

RECORDATION NO. 7702

NOV 6 1974

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE OF RAILROAD EQUIPMENT dated October 29, 1974 between GENERAL FOODS CORPORATION (General Foods) and Thomas F. Patton and Ralph S. Tyler, Jr., Trustees of the Property of ERIE LACKAWANNA RAILWAY COMPANY (EL), Debtor and any additional trustees or the successors of any of them (the Trustees),

W I T N E S S E T H;

WHEREAS, Fruit Growers Express Company (Manufacturer), and General Foods have executed a Purchase Contract dated as of July 1, 1974 (said Purchase Contract as so amended being hereinafter called the Purchase Contract) whereby Manufacturer has agreed to manufacture and sell and General Foods has agreed to purchase and pay for the units of railroad equipment in Exhibit A hereto (said equipment hereinafter collectively called the Units and individually a Unit);

WHEREAS, the Trustees desire to lease all of the Units or such lesser number thereof as are delivered and accepted in accordance with the provisions hereof;

WHEREAS, the Units are to be manufactured in accordance with the specifications approved by General Foods and the

Trustees (such specifications being hereinafter called the "Specifications");

WHEREAS, the terms and provisions contained in this Lease constitute the only understanding, oral or written, between General Foods and the Trustees relating to the Units;

WHEREAS, the Trustees were duly appointed trustees of the property of Erie Lackawanna Railway Company by order of the United States District Court for the Northern District of Ohio Eastern Division (the Court), in proceedings under Section 77 of the Bankruptcy Act entitled "In the Matter of Erie Lackawanna Railway, Debtor," No. 72B2838 (Order No. 2 dated July 31, 1972 by Judge Robert B. Krupansky, U.S. District Judge); said appointment was duly ratified by an order of the Interstate Commerce Commission dated August 11, 1972; and the Trustees were qualified as such by the Court and are now in possession of and operating the property of EL pursuant to Section 77 of the Bankruptcy Act and orders of the Court;

WHEREAS, by an order of the Court dated October 8, 1974 the form and terms of this Lease were approved by the Court in substantially the present form hereof, and the Trustees were duly authorized and directed to execute and deliver this Lease and otherwise to make and carry out the covenants and

agreements on their part contained herein; and

WHEREAS, the Trustees represent that all acts and things necessary to make this Lease valid and binding upon them have been done and performed;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Trustees, General Foods hereby leases the Units to the Trustees upon the following terms and conditions:

SECTION 1. DELIVERY AND ACCEPTANCE OF UNITS. Each of the Units shall be inspected by authorized representatives of General Foods and the Trustees at the Manufacturer's plant at Alexandria, Virginia, and again at the point of delivery at Dover, Delaware; and if such Unit is in good order and condition and conforms to the Specifications and the other requirements of Section 1 of the Purchase Contract and to all applicable Federal Railroad Administration requirements and all standards recommended by the Association of American Railroads, such representatives shall execute and deliver to General Foods a Certificate of Inspection and Acceptance in the form as set forth in Exhibit B hereto. On acceptance of delivery of any Unit as provided in this Section 1, possession of such Unit

shall, for all purposes, be deemed to be held by the Trustees under and subject to all the terms and conditions of this Lease. The Trustees shall promptly after the execution of this Lease deliver to General Foods a certificate signed by EL's Secretary setting forth the names and signatures of the persons authorized by the Trustees as their agents to execute and deliver Certificates of Inspection and Acceptance hereunder.

At all times during the continuance of this Lease, title to the Units shall be vested in General Foods to the exclusion of the Trustees, and delivery of possession of the Units to the Trustees and their possession of the Units shall constitute a leasehold interest only.

SECTION 2. TERM OF THE LEASE. The initial term of this Lease, as to each Unit, shall commence on the date of delivery to the Trustees specified in the Certificate of Inspection and Acceptance for such Unit and, subject to the provisions of Sections 9, 10, and 12 hereof, shall terminate on the day preceding the fifteenth anniversary of the date of delivery of the last unit accepted.

Unless an Event of Default under Section 12 hereof shall have occurred and be continuing, the Trustees shall have the right and option, by written notice given to General Foods not

less than ninety (90) days prior to the expiration of the Initial Term, to extend, subject to the provisions of Section 10 hereof, the term of this Lease with respect to any or all of the Units then subject to this Lease for an additional period of five (5) years (hereinafter called the "Extended Term"), commencing on the fifteenth anniversary of the date of delivery of the last Unit accepted, and ending on the day preceding the twentieth anniversary of the date of delivery of the last Unit accepted.

In the event that the Trustees exercise such right and option to extend the term of this Lease, the provisions of Sections 8, 9, 10, 11, 12 and 16 hereof shall be applicable during the Initial Term and the Extended Term of this Lease.

From and after the date of execution hereof until the expiration or termination of the Initial Term or the Extended Term, as to any Unit as set forth in this Section, this Lease shall not be subject to termination by General Foods except pursuant to Section 12 hereof upon the occurrence of Event of Default, or by the Trustees except pursuant to Section 10 hereof.

SECTION 3. RENTALS. The Trustees agree to pay to General Foods, in cash, for the Initial Term of this Lease rental for each of the Units subject to this Lease at the monthly rate specified for such type of Unit on Exhibit A hereof. Such

rental shall begin to accrue on the date on which such Unit is delivered to and accepted by the Trustees hereunder and continue during the period ending on the earlier of (i) the expiration date of this Lease or (ii) the date, if any, on which this Lease shall terminate with respect to such Unit pursuant to Section 10 or Section 12 hereof.

In the event that the Trustees exercise their right and option to extend the term of this Lease, the Trustees agree to pay to General Foods in cash, during the Extended Term of this Lease at the annual rate determined not less than ninety (90) days prior to the beginning of the Extended Term to be the Fair Rental Value of such Units beginning on the fifteenth anniversary of the date of delivery of the last Unit accepted and ending on the earlier of (i) the expiration of the Extended Term of (ii) the date, if any, on which this Lease shall terminate with respect to such Unit pursuant to Section 10 or Section 12 hereof. Fair Rental Value shall be determined in the same manner as Fair Market Value is determined in Section 3A, paragraph 2, herein.

Freight on the Units from Alexandria, Virginia, to the point of delivery shall be paid by General Foods.

The Trustees agree to pay such rental to General Foods as follows: For the calendar month during which a Unit is delivered

and accepted a daily pro rata rental rate for such Unit will be payable from the date of acceptance through the last day of that month on or before the first day of the following month and the rental for each succeeding month will be payable in advance on the first business day of the calendar month.

The Trustees will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon rentals remaining unpaid after the same shall have become due and payable under any of the provisions of this Lease.

All payments to be made to General Foods will be made at its office at 250 North Street, White Plains, New York 10625, or at such other place or places as shall be directed in writing by General Foods.

SECTION 3A. PURCHASE OPTIONS. Provided that this Lease has not been earlier terminated and the Trustees are not in default hereunder, Lessees may by written notice delivered to General Foods not less than six months prior to the end of the Initial Term, or the Extended Term of this Lease, elect to purchase all of the Units covered by this Lease at the end of such term or extension of this Lease for a purchase price equal to the Fair Market Value of such Units as of the end of such term or extension.

If on or before four months prior to the termination of the term of this Lease or any extension thereof, General Foods and the Trustees are unable to agree upon a determination of the Fair Market Value of the Units, the Fair Market Value as hereinafter defined shall be determined by a qualified independent appraiser. The term Appraiser shall mean such independent appraiser as General Foods and the Trustees may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by General Foods, the second by the Trustees and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to General Foods and the Trustees. The expenses and fee of the Appraiser shall be borne by the Trustees.

Fair Market Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arms-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

SECTION 4. COVENANTS, REPRESENTATIONS AND WARRANTIES.

(a) General Foods represents and warrants that, at the time a Unit becomes subject to this Lease, General Foods will be the true and lawful owner thereof and that such Unit will be free and clear of all liens and encumbrances of any nature whatsoever except only the rights of the Trustees hereunder and of the holder of any chattel mortgage or conditional sale agreement or of the trustee of an equipment trust or of the holder of any other lien created by General Foods on such Units (subject to the rights of the Trustees) and except for liens for taxes, assessments or governmental charges or levies not yet due and delinquent or not yet subject to penalty for non-payment, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent (such liens being herein called "Permitted Liens"). General Foods agrees to pay or hold the Trustees harmless from any such Permitted Liens. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES BY GENERAL FOODS, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY KIND.

(b) The Trustees represent and warrant that:

(i) They were duly appointed Trustees of

the Property of EL by order of the Court which appointment was by order duly ratified by the Interstate Commerce Commission, and that they are duly vested with the title to the properties of EL and have power and authority to carry on EL's business.

(ii) The execution and delivery of this Lease by them (or their Designated Agents) and their assumption and undertaking of the obligations, duties and liabilities hereof have been duly authorized by an order of said Court; and this Lease is legal, valid, binding and enforceable against them in accordance with its terms.

(iii) The rights of General Foods as set forth herein and its title to the Units is free and clear of the lien, charge or security interest created by any mortgage, security agreement or other instrument binding upon the Trustees or EL.

(iv) Except for authorization by the Court of the execution and delivery of this Lease by the Trustees, no governmental authorizations, approvals or exemptions are required for the

execution and delivery of this Lease or for the validity and enforceability hereof or for the leasing of the Units hereunder or for the payment of the rentals or the assumption of the obligation imposed by any other term or condition contained herein; or if any such authorizations are required, they have been acquired and, if any such shall hereinafter be required, they will be promptly obtained.

(v) No litigation or administrative proceedings are pending or to the knowledge of the Trustees are threatened against Them, the adverse determination of which would affect the validity of this Lease or the rights of General Foods hereunder.

(vi) Obligations to make rental and other payments under this Lease will constitute expenses of administration of the Trustees payable on a parity with other equipment obligations theretofore or thereafter assumed or incurred by the Trustees; and, upon occurrence of an Event of Default under this Lease, any claim for damages will constitute an expense of administration.

SECTION 5. OPINIONS OF COUNSEL. Concurrently with the delivery of Certificates of Inspection and Acceptance hereunder, the Trustees will deliver to General Foods an opinion of the Trustees' counsel to the effect that (i) the Trustees and any additional trustee or the successor of any of Them have been duly appointed as trustees of the property of EL by order of the Court, which appointment has been duly ratified by order of the Interstate Commerce Commission, and that They are duly vested with title to the properties of EL and have the power and authority to carry on its business; (ii) the execution and delivery of this Lease by the Trustees and their assumption and undertaking of the obligations, duties and liabilities hereof have been duly authorized by an order of the Court; and this Lease is legal, valid, binding and enforceable against the Trustees in accordance with its terms; (iii) the rights of General Foods as herein set forth and its title to the Units are free and clear of the lien of any mortgage, security agreement or other instrument binding upon the Trustees or EL; (iv) obligations to make rental and other payments under this Lease will constitute expenses of administration of the Trustees, payable on a parity with other equipment obligations theretofore or thereafter assumed or incurred by the Trustees; and, upon occurrence of an Event of Default under this Lease, any

claim for damages will constitute an expense of administration;  
(v) this Lease has been filed and recorded in such public offices as are necessary for the full protection of the rights of General Foods in the United States of America and in Canada; and (vi) no approval of the Interstate Commerce Commission or any other governmental authority (except the Court in the proceedings for the reorganization of EL) is necessary for the execution and delivery of this Lease, or if any such approval is necessary (specifying the same), that it has been obtained. The Trustees' counsel who delivers such opinion to General Foods may rely upon an opinion of Canadian counsel.

SECTION 6. IDENTIFICATION PLATES. Upon or before the delivery to the Trustees of each of the Units the Manufacturer has agreed to cause to be plainly, distinctly, permanently and conspicuously stenciled upon each side of such Unit the following words, which shall appear plainly and conspicuously in letters not less than one inch in height:

GENERAL FOODS CORPORATION

WHITE PLAINS, NEW YORK

OWNER AND LESSOR

In case, during the continuance of this Lease, any such stencil shall at any time be painted over or otherwise made inconspicuous, removed, defaced or destroyed on any Unit, the Trustees shall

immediately cause the same to be restored or replaced. The Trustees will not allow the name of any person, association, or corporation to be placed on any of the Units as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than General Foods or its assignee; but the Units may be lettered with the names or initials or other insignia customarily used by the Trustees on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Units under this Lease.

SECTION 7. NUMBERING. On or prior to the time of delivery of each Unit to the Trustees, Manufacturer has agreed to cause to be placed on each side of such Unit the owner's identity, as indicated in Section 6 above, and the Railroad's Road Number. At all times thereafter, during the continuance of this Lease, the Trustees will cause each Unit to bear the numbers so assigned to it, and the Trustees will not change or permit to be changed, the numbers of any such Units, except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with General Foods by the Trustees and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

SECTION 8. TAXES. The Trustees agree that, during the continuance of this Lease, in addition to the rentals herein provided, they will promptly pay all taxes, assessments and other governmental charges levied or assessed upon or in respect of the Units or any thereof or upon the use or operation thereof or the earnings arising therefrom; if and to the extent that any such taxes, assessments or other governmental charges may give rise to any lien upon the Units or may become a claim entitled to priority over any of the rights of General Foods in and to the Units, and as additional rental will promptly pay or reimburse General Foods for all taxes, assessments and other governmental charges levied or assessed against the Trustees or any predecessor or successor in title of the Trustees solely on account of the use or operation thereof or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the net income from the rentals herein provided), including any sales, use or similar taxes payable on account of the sale or delivery of the Units by the Manufacturer to General Foods or the leasing of the Units hereunder; but the Trustees shall not be required to pay the same so long as they shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless

thereby, in the judgment of General Foods, the rights or interest of General Foods will be materially endangered, nor shall the Trustees be required to make any tax payment which is deferred by order of a court having jurisdiction, provided that such deferment shall not subject the title and interest of General Foods in and to the Units to any lien or encumbrance. In the event any tax reports are required to be made on the basis of individual Units, the Trustees will either make such reports in such manner as to show the ownership of such Units by General Foods or will notify General Foods of such requirement and will make such report in such manner as shall be satisfactory to General Foods.

SECTION 9. MAINTENANCE, LIENS AND INSURANCE.

(a) General Foods makes no warranty or representation either expressed or implied, in respect of the Units, including, without limitation, any warranty or representation as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Trustees hereunder, it being agreed that all such risks, as between General Foods and the Trustees, are to be borne by the Trustees.

(b) The Trustees agree, during the continuance of

this Lease, at their own cost and expense to maintain and keep all of the Units in good order and repair.

(c) Except for alterations or changes required by law, the Trustees shall not, without the prior written approval of General Foods, effect any change in the design, or construction of the Units or in the Specifications.

(d) Any parts installed or replacements made by the Trustees upon any Unit (except for special devices which have been added to the Units by the Trustees, the cost of which is not included in Manufacturer's total unit price on which the rentals hereunder have been computed, which is not required for the operation or use of the Units and which can be removed without material injury to the Units) shall be considered accessions to such Unit and title thereto shall be immediately vested in General Foods, without cost or expense to General Foods.

(e) The Trustees shall pay or satisfy and discharge any and all sums claimed by any party which, if unpaid, might become a lien or a charge upon the Units or entitled to priority over any of the rights of General Foods in and to the Units, but the Trustees shall not be required to discharge any such claim so long as they shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable

manner which, in the opinion of General Foods, will not affect or endanger the title and interest of General Foods in and to the Units.

(f) The Trustees shall, at their own cost and expense insure General Foods against any and all claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons, or loss or damage to property which may result from or grow in any manner out of the control, use or operation of the Units under this Lease whether or not in the possession of the Trustees, and shall further indemnify General Foods and hold it harmless from any loss, expense or liability which General Foods may suffer or incur from any such claims, demands, suits, judgments or causes of action, provided, however, that they do not assume liability in respect of representatives, agents or employees of the Manufacturer or General Foods, and provided, further that General Foods will assign or pay over to the Trustees any and all claims which it may have against third parties in respect of loss or damage to the Units if the Trustees are not in default under this Lease.

SECTION 10. LOSS, THEFT OR DESTRUCTION OF A UNIT. In the event any Unit is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever, or shall be requisitioned, taken over or nationalized by any governmental

authority under the power of eminent domain or otherwise during the Initial Term or Extended Term of this Lease (except by a Reorganized Company, as hereinafter defined), and all of the obligations of the Trustees hereunder are not assumed by such governmental authority within 60 days after such nationalization, the Trustees shall promptly and fully inform General Foods of such occurrence and shall, within 30 days after such occurrence, pay to General Foods, as liquidated damages in lieu of any further claim of General Foods hereunder in respect of such Unit, except for accrued rent and such claims as arise or exist under Sections 8 and 9 hereof, the present worth, as hereinafter defined, of the total remaining rental for such Unit plus the Net Scrap Value, as hereinafter defined, for such Unit.

The present worth of the total remaining rental for such Unit as used in this Section 10 shall mean an amount equal to such rental discounted on a 6% per annum basis compounded monthly from the date of such occurrence to the expiration of the then current term of this Lease.

The Net Scrap Value of each Unit shall mean an amount in cash equal to the current quoted price per gross ton of No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Pittsburgh, Pennsylvania, as published in Iron Age or other reputable

industrial journals, on the first day of the month preceding the month in which payment of such Net Scrap Value is required to be made, multiplied by the gross weight of such Unit on that portion thereof which qualifies as such No. 1 Heavy Railroad Melting Steel Scrap.

In case upon the requisition, take over or nationalization of any of the Units as hereinbefore provided the Trustees shall fail to make payment therefor to General Foods pursuant to this Section 10: (i) this Lease shall be in default, (ii) General Foods shall be entitled to the full amount of any award or recovery from such occurrence, (iii) and the Trustees, who hereby expressly waive any right or claim thereto in that event, shall not be entitled to any part of such award or recovery as damages or otherwise.

This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss, destruction, requisition, take over or nationalization of any of the Units, the risk of which shall be borne by the Trustees; provided, however, that this Lease shall terminate with respect to any Unit which is lost, stolen, destroyed or damaged beyond repair or requisitioned, taken over or nationalized on the date General Foods shall receive payment of the amount required to be paid to it on account of such Unit under

this Section 10.

SECTION 11. COMPLIANCE WITH LAWS AND RULES. The Trustees agree to comply in all respects with all laws of the jurisdictions in which their operations involving the Units may extend and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Trustees or over the Units, to the extent that such laws and rules affect the operation, maintenance or use of the Units. In the event such laws or rules require the alteration of the Units, the Trustees will conform there with at their expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Trustees may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of General Foods, adversely affect its property or its rights as owner hereunder.

SECTION 12. DEFAULT. If, during the continuance of this Lease or any extension thereof, one or more of the following events shall occur:

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for five (5) days after written notice from General

Foods to the Trustees;

(b) The Trustees shall make or suffer any unauthorized assignment or transfer of this Lease or of possession of the Units or any of them except for the requisitioning, taking over or nationalizing described in Section 10 of this Lease and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Unit or Units within thirty (30) days after written notice from General Foods to the Trustees demanding such cancellation and recovery of possession;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Trustees contained herein and such default shall continue for thirty (30) days after written notice from General Foods to the Trustees specifying the default and demanding the same to be remedied;

(d) any material representation made by the Trustees herein or hereunder or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

(e) Order No. 294 (Document No. 858) dated October 8, 1974, of the

United States District Court for the Northern District of Ohio, Eastern Division, in the pending proceedings for the reorganization of EL, authorizing the execution and delivery of this Lease by the Trustees and their undertaking of the obligations, duties and liabilities hereof, shall be reversed, modified, amended or superseded in any material respect which might adversely affect any of the rights, powers, privileges and remedies of General Foods under this Lease and the order effecting such reversal, amendment, modification or superseding of said order shall not have been vacated or set aside or stayed within 60 days from the date of entry thereof;

(f) a plan of reorganization of the Railroad approved by the Court in the pending proceedings for the reorganization of EL and said plan does not provide for the assumption by the Reorganized Company as hereinafter defined of each and every obligation of the Trustees under this Lease in form and substance satisfactory to General Foods;

(g) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against any Reorganized company as hereinafter defined and all the obligations of the Trustees under this Lease shall not have been duly assumed by a trustee or trustees appointed in such proceedings or other-

wise given the same status as obligations assumed by such a trustee or trustees within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or

(h) any proceedings shall be commenced by or against any Reorganized Company as hereinafter defined for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of the Trustees under this Lease shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for such Reorganized Company or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case (herein sometimes called Events of Default), General Foods, at its option, may

- (1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Trustees of the applicable

covenants of this Lease or to recover damages for the breach thereof; or

(2) by notice in writing to the Trustees terminate this Lease, whereupon all their right to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Trustees shall remain liable as herein provided; and thereupon they shall deliver possession of the Units to General Foods in accordance with Section 16 hereof unless such delivery is impossible because the Units or any portion thereof were requisitioned, taken over or nationalized as described in Section 10 and General Foods may by its agents enter upon the premises of the Trustees or other premises where any of the Units may be and take possession of all or any of such Units (damages occasioned by such taking of possession are hereby expressly waived by the Trustees) and thenceforth hold, possess and enjoy the same free from any right of the Trustees, or their successors or assigns, to use the Units for any purpose whatever; but General Foods shall nevertheless have a right to recover from the Trustees any and all amounts which under the terms of this

Lease may be then due or which may become due and unpaid for the use of the Units (including rentals accruing on the Units after the date of default); and also to recover forthwith from the Trustees (to the extent not recovered pursuant to the foregoing) the following: (i) as damages for loss of the bargain and not as a penalty a sum with respect to Units where the term has not expired, which represents the excess of the present worth at the time of such termination, of the aggregate of the rentals for the Units which would otherwise have accrued hereunder from the date of such termination to the expiration date of the then current term of this Lease over the then present worth of the Fair Rental Value of such Units for such Units for such period; plus interest on such excess at the rate of 10% per annum commencing on the date of such notice. Fair Rental Value shall be determined in the same manner as Fair Market Value is determined in Section 3A, Paragraph 2 herein. Such present worths are to be computed in each case by discounting such rental payments at a rate of 6% per annum, compounded monthly from the date upon which rentals

would have been payable hereunder had this Lease not been terminated to the time of such termination, and (ii) any expenses incurred in the retaking, storage, repairing and lease, sale or other disposition, and reasonable attorneys' fees incurred by General Foods, plus an amount equal to accrued taxes and other amounts payable hereunder by the Trustees with respect to the Units, all costs, expenses, losses and damages incurred or sustained by General Foods by reason of such default, at interest at the rate of 10% per annum on each of the foregoing items in this subparagraph (ii) and on all sums not paid when due under this Lease.

If on the date of such termination or repossession any Unit is damaged, lost, stolen or destroyed or subject to requisition, take over or nationalization by any governmental agency or is subject to any levy, seizure, assignment, application or sale for or by any creditor, the Trustees shall also remain liable for payment of the amounts specified in Section 10 hereof.

The remedies in this Lease provided in favor of General Foods shall not be deemed exclusive, but shall be cumulative,

and shall be in addition to all other remedies in its favor existing at law or in equity. The Trustees hereby waive any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of General Foods in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event that General Foods shall bring suit and be entitled to judgment hereunder, then it shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

SECTION 13. POSSESSION AND USE OF THE UNITS. Unless an Event of Default shall have occurred and be continuing, the Trustees shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. They shall not, without the prior written consent of General Foods, part with the possession or control of, or suffer or allow to pass out of their possession or control, any of the Units except that the Trustees may permit the use thereof or any part thereof by other railroads in the usual interchange of traffic.

SECTION 14. ANNUAL REPORT. Trustees will furnish to General Foods on or before September 1 in each year commencing 1975 and on such other date or dates as General Foods may from

time to time reasonably request, an accurate report certified by a duly authorized agent or officer of the Trustees, stating as of a recent date (not exceeding 90 days preceding the date of such report) (a) the Railroad's Road Numbers of the Units then subject to this Lease, (b) the Railroad's Road Numbers of all Units that have become lost, destroyed or irreparably damaged since the date of the previous report (or since the date hereof in the case of the first such report), (c) the Railroad's Road Numbers of all serviceable Units, (d) that all Units then subject to this Lease have been kept in good order and repair or, if such be the case, the Railroad's Road Numbers of all Units then awaiting repairs or being repaired in accordance with Section 9 hereof, (e) that the stencils painted on the Units as required by Section 6 hereof have remained and presently appear plainly and conspicuously on each side of each Unit, and such stencils have not been painted over or otherwise made inconspicuous or defaced, and (f) that, to the best of their knowledge, no Event of Default, and no event which with the giving of notice and lapse of time, would constitute an Event of Default, has occurred during the year immediately preceding the date as of which such report is made, or, if any such Event of Default or other such event has occurred, specifying the same and the nature and the status thereof. The Trustees will furnish copies of such reports to

such persons as General Foods may from time to time designate in writing to them. General Foods shall have the right, by its agents, to inspect the Units and/or the Trustees records with respect thereto at reasonable times and places and upon reasonable notice during the continuance of this Lease or any extension thereof.

SECTION 15. ASSIGNMENT.

(a) All rights, benefits and advantages of General Foods hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or General Foods may assign, pledge, mortgage, transfer or otherwise dispose of title to the Units, with or without notice to the Trustees subject to their rights hereunder.

(b) The Trustees, without the prior written consent of General Foods, shall not sell, assign, transfer or encumber their leasehold interest under this Lease in any of the Units, except that the Trustees may assign and transfer their leasehold interest hereunder in the Units and the possession thereof to any railroad which shall have assumed all of their obligations hereunder and into or with which they shall have merged or consolidated and except that they may sublet the Units or any of them to any corporation or railroad so long as their obligations hereunder are not extinguished by such subletting (except to the

extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Trustees or any other liens authorized by the Court in the proceedings for the reorganization of the Railroad may subject such leasehold interest to the lien thereof). Any assignment prohibited by this Section 15 shall be void.

(c) Nothing in this Section 15 shall be deemed to limit the right of the Trustees to assign and transfer their leasehold interest hereunder in the Units and the possession thereof to a Reorganized Company (as hereinafter defined) or to a governmental agency established to acquire railroad equipment, provided that all the obligations then existing or to accrue of the Trustees under this Lease shall be assumed as a general obligation by such Reorganized Company or governmental agency.

(d) After any assignment and transfer of the Trustees leasehold interest hereunder in the Units and the possession thereof as above permitted, nothing in this Section 15 shall be deemed to limit the right of the Reorganized Company (as hereinafter defined), as successor to the Trustees, at any time further to assign and transfer their leasehold interest hereunder in the Units and the possession thereof to any successor corporation which shall have assumed all of the obligations hereunder of the Trustees and into or with which such Reorganized Company shall have merged

or consolidated or which shall have acquired the greater portion of the property of such Reorganized Company; nor shall anything in this Section 15 be deemed to limit such successive assignments and transfers.

(e) The term "Reorganized Company" shall mean any corporation (which may be EL) or governmental agency which acquires the greater portion of the lines of railroad comprised in the EL's estate and thereafter shall include any successor which shall have become such in compliance with paragraph (d) of this Section 15.

(f) The term "Trustees" whenever used in this Lease means Thomas F. Patton and Ralph S. Tyler, Jr., Trustees of the property of the EL, as well as any successor or additional trustees of such property, before any assignment and transfer of the Trustees leasehold interest hereunder in the Units and the possession thereof to a Reorganized Company as hereinbefore provided in this Section 15 and thereafter shall mean any Reorganized Company.

(g) The liabilities and obligations of said Trustees, Thomas F. Patton and Ralph S. Tyler, Jr., as well as of any such successor or additional trustees, under and in respect of this Lease, are the liabilities of such Trustees, or any or all of them solely as trustees of the property of the EL, and not individually. Said Trustees and any successor or additional

trustees shall not be relieved of their liabilities or obligations as such Trustees under or in respect of this Lease, except upon any assignment and transfer of the Trustees leasehold interest hereunder in the Units and the possession thereof to a Reorganized Company as hereinbefore provided in this Section 15.

SECTION 16. RETURN OF UNITS. Upon the expiration of the Initial Term or Extended Term of this Lease, or if General Foods shall rightfully demand possession of the Units pursuant to this Lease or otherwise, the Trustees shall forthwith deliver the possession of the Units to General Foods. For such purpose the Trustees shall at their own cost and expense forthwith assemble the Units and place them upon such storage tracks of the Trustees as General Foods may designate, or, in the absence of such designation, as the Trustees may select, and they shall permit General Foods to store said Units on such tracks for a period not exceeding one hundred (100) days from the date that all Units are so assembled at the risk of General Foods, and shall at their own cost and expense transport or cause to be transported the same or any thereof, at any time within such one hundred (100) day period to any place or places on the lines of railroad operated by them or to any connecting carrier for shipment, all as directed by General Foods. The assembling, delivery, storage and transporting of the Units as hereinabove

provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises General Foods shall be entitled to a decree against the Trustees so as to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Trustees under the foregoing provisions of this Section 16, they hereby irrevocably appoint General Foods as their agent and attorney, with full power and authority, at any time while they are obligated to deliver possession of any Unit to General Foods, to demand and take possession of such Unit in their name and behalf from whomsoever shall be at the time in possession of such Unit.

Except as otherwise provided in Section 10 hereof, in the event that any Unit or Units subject to this Lease are not redelivered to General Foods on or before the date on which the Initial Term or Extended Term of this Lease expires, all of the obligations of the Trustees under this Lease with respect to such Unit or Units shall remain in full force and effect until such Unit or Units are redelivered to General Foods.

SECTION 17. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.

(a) The implementation of this Lease will be carried out in strict compliance with all federal and state laws regarding discrimination in employment. Specifically, the parties agree that they will not discriminate by reason of race, color, creed,

national origin, age or sex.

(b) During the performance of this Lease, the Trustees agree as follows:

(1) The Trustees will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Trustees will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Trustees agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(2) The Trustees will, in all solicitations or advertisements for employees placed by or on behalf of the Trustees, state that all qualified applicants

will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Trustees will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Trustees' commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Trustees will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Trustees will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary

of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Trustees' noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended, in whole or in part, and the Trustees may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Trustees will incorporate in every subcontract or purchase order (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965) the provisions of section 202 of said Executive Order No. 11246, so that such provisions will be binding upon each subcontractor or vendor. The Trustees will take such action with respect to any subcontract or purchase order as the contracting

agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Trustees become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Trustees may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 18. MODIFICATION OF LEASE. This Lease exclusively and completely states the rights of General Foods and the Trustees with respect to the Units. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of General Foods and the Trustees, or the successors, transferees or assigns of either, subject, however, to the limitations on assignment hereof by the Trustees.

SECTION 19. SECTION HEADINGS AND CERTAIN REFERENCES. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. Unless otherwise indicated, all references herein to sections, subsections, clauses and other subdivisions refer to the corresponding sections, subsections, clauses and other subdivisions of this

Lease; the words "herein", "hereof", "hereby", "hereto", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular section, subsection, clause or other subdivision hereof; and reference to a numbered or lettered subdivision of a section shall include relevant matter within the section which is applicable to but not within such numbered or lettered subdivision.

SECTION 20. CERTAIN APPLICABLE LAWS. Any provision hereof prohibited by or unlawful or unenforceable under any applicable law or any jurisdiction shall as to such jurisdiction be ineffective without modifying the remaining provisions of this Lease. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the Trustees to the full extent permitted by law, to the end that this Lease shall be deemed to be a valid, binding agreement enforceable in accordance with its terms.

SECTION 21. 360 DAY YEAR. Computations hereunder involving the determination of interest or discount shall be made on the basis of a 360-day year of twelve 30-day months.

SECTION 22. NOTICES. All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or delivered to a United States post office, registered mail, return receipt requested, or to a telegraph office, charges prepaid, addressed

as follows:

If to the Lessor:

General Foods Corporation  
250 North Street  
White Plains, New York 10625

Attention: A. G. Perkins, Esq.

If to the Lessees:

Trustees of the Property of  
Erie Lackawanna Railway Company  
Midland Building  
Cleveland, Ohio 44115

Attention: Treasurer

or to such other addresses as may hereafter be furnished in writing by either party to the other.

SECTION 23. GOVERNING LAW. The provisions of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 24. SURVIVAL OF COVENANTS. Any other provisions contained in this Lease to the contrary notwithstanding, it is hereby agreed that the provisions of Sections 8, 11, 12, 15 and 16 hereof shall survive the expiration or termination hereof.

SECTION 25. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 15, this Lease shall be binding upon and shall inure to the benefit of General Foods and the Trustees and their respective successors and assigns, and no other persons shall have or acquire any right under or by virtue of this Lease.

SECTION 26. EXECUTION IN COUNTERPARTS. This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

SECTION 27. RECORDING. The Trustees, without expense to General Foods, will cause this Lease and all amendments, supplements, and assignments hereof or thereof, to be duly filed and recorded and re-filed and re-recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and this Lease to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act (a notice of such deposit to be given in the "Canada Gazette" pursuant to said Section 86). Trustees will promptly furnish to General Foods certificates or other evidences of such filing and recording and re-filing and re-recording and an opinion satisfactory to General Foods of Counsel for the Trustees, with respect thereto. In addition, the Trustees shall do and perform all such other acts as may be required by law, or reasonably requested by General Foods, for its protection of title to the interest in the Units.

SECTION 28. OTHER EQUIPMENT LEASES AND SECURED OBLIGATIONS. The Trustees agree that during the continuance of this Lease, they

will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of rolling stock equipment, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Trustees under this Lease or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of EL or the Trustees (except the rolling stock equipment or other property involved in the particular transaction) unless the obligations of the Trustees under this Lease are given the same priority and are equally and ratably secured thereby.

SECTION 29. This Lease is a net lease and the Trustees shall not be entitled to any abatement of rent, reduction thereof or set off against rent, including, but not limited to, abatements, reductions or set offs due or alleged to be due to, or by reason of, any past, present or future claims involving this Lease or other dealings between General Foods and the Trustees.

IN WITNESS WHEREOF, General Foods has caused this Lease to be executed in its corporate name, by one of its officers



STATE OF OHIO            )  
                                  ) ss.  
COUNTY OF CUYAHOGA )

On this *24<sup>TH</sup>* day of *OCTOBER*, 1974, before me personally appeared Thomas F. Patton and Ralph S. Tyler, Jr., to me personally known, who, being by me duly sworn, say that they are Trustees of the property of Erie Lackawanna Railway Company, Debtor, that the foregoing instrument was signed by them as Trustees of the property of Erie Lackawanna Railway Company, Debtor, and they acknowledged that the execution of the foregoing instrument was their free act and deed.

*Harry P. Tyler*  
\_\_\_\_\_

EXHIBIT A

<u>Description</u>	<u>Specification # and Date</u>	<u>Railroad's Road No.</u>	<u>Unit Cost</u>	<u>Total</u>
Seventy-Five (75) 50-ft., 70-ton RBL cars	Builders Specification No. S-385-A, dated April 25, 1974	69275 through 69349	\$32,146.24*	\$2,410,968*

\*Estimated price; final price to be determined by final invoice.

Monthly rental per Unit = \$9.80 per \$1,000 of unit cost.

EXHIBIT B

CERTIFICATE OF INSPECTION AND ACCEPTANCE

To:

GENERAL FOODS CORPORATION

250 North Street

White Plains, New York 10625

We do hereby certify as follows:

(i) The below described Units of railroad equipment (the Units) were delivered to the Railroad Trustees at Dover, Delaware on the indicated dates:

<u>Description</u>	<u>Quantity</u>	<u>Railroad's Road Number</u>	<u>Date of Delivery</u>
--------------------	-----------------	---------------------------------------	-----------------------------

(ii) The units have been inspected by duly appointed and authorized representatives of General Foods Corporation and the Railroad Trustees at the plant of Manufacturer and again at the point of delivery hereinbefore specified. Such inspections show (a) that the Units are in good order and condition and conform to the Specifications referred to in the Purchase Contract and to all applicable Federal Railroad Administration requirements and all standards recommended by the Association of American Railroads and (b) that there was plainly, distinctly, permanently and conspicuously stenciled upon each side of each Unit the

following words, which appear plainly and conspicuously in letters not less than one inch in height:

GENERAL FOODS CORPORATION  
WHITE PLAINS, NEW YORK  
OWNER AND LESSOR

and that each Unit was plainly and distinctly marked with \_\_\_\_\_ and the Railroad's Road Number set forth above with respect thereto,

(iii) On the aforesaid dates of delivery the Units were duly accepted by the undersigned on behalf of General Foods Corporation and the Railroad Trustees as the Lessees thereof.

Dated: \_\_\_\_\_, 1974

\_\_\_\_\_  
(Representative of ELRC)

\_\_\_\_\_  
(Representative of GFC)

8285

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976, 12:01 a.m., the Financing Agreement described below has been assigned to the Consolidated Rail Corporation by the Trustees of:

Erie Lackawanna Railway Company  
Midland Building  
Baltimore, Maryland 21201

The Financing Agreement is a Lease Agreement , dated October 29, 1974 , bearing the ICC recordation number 7702 .

The payee's name and address is:

General Foods Corporation  
250 North Street  
White Plains, New York 10625

This Notice of Assignment has been placed in the file of the ICC recordation number listed above and the entire assignment is contained in the ICC recordation file stamped in the margin of this assignment. A copy hereof will be promptly mailed to the payee listed above for distribution to the beneficial holder(s) of the Financing Agreement described in this Notice of Assignment.

Consolidated Rail Corporation