

# GREENBRIER LEASING CORPORATION

THE M. D. FRIEDMAN COMPANY — COMMERCIAL METALS COMPANY

Room 604 Coal Exchange Building  
Huntington, West Virginia 25701

RECEIVED

AUG 2 9 07 AM '76

I.C.C.  
FEE OPERATION BR.

July 28, 1976

6-21-76-10  
AUG 2 1976  
58

Secretary of the Interstate Commerce Commission  
% Mr. Shelton - Fee and Recordation Unit  
Room 1312  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 0429 Filed & Recorded  
AUG 2 1976 9 10 AM  
INTERSTATE COMMERCE COMMISSION

Re: Lease Agreement 76-21

Dear Secretary:

We have enclosed our original lease No. 76-21 and three counterparts for filing per Section 20 C of the act.

The general description of the equipment covered by our lease 76-21 is:

- 20 - 70 Ton Gondola Cars (GT AAR mechanical designation), Reporting Marks P & PU 1100-19. Formerly C.I.M. 7450-7999.
- 46'6" I. L. - 9'8" I. W. - 5'6" I. Hgt. - 2802 Cu. Ft.

Our check No. 1368 in the amount of \$50.00, payable to the Secretary of the Interstate Commerce Commission is enclosed to pay the recordation fee.

Yours truly,

*Willard Q. Winters*  
Willard Q. Winters,  
Vice President

WQW:fab  
Enclosures

I.C.C.  
FEE OPERATION BR.  
RECEIVED

REGISTRATION NO. 8429  
AUG 2 1976-9 10 AM  
RECORDS & COMM. DIVISION

LEASE

AGREEMENT made and entered into this 1st day of July, 1976

between

GREENBRIER LEASING CORPORATION  
a Delaware Corporation (hereinafter called  
"Greenbrier")

and

PEORIA AND PEKIN UNION RAILWAY COMPANY  
a Illinois Corporation

RECITALS

Lessee desires to lease from Greenbrier as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals and terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. Lease of Cars. Greenbrier agrees to lease to Lessee and Lessee agrees to and does hereby lease from Greenbrier 20 rail-road cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The Lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3 hereof.

2. Delivery of Cars. Greenbrier shall deliver the Cars as promptly as is reasonably possible from time to time. Greenbrier's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Greenbrier shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers and Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Greenbrier's control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after

From and after delivery of a Car, Lessee shall be liable for, and shall pay or reimburse Greenbrier for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car.

3. Condition of Cars - Acceptance. All cars delivered hereunder shall be per your inspection and shall comply with the description and/or specifications contained in Exhibit "A", but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease.

4. Use and Possession. Throughout the continuance of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to each Car.

5. Term. This Lease shall be for a term (hereinafter referred to as the ("Original Term")) which shall commence on the date of delivery by Greenbrier of the cars, as provided in Paragraph 2 hereof, and shall terminate three (3) years from the Date of Delivery.

6. Rental. Per Car. During the original term of this Lease, Lessee shall pay to Greenbrier for each Car, commencing on the date of delivery thereof a rental of \$5.00 per Car per day.

7. Payment. Lessee shall make payment of all sums due hereunder to Greenbrier at the address provided in Paragraph 20 hereof, or such other place as Greenbrier may direct. Rental payments shall be made on or before the 15th day of each month succeeding the month for which such rental has accrued. 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 reason.

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

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.

10. Substitution of Cars. No substitutions.

11. 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.

12. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens, in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect Greenbrier's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

13. Indemnities - Patent Covenants. Lessee agrees to indemnify Greenbrier and hold it harmless from any loss, expense or liability which Greenbrier may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease. Greenbrier agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by Greenbrier upon delivery of a Car, or any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

14. Use - Lettering. No lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Greenbrier. Cars to be delivered will be stencilled P & PU reporting marks.

15. Loss, Theft or Destruction of Cars. All risk of loss or damage to the cars from any cause not otherwise provided for in this Lease, and in the event of loss or destruction or irreparable damage to any of the cars from any cause, Lessee shall promptly and fully inform Lessor with respect to the same and shall promptly pay Lessor the daily rental from the end of the preceding month to the date of loss, destruction or irreparable damage, the sum of \$5,200.00, less 60% of all rental paid by Lessee hereunder with respect to such Car.

16. Return of Cars. Upon the expiration of this Lease with respect to any Car (other than pursuant to paragraph 15 hereof), Lessee shall at

its sole cost and expense, forthwith surrender possession of such Car to Greenbrier. Each Car so surrendered shall be in running condition, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no repairs that would prevent the movement for scrapping over railroads with provisions under A.A.R. Rule 88. Until the delivery of possession to Greenbrier pursuant to this Paragraph 16, Lessee shall continue to be liable for and to pay rental at the rate being paid immediately prior to expiration, and Lessee shall, in addition, make all other payments and keep all obligation and undertakings required of Lessee under any and all provisions of this Lease as though such expiration had not occurred. Notice in writing to Greenbrier by Lessee shall constitute termination of liability for daily rental and surrender of possession of such cars at expiration of lease.

17. Default. If Lessee shall fail to make any payment required hereunder within thirty (30) days after same shall have become due or shall default or fail for a period of thirty (30) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, federal or state, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events, Greenbrier may at its election terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date or may without terminating the Lease repossess the Cars and relet same, and, if after paying all expenses of retaking and reletting the Cars, the amount so realized will not satisfy the rentals reserved in this Lease, Lessee agrees that it will pay any such deficiency from time to time upon demand from Greenbrier. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive for a period of only sixty (60) days beyond the termination of the Lease and the retaking of the Cars.

18. Sub-Lease. Any such sub-lease shall be upon the terms of this Lease.

19. Opinion of Counsel. On or before the execution of this Lease, Lessee shall deliver to Greenbrier an opinion of Lessee's counsel to the effect that:

- (a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary to validly enter into

this Lease and carry out its obligations thereunder;

- (b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;
- (c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through and under Lessee; and all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease;
- (d) neither Lessee nor its counsel know of any requirement for recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20 (c) of the Interstate Commerce Act, which is necessary to preserve or protect the title of Greenbrier or its assignee in the United States of America; and
- (e) no governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of the Lessee in connection with this Lease or any action contemplated on its part thereunder.

20. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

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

Lessee: Peoria and Pekin Union Railway Company  
Peoria, Illinois 61611

or such other address as either party may from time to time designate by such notice in writing to the other.

21. No Warranty. No warranty.

22. Governing Law - Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State

of West Virginia. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

23. Severability - Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Greenbrier to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

24. Terminology. In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

25. Benefit. Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and their successors and assigns (to the extent permitted in Paragraph 18 hereof). Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 13 hereof shall apply to and inure to the benefit of any assignee of Greenbrier, and, if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

26. Recording. Lessee agrees that it will join in the execution of a memorandum or short form of this Lease for the purposes of recordation under Section 20(c) of the Interstate Commerce Act or such other recordation as Greenbrier deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

27. Option to Renew. Option to renew this Lease any quantity for one (1) year term would be at the rate of \$2.75 per day; all other conditions of this Lease to remain the same.

IN WITNESS WHEREOF, Greenbrier Leasing Corporation and  
Peoria and Pekin Union Railway Company have duly executed this  
Lease as of the day and year first above written.

GREENBRIER LEASING CORPORATION

Willard Q. Winters  
Vice President

ATTEST:

M. J. Friedman  
President

PEORIA AND PEKIN UNION RAILWAY COMPANY

Brayman  
President and General Manager

ATTEST:

C. B. Hellum  
Vice President, Secretary,  
Treasurer and Auditor

EXHIBIT "A"

70 Ton Gondola Car (Coal)

Reporting Marks ~~GBRX 7450-7999~~ P & PU 1100-1119

2802 Cubic Ft. Capacity

52,000 # Average lightweight

46' 6" Inside Length

9' 8" Inside Width

5' 6" Inside Height

Built 1948

6" x 11" Ride Control (A3) Trucks

E60 - Y 40 Draft Arrangement

AB type air brakes with QRB valves.