

LEASE AGREEMENT

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INTERSTATE COMMERCE COMMISSION

THE STATE OF WEST VIRGINIA]
COUNTY OF CABELL]

This Net Lease Agreement, made and entered into this 6th day of May, 19 74, by and between Greenbrier Leasing Corporation, a Delaware corporation jointly owned by Commercial Metals Company in Dallas, Texas and The M.D. Friedman Company of Portsmouth, Ohio, sometimes herein called "LESSOR" and PPG Industries, Inc. having central offices located in Pittsburgh, Pennsylvania, sometimes herein called "LESSEE."

W I T N E S S E T H:

I

LEASE, TERM, AND RENTAL

1. Cars. Lessor hereby agrees to lease to Lessee and Lessee hereby rents from Lessor twenty-five (25) interchange hopper cars, each having a 70 ton capacity. Said cars to be prepared in accordance with the work specifications contained in Attachment A by Safety Railway Service Company and thereafter to be numbered PPGX 16001 through 16025. After each said car has been so reconditioned and inspected by Lessee, it shall be delivered to Lessee at Safety Railway Service in Victoria, Texas, and thereupon, shall become subject to all of the terms and conditions of this Lease Agreement.

2. Term. This Lease shall attach to and apply to each car as and when accepted by and delivered to Lessee as aforesaid,

and shall continue for a term of thirty (30) months from and after the first of the month following the date of the acceptance by and delivery to Lessee of the last of said twenty-five (25) cars. The last car will be delivered within 90 days from the date of delivery of the first car. If for any reason, not all of said twenty-five (25) cars are prepared by Safety Railway Service Co. and accepted by and delivered to Lessee at Victoria, Texas, this Lease Agreement shall nevertheless attach to and apply to such of the cars as are prepared by Safety Railway Service Co. and accepted by and delivered to Lessee, and the term of this Lease Agreement shall be thirty (30) months from the first of the month following the date of the last car accepted by and delivered to Lessee. After the last car is accepted by and delivered to Lessee, an exhibit listing the cars shall be prepared as part hereof, and the last day of the original term shall be stated therein.

3. Rent. Lessee agrees to pay a monthly rental of One Hundred Twenty-Six and 00/100 Dollars (\$126.00) per car during the term of this Lease. For any car delivered prior to first day of any month, rental shall be prorated. The rental for each and all of said cars shall be paid to Lessor at its office in Huntington, Cabell County, West Virginia. The rental for all cars subject to this Lease Agreement for any month shall be paid on or before the 10th of the month, commencing with the 10th of the month commencing the first delivery of the cars. Each months rental is payable in advance. Rental shall be paid for each month of the lease period with no exception for any time said car may be temporarily idle for repairs or for any other reason.

4. Interchange. Lessee shall at all times have the right to receive any compensation paid by any railroad for the use of said

cars while said cars are in the usual interchange of traffic; provided, however, that the right of such use in the usual interchange of traffic shall be subject to all of the terms and conditions of this agreement.

5. Warranty. Since Lessee will have inspected and accepted each car prior to its delivery to Lessee and becoming subject to this Lease, such inspection, acceptance and delivery shall conclusively establish, as between the parties hereto, that said car was, at the time of such delivery to Lessee, in apparent good condition and repair and suitable for its intended use; such inspection and acceptance by and delivery to Lessee shall not be construed as acceptance by Lessee as to any defects in said cars which were not reasonably discoverable upon such inspection; said defects to be reported to Lessor within 45 days after cars are accepted for service by Lessee, after which Lessor not to be liable for defects of whatever nature. Should a claim for latent defects be disputed by Lessor, final determination, binding on both parties, shall be made by an independent railroad car inspector employed as prescribed in Article II, Paragraph 9 of this agreement. There is no warranty, express or implied, on the part of Lessor and Lessor shall have no liability to Lessee with respect to said cars.

II.

OBLIGATIONS OF LESSEE

Lessee agrees that during the term of this lease agreement, or any renewal term, it will at its sole cost and expense:

1. Taxes. Promptly pay all sales, use, ad valorem or other taxes and assessments and all licenses and fees imposed or required by federal, state or municipal or other governmental authorities

upon the ownership, possession, leasing, or use of the cars, excluding any income tax imposed on the income of Lessor; provided, however, that Lessee shall be under no obligation to pay any such tax so long as Lessee is contesting same in good faith and by appropriate legal proceeding, and provided such non-payment shall not put a hazard upon the property or rights of Lessor hereunder.

2. Use. To use the cars in a careful and prudent manner and keep them in good order and repair and satisfactory for interchange in accordance with the rules of the Association of American Railroads, and to make any and all replacements of any parts or additions to continue the cars in such interchange service in accordance with said rules; and all equipment, accessories, parts and replacements for or which are added to or become attached to the cars shall become the property of Lessor.

3. Markings. Maintain the markings on each side of each car to show that the car is the property of Lessor, such markings to be in such manner as may be directed by Lessor, and keep the cars free from any marking or labeling which might be interpreted as a claim of ownership thereof by Lessee or any other party other than Lessor, and not to change or permit to be changed the identifying road numbers on any of the cars without the written consent of Lessor, provided, however, that Lessee may paint or mark said cars with its own name, insignia or other markings customarily applied to its own cars so long as the same cannot be interpreted as a claim of ownership thereof by Lessee.

4. Liens. Keep the car free from any encumbrances or liens which may be a cloud upon or otherwise affect the title of Lessor and promptly discharge any legal process which may be levied upon the

cars in any action other than one against Lessor.

5. Regulation. Secure the consent of any governmental authority necessary in order to lease the cars and comply thereafter with all laws and regulations of any governmental authority with reference to the manner of using or operating the cars.

6. Inspection. Furnish to Lessor at least once every year an accurate inventory of the cars, showing their present location to the best knowledge of Lessee and allow Lessor, at its cost and expense, to inspect the cars at any reasonable time or times whether on the road of Lessee or elsewhere.

7. Indemnity. Indemnify and save Lessor harmless from any and all liabilities, damages, claims, suits, judgments, and costs which may arise from the possession, use or operation of the cars, or their delivery or return, or resulting from their becoming out of repair, except to the extent that any such liability, damage, claim, suit, judgment or cost may be occasioned by or result from the sole negligence of Lessor.

8. Instruments. Execute, acknowledge, deliver, file, register and record any and all further instruments required by law or requested by Lessor, and perform such other acts as may be desirable for the purpose of protecting the title and rights of Lessor or for the purpose of carrying out the intention of this Agreement, and furnish Lessor certificates or other evidences of any such filing, registering and recording.

The Lessor will file and register all cars under this lease with the Association of American Railroads, the Interstate Commerce Commission, and cause the cars to be placed in the Official Railway Equipment Register.

9. Maintenance. The Lessee will be responsible at all times during the original lease term or extensions thereof to maintain all cars covered by this Lease Agreement in a suitable structural and mechanical condition, normal wear and tear excluded. Cars will be maintained at the lessee's expense. Maintenance will comply with AAR standards.

Upon the completion of the original lease term the Lessor will perform a joint inspection of all cars with the Lessee to assure cars are being returned in AAR Interchange Condition in a well maintained manner, normal wear and tear excepted. In the event Lessee and Lessor cannot agree to the condition of any car or cars, an independent railroad inspector shall be mutually selected and engaged and his determination shall be final. Cost of this inspection will be borne jointly by Lessee and Lessor.

III.

EXTENSION OF TERM

1. New Devices. If the installation of any device or apparatus not now required is made mandatory by the Interstate Commerce Commission or any other public or private agency authorized to issue such mandate, the party receiving notice of same shall give the other at least ten (10) days notice in writing of such requirements. If any such mandate contains an effective date later than the termination date of this Agreement, or any renewal thereof, Lessee, at its option, may elect to continue to lease and operate said car or cars for the balance of the term hereunder, or any renewal thereof, without the installation of such device or apparatus. If Lessee elects to install any such device or apparatus prior to the required effective date thereof or if the effective date of such mandate is prior to the termination date of this Agreement, Lessee

shall pay the cost of the installation of any such device or apparatus at the time of installation by Lessee. If Lessee, at its option, elects not to install any such device or apparatus, Lessee shall terminate this Lease as to the car or cars in question and shall continue to pay the monthly rental for said car or cars for the balance of the term of this Agreement or any renewal thereof.

2. Damage or Destruction. All risk, loss or damage to the cars from any and every cause whatsoever, except the sole negligence of Lessor, shall, at all times, be upon Lessee, and in the event of loss, destruction or irreparable damage to any of the cars from any such cause, Lessee shall promptly and fully inform Lessor with respect to the same and shall promptly pay Lessor the sum of the following:

(a) a sum equal to the settlement basis provided by the rules of the Association of American Railroads; and

(b) the pro rata daily rental from the end of the preceding month to the date of destruction; and

(c) an amount equal to the total of the remaining unpaid monthly rentals for any such car or cars less the amount of the aforesaid settlement provided by the rules of the Association of American Railroads.

In all cases where such loss, destruction or irreparable damage occurs off the lines of Lessee, Lessor hereby authorizes Lessee to make settlement pursuant to the rules of the Association of American Railroads, for the account of Lessor, with the foreign line upon whose railroad line such car or cars may have been damaged or destroyed; provided, however, no such settlement shall relieve Lessee from its obligation to pay Lessor the sum provided for herein.

In the event of such loss, destruction or irreparable damage, Lessor shall have the right to salvage such car or cars, and in such event, Lessor shall assume all costs related thereto. It is agreed that Lessee shall exert its reasonable efforts to have the railroad return said car or cars to a destination selected by Lessor at Lessor's expense.

Under no circumstances shall Lessor be obligated to pay Lessee any monies in the event of such loss, destruction or irreparable damage to any of the cars.

IV

OPTION TO EXTEND

Unless the Lessee is in default under the provisions of this Lease at the end of the original term hereof, Lessee shall have the right and option to extend the original term of this Lease upon the same terms and conditions other than rental as to all or any portion of the cars then subject to this Lease by notifying Lessor in writing prior to the 27th month of the Lease of its desire to extend the term of this Lease as to such cars as are specified in said notice for an additional thirty (30) month term. During the extended term, Lessee shall pay to Lessor in the same manner as herein provided rental for all cars then remaining under Lease the sum of One Hundred Thirteen (\$113.00) Dollars per car per month.

V

OPTION TO PURCHASE

The Lessee has the right and option to purchase any or all of the twenty-five (25) cars covered by this Lease Agreement by notifying the Lessor of his intent on or before the 27th month of the original Lease. If exercised, the purchase will be transacted

upon the completion of the original Lease term for a value of Six Thousand Seven Hundred Fifty (\$6,750.00) Dollars per car.

VI

DEFAULT

1. The term "Default" shall mean the occurrence of any of the following events:

(a) The failure of Lessee to pay any installment of rental hereunder within thirty (30) days after the same becomes due.

(b) The failure of Lessee to pay any other sum required of Lessee hereunder, other than the payment of rental, or the failure of Lessee to comply with or perform any of the other terms and conditions of this Agreement, within thirty (30) days after receipt of written notice from Lessor demanding payment or compliance or performance.

(c) The appointment of a permanent receiver or trustee in bankruptcy for Lessee or for any of its property and the failure by such receiver or trustee to adopt, assume and agree to perform the obligations of Lessee hereunder within thirty (30) days after such appointment.

2. Upon occurrence of a default, Lessor may, without demand or legal process, enter into the premises where the cars may be found and take possession of and remove the same and, either:

(a) Declare this Lease terminated, in which event all rights of Lessee shall terminate, with Lessee remaining liable to pay the accrued rental to the date of retaking with respect to such car; or

(b) Relet the cars for the account of Lessee and apply the proceeds of such reletting first to the expenses that may be incurred in the retaking, storing and delivery of the cars to

the new Lessee, then to the expense of making any and all repairs that should have been made by Lessee, and then to the payment of rent due under this Lease, and Lessee shall remain liable for any rents remaining due after so applying the proceeds so realized, and Lessee agrees to pay any and all such deficits monthly as the same may accrue, or all of the rent becoming due if Lessor is unable to relet the cars.

3. Upon the occurrence of a default, Lessee agrees to pay the reasonable attorney's fee incurred by Lessor in the enforcement of its rights hereunder.

VII

TERMINATION

Upon the expiration or termination of this Lease, Lessee shall surrender the cars to Lessor at Safety Railway Service in Victoria, Texas, or any other point as directed by Lessor of equal or less freight as compared to Victoria, Texas. The cars will be in a condition satisfactory for interchange service under load under the rules of the Association of American Railroads, as they may exist at such time. If any of the cars are away from the Lessee on the date of expiration or termination of this Lease, the obligations of Lessee hereunder as to such cars (including the payment of rental therefore) shall continue until same are surrendered as herein provided.

VIII

MISCELLANEOUS PROVISIONS

1. Assignment. This Lease may not be assigned by Lessee without the written consent of Lessor, provided, however, that Lessee may assign all of the rights under this Lease to another corporation

which succeeds to all or substantially all of the business of the Lessee, provided that such successor shall have assumed all of the obligations of the Lessee hereunder. Lessor may at any time assign this Lease to a wholly-owned subsidiary of Lessor, whereupon said assignee shall succeed to all of the rights and obligations of Greenbrier Leasing Corporation as Lessor herein as if named as Lessor herein, and thereafter Greenbrier Leasing Corporation shall have no right or obligation under this Agreement to any party.

Lessee, at its option, may sub-lease any or all of the cars leased hereunder without the consent of Lessor provided that in the event of any such sub-lease, Lessee shall continue to be bound by all of the terms and conditions of this Lease Agreement.

2. Law Governing. This Lease Agreement shall be governed by and construed in accordance with the Laws of the State of West Virginia.

3. Notices. All notices relating to this contract shall be in writing and mailed by registered or certified mail, return receipt requested, to the parties at the following address, or at such other address as may be hereafter specified by like notice by either party to the other:

Greenbrier Leasing Corporation
604 Coal Exchange Building
Huntington, West Virginia 25701

PPG Industries, Inc.
1 Gateway Center
Pittsburgh, Pennsylvania 15222
Attention: Mr. W. E. Davis,
Supt. Fleet Operations

with carbon copy to:

M. D. Friedman Company
P. O. Box 409
Portsmouth, Ohio 45662

Commercial Metals Company
P. O. Box 1046
Dallas, Texas 75221

4. Whole Agreement. This Lease Agreement constitutes the entire agreement of the parties and no representation, warranty, agreement or promise, oral or written, not contained herein shall be binding, and no change or amendment herein may be made except in writing signed by both parties.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN.

GREENBRIER LEASING CORPORATION

By [Signature]
Vice President

ATTEST:
[Signature]
Secretary

PPG INDUSTRIES, INC.

By [Signature]
Vice President

ATTEST:
[Signature]
SECRETARY

	<u>OLD CAR NO.</u>	<u>NEW CAR NO.</u>	<u>AAR TYPE</u>
MKT	3903	PPGX 16002	H150
	3921	16004	H150
	3934	16009	H250
	3961	16011	H250
	3969	16008	H250
	3971	16019	H250
	3972	16012	H250
	3974	16014	H250
	3982	16015	H250
	3994	16003	H250
	4010	16018	H250
	4014	16017	H250
	4023	16007	H250
	4035	16010	H250
	4037	16016	H250
	4159	16005	H150
	4187	16020	H150
	4248	16023	H150
	4276	16013	H150
	4310	16025	H150
	4329	16021	H150
	4382	16006	H150
	4390	16024	H150
	4421	16001	H150
	4455	16022	H150