045	35338	1070	34931
1021	35060	1046	35207	1071	35020
1022	35372	1047	34977	1072	35189
1023	35013	1048	35131	1073	35072
1024	35210	1049	34906	1074	35054

ATTACHMENT ONE

<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>
1075	35194	1099	35307	1123	35102
1076	35023	1100	35034	1124	35327
1077	35233	1101	34907	1125	35304
1078	35139	1102	35361	1126	34914
1079	34952	1103	35282	1127	35364
1080	35118	1104	34981	1128	34939
1081	35355	1105	35232	1129	35066
1082	34934	1106	34920	1130	35021
1083	35181	1107	35208	1131	35049
1084	35017	1108	35384	1132	35136
1085	35211	1109	35246	1133	35387
1086	34947	1110	35238	1134	34969
1087	35153	1111	35167	1135	35353
1088	35331	1112	35348	1136	34945
1089	34948	1113	35261	1137	35376
1090	35130	1114	35313	1138	35280
1091	35124	1115	35362	1139	35314
1092	35266	1116	35365	1140	35103
1093	35302	1117	34985	1141	35182
1094	35154	1118	35011	1142	35014
1095	35231	1119	35064	1143	34978
1096	35163	1120	35252	1144	35345
1097	35394	1121	35264	1145	35035
1098	34941	1122	35158	1146	35219

ATTACHMENT ONE

<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>	<u>Old Car No.</u>	<u>New Car No.</u>
1147	35067	1173	35026	1198	35012
1148	35374	1174	35293	1199	34925
1149	35077	1175	35193	1200	35076
1150	34915	1176	34968	1201	35005
1151	34900	1177	35166	1202	35161
1152	35274	1178	35086	1203	34938
1154	35120	1179	34943	1204	35309
1155	35000	1180	35350	1205	35155
1156	35200	1181	35141	1206	35397
1157	35394	1182	35371	1207	35323
1158	35007	1184	35010	1208	34958
1160	35002	1185	34935	1209	35069
1161	35319	1186	35357	1210	35117
1162	35025	1187	35001	1211	34905
1163	34901	1188	35101	1212	35110
1164	35142	1189	35340	1213	34946
1165	35206	1190	35106	1214	35296
1166	35265	1191	35386	1215	35230
1167	35317	1192	34965	1216	35363
1168	34909	1193	34961	1217	35223
1169	35097	1194	35004	1218	35236
1170	35373	1195	35222	1219	34933
1171	35339	1196	35032	1220	35168
1172	35146	1197	35199	1221	35055