

7014

RECORDATION NO. _____ Filed & Recorded

MAY 1 1973 - 3 10 PM

RAILROAD EQUIPMENT LEASE INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT dated this 30th day of April, 1973, by and between KELLOGG COMPANY, a corporation of Delaware, hereinafter called "Kellogg" and George P. Baker, Richard C. Bond and Jervis Langdon, Jr., Trustees of the property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, hereinafter called "Lessees".

W I T N E S S E T H:

1. Term

Kellogg agrees to lease to Lessees and Lessees agree to accept and use exclusively upon the terms and conditions herein set forth the cars described in the Schedule hereto, hereinafter called "cars" and to pay Kellogg during the term of this Lease, for the use of each car, the rent set forth in the Schedule hereto.

The initial term of the Lease hereinafter called the "initial term" as to each car shall commence on the date of delivery to Lessees specified in the Certificate of Inspection and Acceptance for such car and shall terminate

on the fifth anniversary of the Average Date of Acceptance as hereinafter defined.

For the purposes of this Lease, the "Average Date of Acceptance" shall be the first day of the calendar month next succeeding a date determined as follows: the number of cars accepted by Lessees on each date of acceptance on or prior to the cutoff date as extended shall in each case be multiplied by the number of days elapsed subsequent to the date of the acceptance of the first car accepted; the products so obtained shall be added together and divided by the total number of cars accepted on or prior to the last date on or prior to the cutoff date as extended on which any of the cars were accepted; and the quotient so obtained (rounded out to the nearest whole number) will be the number of days elapsed subsequent to the date of the acceptance of the first car to and including the date which is the Average Date of Acceptance; provided, however, that the Average Date of Acceptance may be such other date as shall be agreed upon in writing by Lessor and Lessees.

2. Warranty

Kellogg warrants that the cars comply with the Association of American Railroads' requirements for inter-

change and with the requirements of the Federal Railroad Administration. Kellogg hereby assigns to Lessees' such of its warranty rights against the manufacturers of the cars and the component parts thereof as may be in the interest of Lessees, and hereby appoints Lessees as its agent and attorney to enforce, in the name of Kellogg or Lessees as their interests may appear, the warranty rights of Kellogg against such manufacturers.

3. Successors

This agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives.

4. Renewal

The Lessees are hereby given an option to renew this lease as to all of any of the cars for up to four successive five (5) year terms following the initial term of this lease upon the giving of a ninety (90) day written notice to such effect prior to the expiration of the initial term or any renewal term. In the event the Lessees exercise such renewal option the lease charge

per day for the first and second renewal term shall be the rental set forth in the Schedule A hereto. The rent for each subsequent five (5) year period shall be the fair market rent of the cars at such time. Fair market rent is the rent which would be paid in an arm's-length transaction by an informed and willing lessee (other than a lessee currently in possession or a used equipment dealer) to an informed and willing lessor under no compulsion to lease. If Kellogg and the Lessees are unable to agree on the Fair Market Rent prior to sixty days before the termination of the second or third renewal term they shall appoint and be bound by the finding of an independent appraiser or appraisers. If the parties are unable to agree on one independent appraiser, each party shall select one appraiser, and the two appraisers so selected shall select a third.

5. Delivery

Kellogg agrees to deliver each of the cars as soon as possible after the execution of this contract and not later than August 1, 1973, freight prepaid, to the Lessees' tracks at Chicago Heights, Illinois, and the Lessees agree to pay the per car charge on each of the

above described cars from the date such car has been accepted by the Lessees at Chicago Heights, Illinois, until each such car is returned to Kellogg at or after the termination of this agreement.

6. Lessees' Representations

Lessees represent and warrant that:

(i) Lessees, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., have been duly appointed as Trustees of the property of Penn Central Transportation Company, Debtor, by an order of the United States District Court for the Eastern District of Pennsylvania; the appointment of said Trustees has been duly ratified by an order of the Interstate Commerce Commission; and said Trustees are duly vested with the title to the properties of the Railroad and have the power and authority to carry on its business.

(ii) The execution and delivery of this lease by Lessees 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 Lessees in accordance with its terms.

(iii) The rights of Kellogg as herein set forth and the title of Kellogg to the cars are free and clear of the lien, charge or security interest created by any mortgage, security agreement or other instrument binding upon the Railroad or Lessees.

(iv) Except for the authorization by the United States District Court for the Eastern District of Pennsylvania (Reorganization Court) of the execution and delivery of this lease by the Lessees, 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 cars hereunder, for the rentals and for the other terms and conditions herein provided; or, if any such authorizations are required, they have been obtained and, if any such shall hereafter be required, they will be promptly sought.

(v) No litigation or administrative proceedings are pending or, to the knowledge of Lessees, are threatened against Lessees, the adverse determination of which would affect the validity of this lease or the rights of Kellogg to enforce the provision hereof.

(vi) Obligations to make rental and other payments under this Lease will constitute expenses of administration of Lessees, payable on a parity with other equipment obligations heretofore or hereafter assumed or incurred by Lessees; and, upon failure of the Lessees to pay the rent when due hereunder or any other default by Lessees in their obligations hereunder, any claim for damages will constitute an expense of administration.

7. Opinion of Counsel

Concurrently with the execution of this Lease, Lessees will deliver to Kellogg an opinion of Robert W. Blanchette, Esq., Counsel for Lessees, or an attorney designated by him, satisfactory to Lessor, to the effect that (i) Lessees, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., (or any successor or additional Trustees), have been duly appointed as Trustees of the property of the Railroad by an order of the United States District Court for the Eastern District of Pennsylvania; the appointment of said Trustees has been duly ratified by an order of the Interstate Commerce Commission; and said Trustees are duly vested with title to the properties of the Railroad and have the power and authority to carry on its business; (ii) the execution and delivery of this Lease by Lessees have been duly authorized by an order of said Court; and this lease is legal, valid, binding and enforceable against Lessees in accordance with its terms; (iii) the rights of Kellogg as herein set forth and the title of Kellogg to the cars are free and clear

of the lien of any mortgage, security agreement or other instrument binding upon the Railroad or Lessees; (iv) obligations to make rental and other payments under this lease will constitute expenses of administration of Lessees, payable on a parity with other equipment obligations heretofore or hereafter assumed or incurred by Lessees; and, upon failure of the Lessees to pay the rent when due hereunder or any other default by Lessees in their obligations hereunder, 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 Kellogg 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 the Railroad) 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. Counsel for Lessees or attorneys designated by him to deliver such opinion to Kellogg may rely upon an opinion of Canadian counsel.

8. Payment

The Lessees agree to pay Kellogg the aforesaid per car charge on or before the last day of each calendar month, covering the rentals which shall have accrued during the immediately preceding calendar month, during the life of this

agreement and until such time thereafter as all cars have been returned to Kellogg and all rentals therefor have been paid. Payment shall be made by mail to Kellogg Company, Battle Creek, Michigan, 49016, or such other place or places as may be directed in writing by Kellogg, and payment shall be effective when received by Kellogg.

9. Inspection

Each of the cars shall be inspected by the Lessees prior to the acceptance thereof by the Lessees, and the Lessees will deliver to Kellogg a certification of their acceptance of such car. Such certification shall constitute conclusive evidence, as to Kellogg and the Lessees, of the fitness of such car for the service intended, but shall not affect any right of the Lessees against the manufacturer of each car.

10. Maintenance

a. Maintenance and repair of the cars shall be performed by the Lessees or by other railroads according to the Interchange Rules adopted by the Association of American Railroads, Mechanical Division, Operation and Maintenance Department. Such rules are hereinafter called the "Interchange Rules" and are hereby incorporated into this agreement. Kellogg agrees to pay to the Lessees the amounts specified in the Interchange Rules for the maintenance and repair of the cars on the same basis as though Kellogg were the "Owner" as such term is used in the Interchange Rules.

b. The Lessees shall deal with other railroads for the account of Kellogg in matters relating to the maintenance, repair, destruction of and bad damage to the cars.

c. If any of the cars is destroyed or badly damaged, the Lessees shall promptly notify Kellogg of such occurrence, and the parties shall handle such occurrence as provided in the Interchange rules, except that as between Kellogg and the Lessees the amount to be paid by the Lessees in the event a car is destroyed or damaged beyond economical repair shall be the amount determined according to Paragraph 11 hereof.

d. In the event a car requires extensive repairs, is destroyed or badly damaged as defined in the Interchange Rules, as between Kellogg and the Lessees the per car charges shall abate in the same fashion as though it were a per diem charge according to the Association of American Railroads' Code of Per Diem Rules - Freight. Such rules are hereby incorporated into this Agreement.

e. Kellogg shall have the right but not the obligation, to replace any car destroyed, badly damaged or which requires extensive repairs. If such a substitution is made the per car charge shall begin on the day such replacement car is accepted by the Lessees.

11. Destruction

If a car is destroyed or damaged beyond economical repair, the Lessees shall pay to Kellogg within 90 days after such occurrence the present worth, as hereinafter defined, of the total remaining finance factor for such car as set forth

in the Schedule hereto (Finance Factor) plus the Net Scrap Value, as hereinafter defined, of such car.

The present worth of the total remaining Finance Factor for such car, used in this Paragraph 11 shall mean an amount equal to the Finance Factor discounted at $7\frac{1}{4}\%$ per annum in accordance with the "Present Worth" tables in "Financial Compound Interest and Annuity Tables, Fourth Edition" published by Financial Publishing Company, Boston, Massachusetts, or any subsequent edition thereof, compounded monthly from the date of Lessees' payment of such liquidated damages to the end of the second renewal as defined in Paragraph 4 hereof, regardless of whether the term of this Lease is extended pursuant to such Paragraph 4.

The Net Scrap Value of each car shall mean an amount in cash equal to the current quoted price per gross ton on No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Chicago, Illinois, as published in 'Iron Age' or other reputable industrial journals on the date such damage occurred, multiplied by 39.75.

12. Liability

No liability shall attach to Kellogg for injury, damage or loss of any kind whatsoever in connection with the use of said cars, whether it be to persons or property, and the Lessees agree to hold Kellogg harmless from and against any claims or payments which Kellogg may be required to pay as a result thereof. Nothing contained in this Paragraph 12 shall be construed to release Kellogg from any claim or liability resulting from negligence of Kellogg.

13. Default

If the Lessees shall fail to perform or abide by any of its obligations hereunder for a period of sixty (60) days after receipt of notification thereof, Kellogg at its election may either (a) terminate this agreement immediately or (b) withdraw said cars from the service of the Lessees and deliver the same, or any thereof, to others upon such terms as Kellogg may determine to be best at the time, and, in either case, the Lessees shall be liable to Kellogg for the balance of the Finance Factor for the then current term of this Lease if such default occurs during the original term or the first or second renewal term hereof, or the balance of the rent for the then current term if such default occurs during the third or fourth renewal term hereof, less any rentals received by Kellogg from others for any of the cars.

14. Return of Cars

The Lessees agree to return said cars to Kellogg at a point on the Lessees' rails designated by Kellogg at the expiration of this agreement, as hereinafter provided, free from all liens and charges whatsoever, in the same or as good condition, order and repair as received, ordinary wear and tear excepted, and with all the same kind and character of devices, appliances or appurtenances with which said cars were equipped at time of delivery to the Lessees. However, the preceding sentence shall not be binding upon the Lessees for any car or cars which have been destroyed or damaged beyond economical repair during the life of this agreement, and which are referred to

more specifically in Paragraphs 10 and 11 hereof.

15. Per Diem

Kellogg expressly agrees that the Lessees may collect and retain any and all per diem and mileage charges applicable to these cars.

16. Marking

At, or prior to the time of delivery of each of the cars Kellogg shall cause both sides of each car to be distinctly, permanently and conspicuously marked by stenciling or by a metal plate affixed thereto, with the reporting marks and numbers set forth in Schedule A inclusive and with the following legend in letters not less than one inch in height:

KELLOGG COMPANY
BATTLE CREEK, MICHIGAN
OWNER AND LESSOR

The Lessees shall immediately replace any such marking which may be removed, destroyed or become illegible wholly or in part. Except for numbering and stenciling as provided herein, the Lessees shall keep the cars free from any marking or labeling which might be interpreted as a claim of ownership thereof by the Lessees or any other person, association or corporation other than Kellogg and will not change, or permit to be changed, the identifying road numbers on any of the cars; provided, however, that the Lessees may permit the cars to be lettered in some appropriate manner for convenience of identification of the interest of the Lessees or to indicate the nature of the service furnished thereby.

17. Assignment

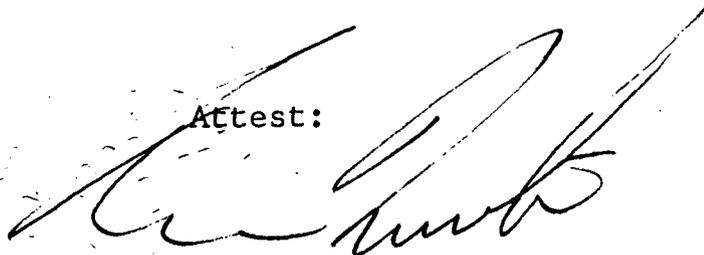
Unless the written consent of Kellogg shall be first obtained, the Lessees shall not assign this lease or any of its rights or interests hereunder, and shall not permit any of Kellogg's rights or interests hereunder to become subject to any lien, charge, or encumbrance of any kind; provided that nothing herein contained shall prevent the Lessees from allowing the use of the cars by others upon railroad lines usual interchange of traffic; or subleasing the cars to another railroad or corporation (i) if the lines of railroad presently operated by Lessees are temporarily or permanently reduced by 20% or more, or operations of 20% or more of such lines is temporarily or permanently suspended or taken over by another person or persons, or (ii) if the railroad freight operations, measured by car loadings, of the Lessees have been reduced, over a period of at least 12 months, to an average level not exceeding 85% of the level obtaining during the calendar year in which the then current term of this lease began, so long as the other obligations of the Lessees hereunder are not in any way diminished. A notation will be inserted in the Official Railway Equipment Register that cars marked PC 281300 to 281399, both inclusive, are leased from the Kellogg Company to the Lessees at a rent of \$8 a day, (or whatever the rate should happen to be at the time).

18. Recording

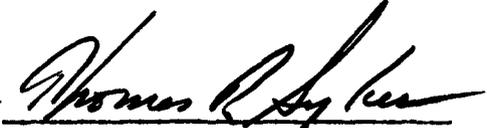
Lessees, without expense to Kellogg, will cause this lease and all amendments supplements and assignments hereof or thereof, to be duly filed and recorded and re-filed and re-recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and this lease to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act (and notice of such deposit to be given in the "Canada Gazette" pursuant to said Section 86). Lessees will promptly furnish to Kellogg certificates or other evidences of such filing and recording and refiling and re-recording and an opinion satisfactory to Kellogg of Counsel for Lessees, or an attorney designated by him satisfactory to Kellogg, with respect thereto. In addition, Lessees shall do and perform all such other acts as may be required by law, or reasonably requested by Lessor, for the protection of Kellogg's title to and interest in the cars.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement in several counterparts (each of which shall be deemed an original).

Attest:


Secretary

KELLOGG COMPANY

By 
Vice President

Witness:

GEORGE P. BAKER, RICHARD C. BOND, AND JERVIS LANGDON, JR.,
Trustees of the property of
PENN CENTRAL TRANSPORTATION
COMPANY, DEBTOR


Assistant Secretary

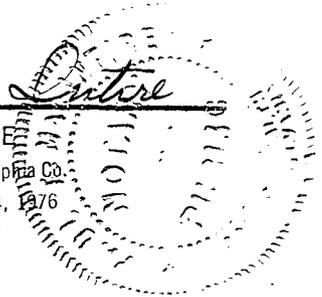
By 
VICE-PRESIDENT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF PHILADELPHIA)

On this *30th* day of *April*,
1973, before me personally appeared *W. R. DIVINE*,
to me personally know, who, being by me duly sworn, said
that he is a Vice President of the Trustees of the property
of Penn Central Transportation Company, Debtor, that the
foregoing instrument was signed on this day by him on behalf
of and by authority of the Trustees of the property of Penn
Central Transportation Company, Debtor, and he acknowledged
that the execution of the foregoing instrument was the free
act and deed of said Trustees.

Paul T. MacIntire

PAUL T. MacINTIRE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires October 4, 1976



SCHEDULE

<u>Cars</u>	<u>Description</u>	<u>Purchase Price Per Car</u>	<u>Lessees' Reporting Mark and Numbers</u>	<u>Monthly Rents Payment Per Car</u>
100	60 Foot 70 Ton Box Cars	\$23,140.	PC 281300 through PC 281399 both inclusive	Finance Factor \$210.00 Maintenance Factor <u>30.00</u> Total Rent * \$240.00

* Rent for less than a full month, when applicable, will be \$8.00 a day, composed of a Finance Factor of \$7.00 a day and a maintenance factor of \$1.00 a day.

EXHIBIT

Thrall Car Manufacturing Company

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, the duly authorized representative of Kellogg Company (Lessor) and of George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees of the property of Penn Central Transportation Company, Debtor (Lessees), hereby certifies with respect to box cars, manufactured by Thrall Car Manufacturing Company (Manufacturer), bearing the identifying reporting mark PC and car numbers of Lessees as follows:

pursuant to the Lease of Railroad Equipment, dated , 1973, between Lessor and Lessees (Lease):

1. That during the manufacture of said cars by Manufacturer he, either personally or through qualified inspectors working under his supervision, inspected, in accordance with inspection and testing practices and methods which in his opinion are adequate for the protection of Lessees, the materials and other components which were incorporated in, and the construction of, said cars;

2. That the materials and other components incorporated in, and the construction of, said cars comply fully with, and said cars have been completed in full accordance with, the Specifications approved by the Lessees, and in accordance with all applicable standards of the Federal Railroad Administration and the Association of American Railroads.

3. That said cars have been delivered in good order and ready for service by Manufacturer to Lessor and Lessees at Chicago Heights, Illinois, and were accepted by the undersigned on this date on behalf of Lessees, in accordance with the provisions of the Lease; and

4. That there was plainly, distinctly and conspicuously placed upon each side of each such car at the time of its delivery and acceptance a legend bearing the following words in letters not less than one inch in height:

KELLOGG COMPANY, BATTLE CREEK, MICHIGAN, OWNER AND LESSOR

Dated: , 1973

PROVIDED HOWEVER that this certificate is not a waiver of, and does not in any way diminish or affect the obligation of the Manufacturer to Lessor, or Lessees with respect to warranties concerning the construction and manufacture of the aforesaid cars.

Duly Authorized Representative
of KELLOGG COMPANY

and George P. Baker, Richard C. Bond,
and Jervis Langdon, Jr., Trustees of
the Property of Penn Central

8261

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: Penn Central Transportation Company
Six Penn Center Plaza
Philadelphia, PA 19104

The Financing Agreement is a Lease Agreement
, dated 4/30/73
bearing the ICC recordation number 7014
The payee's name and address is:

Kellogg Company
Battle Creek, Michigan 49016

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