

**Mellon Bank N.A.**  
Mellon Square  
Pittsburgh, Pennsylvania 15230

RECORDATION NO. **11566** Filed 1425

MAR 6 1980 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

G. CHRISTIAN LANTZSCH  
VICE CHAIRMAN OF THE BOARD

March 4, 1980

**NO--066A085**

Date MAR 6 1980

Fee \$ 50.00

ICC Washington, D. C.

Interstate Commerce Commission  
Twelfth Street and  
Constitution Avenue, NW  
Washington, DC 20423

Dear Sirs:

I have enclosed for recordation three multiple originals of an Agreement and Lease dated as of January 1, 1980, by and between Mellon Bank, N.A., Lessor, and The Chesapeake and Ohio Railway Company, Lessee. The Lease covers 96 used railroad flat cars bearing identifying road numbers 82100-82199, inclusive, except for numbers 82167, 82171, 82174, and 82180.

The address of Lessor is Mellon Square, Pittsburgh, Pennsylvania 15230. The address of Lessee is 2 Charles Street, Baltimore, Maryland 21203.

Please return the original document to Lessor at the following address:

Arthur Folsom, Jr., Esq.  
Suite 3629  
Mellon Bank Building  
Mellon Square  
Pittsburgh, Pennsylvania 15230

Very truly yours,

MELLON BANK, N.A.



*S. Fredstone*

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MAR 05 11 23 AM '80  
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RECORDATION DIV.  
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**Interstate Commerce Commission**  
Washington, D.C. 20423

2/6/80

OFFICE OF THE SECRETARY

**Arthur Folsom, Jr., Esq.**  
**Suite 3629**  
**Mellon Bank Building**  
**Mellon Square**  
**Pittsburgh, PA. 15230**

Dear **Sir**:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/6/80** at **1:15pm**, and assigned re-  
recording number (s). **11566**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

2/20/79

11566

RECORDATION NO. .... Filed 1425

MAR 6 1980 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

dated as of January 1, 1980

between

MELLON BANK, N.A.,

Lessor

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

Lessee

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AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of January 1, 1980 between MELLON BANK, N.A., a Pennsylvania corporation ("Lessor"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation ("Lessee");

W I T N E S S E T H     T H A T :

WHEREAS, Lessee has requested that Lessor lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I.    Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Schedule of Equipment.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the Schedule of Equipment.

"Interest Payment Rate" shall mean 15% per annum.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments

to a governmental authority or other third party or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall first notify Lessor of its intention to exercise such right and shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other condition, event, act or omission which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Rent" shall mean Additional Rent and Basic Rent, collectively.

"Rental Payment Date" shall mean each date on which Basic Rent is payable hereunder.

"Schedule of Equipment" shall mean the Schedule of Equipment attached hereto and made a part hereof.

"Term" shall mean the period of time for which the Units are leased hereunder.

"Unit" shall mean each individual item of personal property described in the Schedule of Equipment.

## ARTICLE II. Agreement to Lease

Lessor agrees to lease the Units to Lessee and Lessee agrees to lease the Units from Lessor upon the terms and conditions hereinafter set forth.

## ARTICLE III. Acceptance

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit that (i) Lessee has inspected and accepts such Unit for all purposes of this Agreement, (ii) such Unit is of a size, design, capacity and manufacture selected by Lessee, (iii) such Unit conforms to the applicable description set forth in the Schedule of Equipment and (iv) Lessee is satisfied that such Unit is suitable for its purposes; provided,

however, that nothing contained in this Agreement shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

#### ARTICLE IV. Term and Rent

4.1. Term. The Term shall be a period of 84 consecutive months commencing January 1, 1980.

4.2. Basic Rent. The aggregate Basic Rent for each Unit shall be \$26,278.28 payable in semi-annual installments of \$1,877.02 on each June 30 and December 31 after the commencement of the Term.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes, assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent shall be paid to Lessor at its office at Mellon Square, Pittsburgh, Pennsylvania 15230, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 12:00 noon Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit or the prohibition of or other restriction against

Lessee's use of all or any of such Units or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such causes or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

#### ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTY OF LESSOR SET FORTH IN THIS SECTION 5.1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions where such qualification is necessary;

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement. This Agreement has been duly authorized by all necessary corporate action on the part of Lessee; does not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); does not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and

does not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(d) Except as disclosed in a letter furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder; and

(e) The balance sheet of Lessee as of the close of its fiscal year ending December, 1978 and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

#### ARTICLE VI. Conditions to Lessor's Obligations

Lessor's duties and obligations under this Agreement are subject to fulfillment of the following conditions precedent prior to the date of the commencement of the Term (the "Closing Date"), in each case in form, substance and manner satisfactory to Lessor and its counsel:

(a) Lessee shall have furnished to Lessor:

(i) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified as of the Closing Date by the Secretary or an Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement.

(ii) A certificate of the Secretary or an Assistant Secretary of Lessee dated the Closing Date as to the incumbency and signatures of the person or persons authorized to execute this Agreement and the other documents contemplated hereby on behalf of Lessee.

(iii) An opinion of counsel for Lessee dated the Closing Date as to the matters set forth in Section 5.2

other than subparagraph (e) thereof and as to such other matters as Lessor may reasonably request.

(iv) Evidence satisfactory to Lessor that Lessee has obtained insurance with respect to each Unit as required by Article X hereof.

(b) This Agreement shall have been duly filed, recorded and deposited in the United States in conformity with 49 U.S.C. §11303 and any financing statements with respect hereto that Lessor deems necessary or desirable shall have been duly filed in the appropriate jurisdiction or jurisdictions.

(c) All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

#### ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 120 days thereafter), furnish to Lessor duplicate copies of Lessee's most recent financial reports, balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants. Interim quarterly financial statements, certified by the chief financial or accounting officer of Lessee, shall be furnished to Lessor within 45 days after the close of each of the first three fiscal quarters of each fiscal year of Lessee.

7.2. Annual Certificates. Lessee shall furnish to Lessor, on or before November 1 of each year commencing November 1, 1980, a certificate signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of the preceding June 30:

(a) a description of and the identifying number of each Unit;

(b) The identifying number of any Unit that has become lost, destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2 (or since the commencement of the Term in the case of the first such report);

(c) That the Equipment has been kept in good order and repair or is then being repaired in accordance with Section 8.1 hereof;

(d) That the location and identification requirements of Section 8.2 hereof have been complied with in the case of each Unit; and

(e) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Event of Default, and no condition, event, act or omission which with notice or lapse of time or both would be an Event of Default, has occurred and is continuing or, if any such Event or condition, event, act or omission has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2(e). Lessee shall also furnish to Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.5. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day; provided, however, this Section shall not apply to liens for taxes not delinquent.

## ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall service, repair, maintain and overhaul each Unit so as to keep it (i) in as good operating condition as it was when originally received by Lessee ordinary wear and tear excepted, and (ii) subject to Lessee's Right to Contest, in such condition as shall meet all applicable federal, state or local laws or regulations and the applicable rules of the American Association of Railroads. Lessee shall not use, operate or store any Unit in violation of this Agreement, of any instructions therefor furnished by the manufacturer or vendor thereof or, subject to Lessee's Right to Contest, of any applicable federal, state or local law or regulation or the applicable rules of the American Association of Railroads; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

8.2. Location and Insignia. Lessee shall be permitted to use the Units only upon the lines of railroad owned or operated by Lessee (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by Lessee, or upon lines of railroad over which Lessee or any such corporation has trackage or other operating rights or over which railroad cars of Lessee are regularly operated pursuant to contract, or upon the lines of connecting or other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; and Lessee may receive and retain compensation for such use from other railroads so using any Unit. Lessee shall maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of Lessor followed by the words "Owner and Lessor" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Unit and its rights under this Agreement; and shall not remove, or permit the removal of, such identification without the prior written consent of Lessor.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of Lessor (except such as may be removed without in any way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any

replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the removed part shall thereon vest in Lessee, free and clear of all rights of Lessor.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement), (a) assign this Agreement or sublease or let any Unit except to a corporation which shall acquire all or substantially all of the business and properties of the Lessee and which shall assume and agree to perform the obligations and covenants of Lessee hereunder, or (b) part with the possession or control of, or suffer or allow to pass out of its possession or control, any Unit, except to the extent permitted by Section 8.2 hereof.

#### ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate, materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

#### ARTICLE X. Insurance

10.1. Public Liability and Property Damage. Lessee will, without cost to Lessor or any other named insured (other than Lessee), carry or cause to be carried with commercial insurers of recognized responsibility insurance, payable in United States Dollars, with respect to the Units which is of the type and amounts no less than the public liability and property

damage insurance applicable to other units of equipment of same or comparable type operated by Lessee.

ARTICLE XI. Assumption of Risk; Indemnification

11.1 General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort, and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not

in any way affect, impair or diminish Lessee's obligations hereunder.

11.2 Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

#### ARTICLE XII. Damage to Property

12.1. Duty to Notify. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Payment. Effective upon the happening of an Event of Loss with respect to any Unit Lessee shall become obligated, without demand or notice, to pay to Lessor forthwith an amount equal to the aggregate remaining Basic Rent for such Unit, discounted to the time of payment at 11% per annum. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such payment has been made and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment. Upon request of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.3 Insurance and Condemnation Proceeds. Any and all insurance or other payments received by Lessor or Lessee (except under any liability insurance policy maintained pursuant to Section 10.1 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to make the payment set forth in Section 12.2 hereof.

#### ARTICLE XIII. Return of Property

Unless the purchase option set forth in Article XV hereof shall have been exercised, at the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, in a condition which complies with all governmental laws, regulations, requirements and rules as required by Section 8.1 hereof, and in the same operating order, repair, condition and appearance as when originally received by

Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. Lessee shall return each Unit to Lessor at any location on Lessee's lines designated by Lessor. If Lessor so requests, Lessee will defer such return of any of the Units and will, without expense to Lessor, store same at premises of Lessee approved by Lessor, for a period not to exceed 100 days from the date of the expiration or sooner termination of the Term, the obligations of Lessee during that interval in respect of the Units being that of reasonable care under all the circumstances; provided, however, that the foregoing shall not impose upon Lessee any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X hereof.

#### ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If from the date of the execution and delivery hereof through the end of the Term one or more of the followings events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any Rent herein provided, and such default shall continue for 10 days after the date such payment became due and payable; or

(b) Lessee shall attempt to sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or

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

(d) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 30 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or

(e) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(f) An event of default under any mortgage, indenture or other agreement or lease evidencing indebtedness of the Lessee shall have occurred which shall result in the declaring due and payable of indebtedness of Lessee prior to the date on which it would otherwise have become due and payable, and such declaration shall not have been satisfied, rescinded or annulled within thirty (30) days; or

(g) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes, or with notice or lapse of time would constitute, an Event of Default, and shall fail promptly to notify Lessor of such condition, event, act or omission; or

(h) Any representation or warranty made by Lessee in this Agreement, or any information furnished by Lessee in any instrument, certificate or other document delivered by or on behalf of Lessee pursuant hereto, shall prove to be false and misleading in any material respect;

then, in any such case, Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located

and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

- (1) an amount with respect to each Unit equal to the aggregate remaining Basic Rent for such Unit as of the date of termination, discounted to the date of termination at 11% per annum;
- (2) all due and unpaid Rent for the Equipment to the date of termination;
- (3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;
- (4) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and
- (5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable until paid.

14.2. Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor 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. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

#### ARTICLE XV. Purchase Option

If Lessee is not in default hereunder, Lessee shall have the right to purchase the Equipment at the expiration of the Term for One Dollar (\$1.00).

#### ARTICLE XVI. Assignment by Lessor

Lessor hereby reserves the right, without the consent of Lessee, at any time to assign its interest under the Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the

Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XVI. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XVI shall relieve Lessor from its obligations to Lessee hereunder.

#### ARTICLE XVII. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

#### ARTICLE XVIII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

ARTICLE XIX. Miscellaneous

The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

ARTICLE XX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such

party's signature hereto, or to such other address as such party shall specify by like notice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

MELLON BANK, N.A.

Lessor

By: *Ernest Daniel*

Title: VICE CHAIRMAN

Address: Mellon Square  
Pittsburgh, Pennsylvania 15230

THE CHESAPEAKE AND OHIO  
RAILWAY COMPANY

Lessee

By: *James Ermer*

Title: Senior Assistant Treas

Address: 2 North Charles Street  
Baltimore, Maryland 21203

Attest:

By: *R. Sullivan*

Title: Assistant Secretary

[CORPORATE SEAL]

State of Maryland )  
County of Baltimore )

SS:

On this, the 21st day of February, 1980, before me, a Notary Public, the undersigned officer, personally appeared James Ermer, who acknowledge himself to be the Senior Asst. Treasurer of The Chesapeake and Ohio Railway Company, a corporation, and that he as such Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such Officer.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

Beatrice M. Hawley  
Notary Public  
(Notarial Seal)

My Commission Expires: 7-1-82

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF ALLEGHENY )

SS:

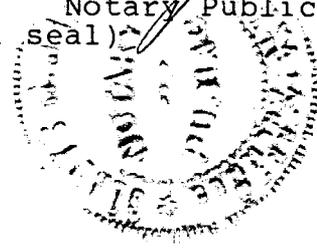


On this, the 29th day of February, 1980, before me, a Notary Public, the undersigned officer, personally appeared George T. Farrell, who acknowledged himself to be the Vice Chairman of Mellon Bank, N.A., a national banking association, and that he as such Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the association by himself as such Officer.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

Gladys M. Harper  
Notary Public  
(Notarial seal)

My Commission Expires: **GLADYS M. HARPER, Notary Public**  
**Pittsburgh, Allegheny County, PA**  
**My Commission Expires May 29, 1982**



SCHEDULE OF EQUIPMENT

96 used 100-ton flat cars bearing identifying road numbers of The Chesapeake and Ohio Railway Company 82100-82199, inclusive, except for numbers 82167, 82171, 82174 and 82180.

Located on lines of The Chesapeake and Ohio Railway Company.