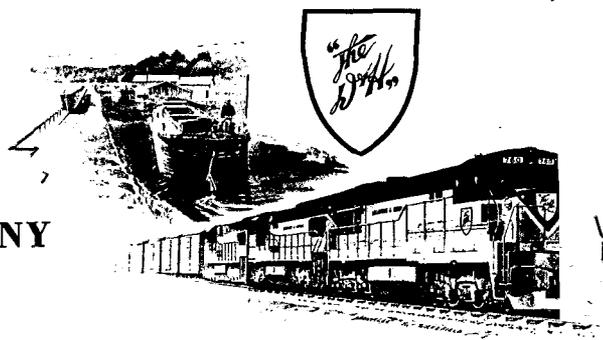


RECORDATION NO. 13909-A

JAN 14 1983 · 1 40 PM  
INTERSTATE COMMERCE COMMISSION



**DELAWARE AND HUDSON RAILWAY COMPANY**  
ALBANY, NEW YORK 12207

3-014A-173  
No. **JAN 14 1983**  
Date  
Fee \$ 50.00  
ICC Washington, D. C.

*Dependable Transportation Since 1823*

January 14, 1983

Hon. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECEIVED  
JAN 14 1 33 PM '83  
FEE OPERATION BR.  
I. C. C.

Attention: Mildred Lee  
Recordation Clerk

Dear Secretary:

I have enclosed an original and one counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of railroad equipment, a primary document dated as of December 23, 1982.

The names and addresses of the parties to this document are as follows:

Lessor: XTRA, Inc.  
c/o X-L-Co., Inc.  
60 State Street  
Boston, Massachusetts 02109

Lessee: Delaware and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207

A description of the equipment covered by the document follows:

One hundred twenty-eight (128) 100 ton open top triple door hopper cars bearing the following road numbers of Delaware and Hudson Railway Company:

1000 - 1005  
1007  
1008  
1010 - 1052  
1054  
1056 - 1075  
1077  
1078  
1080 - 1089  
1091 - 1124  
1126 - 1135

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to George H. Kleinberger, Esq., Corporate Counsel, Delaware and Hudson Railway Company, 40 Beaver Street, Albany, New York 12207.

A short summary of the document to appear in the index follows:

Lease from XTRA, Inc. to Delaware and Hudson Railway Company (D&H) dated as of December 23, 1982. This document leases 128 100 ton open top triple door hopper cars bearing D&H railroad numbers 1000 - 1005, 1007, 1008, 1010 - 1052, 1054, 1056 - 1075, 1077, 1078, 1080 - 1089, 1091 - 1124, and 1126 - 1135 from XTRA, Inc. to D&H.

Very truly yours,

*King L. LaChapelle*  
*Attorney for Delaware and*  
*Hudson Railway Company*

REGISTRATION NO. 13208-A

JAN 14 1983 - 1 40 PM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

Lease Agreement dated as of December 23, 1982, between XTRA, Inc., a Maine corporation ("Lessor"), and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation ("Lessee").

### 1. LEASE OF EQUIPMENT

Lessor has agreed to purchase from Lessee, and Lessee has agreed to sell by warranty bill of sale (the "Bill of Sale") to Lessor, on or before January 31, 1983, the units of equipment (the "Equipment") described in Schedule A hereto for an aggregate purchase price of \$2,100,000, or a unit acquisition cost (the "Acquisition Cost") of \$16,406.25 per unit of Equipment. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the units of Equipment immediately following the purchase of the Equipment by Lessor, upon the terms and conditions hereinafter set forth.

### 2. LEASE TERM

The term of lease under this Lease Agreement of each unit of Equipment shall commence on the date of purchase of the Equipment by Lessor from Lessee and the delivery thereof to Lessee by Lessor immediately following such purchase (the "Commencement Date") and shall continue for 5 years thereafter.

### 3. RENT, NET LEASE, OPTION TO PURCHASE

(a) Rent for the Equipment shall be due and payable in sixty (60) monthly installments, in arrears, commencing one month from the Commencement Date, each such monthly installment to be in the amount of sixty thousand dollars (\$60,000), or \$468.75 per unit per month.

(b) All rent and other amounts due from Lessee to Lessor shall be paid to Lessor at its office at 60 State Street, Boston, MA 02109 or at such other place as Lessor shall specify in writing.

(c) In the event any rent or other amounts due hereunder shall not be paid promptly when due, Lessee shall pay Lessor, as additional rent hereunder, interest on such overdue amount from the due date thereof to the date of payment thereof at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by law.

(d) This Lease Agreement provides for a net lease and the rent and other amounts due hereunder from Lessee to Lessor shall not be subject to any defense, claim, reduction, set-off or adjustment for

any reason whatsoever. Lessee shall promptly pay all costs, expenses and obligations of every kind and nature incurred in connection with the use or operation of the Equipment which may arise or be payable during the lease term of such Equipment hereunder, whether or not such cost, expense or obligation is specifically referred to herein.

(e) It is understood and agreed by the parties hereto that at any time during the period commencing with the conclusion of the 36th month from the Commencement Date hereunder and terminating with the conclusion of the 54th month from such Commencement Date, Lessee shall have the right to exercise the Purchase Option, but only upon (30) days' prior written notice to the Lessor. The Purchase Option is the option of Lessee to buy all right, title and interest of Lessor in and to all and only all units of the Equipment (excluding units subject to total loss as provided in Section 8(b) hereof), upon payment to Lessor of the Purchase Option Price as indicated in Schedule B attached hereto. Upon payment by Lessee of the Purchase Option Price, plus any other amounts then due hereunder, and provided Lessee is not then in default of any of its obligations hereunder, whatever title to the units of Equipment that Lessor may have shall pass to Lessee and this Lease Agreement shall terminate. Upon request of Lessee, Lessor shall deliver to Lessee a confirmatory bill of sale covering said units of Equipment.

(f) Upon final termination of the lease term without exercise of the Purchase Option, Lessee shall, at its sole expense, forthwith deliver possession of the Equipment to Lessor, (i) empty and free from residue, (ii) in such order and condition as will permit Lessor to immediately sell or re-lease the Equipment without repair, (iii) in a suitable condition for the hauling of commodities for which such Equipment is designed, intended and customarily used to transport and (iv) in such condition as is necessary to have the Equipment comply with all applicable laws and regulations. Lessee shall, on demand, reimburse Lessor for the costs necessary to make any units of the Equipment comply with the standards of this Section. Such Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances other than those created or granted by the Lessor.

For the purpose of delivering possession of any unit or units to Lessor as above required, Lessee shall, at its own cost, expense and risk: forthwith place such units upon such storage tracks of Lessee as Lessor reasonably may designate, and permit Lessor to store such units on such tracks at the risk of Lessee until such units have been sold, leased or otherwise disposed of by Lessor, provided that Lessor agrees to pay Lessee's reasonable storage charges for any storage after 180 days, or transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor.

The delivery, storage (except as above provided) and transporting of the units as hereinbefore provided shall be at the

expense and risk of Lessee and are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to deliver, store and transport the units. During any storage period, Lessee shall maintain insurance on the units of Equipment in accordance with Section 10 hereof and shall permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 3(f), Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit to Lessor, to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

In the event that Lessee exercises the Purchase Option, none of the provisions of this Section 3(f) shall be of any force and effect.

#### 4. DISCLAIMER OF LESSOR'S WARRANTIES

(a) Lessee agrees and acknowledges that all units of Equipment have been ordered to Lessee's specifications and originally purchased from vendors of Lessee's choice and that LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR OTHERWISE REGARDING THE EQUIPMENT OR ANY UNIT THEREOF.

(b) In connection with the Bill of Sale reflecting Lessor's purchase of the Equipment, Lessee has (and hereby confirms that it has) assigned to Lessor all rights and causes of action against third parties relating to the design, merchantability, and fitness of the Equipment. Lessor shall, at Lessee's sole expense, take all action reasonably requested by Lessee to make available to Lessee to the fullest extent possible any rights of Lessor under any express or implied warranties of any manufacturer or vendor of the Equipment.

#### 5. LESSEE'S 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 Delaware.

(b) Lessee is duly authorized to execute and deliver the Bill of Sale and this Lease Agreement, to sell the Equipment to Lessor and to lease the Equipment hereunder, and to perform its obligations under the Bill of Sale and hereunder.

(c) The execution and delivery of the Bill of Sale and this Lease Agreement, and the performance by Lessee of its obligations under the Bill of Sale and hereunder, do not and will not conflict with any

provision of present law or of the charter or by-laws of Lessee or of any agreement, law, regulation or other requirement binding upon Lessee.

(d) The execution, delivery and performance of the Bill of Sale and this Lease Agreement by Lessee and the consummation by Lessee of the transactions contemplated by the Bill of Sale and this Lease Agreement do not require the consent, approval or authorization of, or notice to, or filing or recording with, any Federal, State or foreign governmental authority or public regulatory body, except for: (i) the recording of the Bill of Sale and this Lease Agreement with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act ("ICC Recordation"), and (ii) the filing of this Lease Agreement with the Registrar General of Canada and publication with respect thereto in the Canada Gazette in accordance with Sections 86(1) and 86(2) of the Canadian Railway Act, and (iii) releases of mortgage from the United States Railway Association (USRA) and the United States of America, acting through the Administrator of the Federal Railroad Administration, and the ICC Recordation of such releases, and (iv) the consent of USRA under the Loan Agreement between USRA and Delaware and Hudson Railway Company, dated March 15, 1976, as supplemented, and (v) the consent of the Administrator of the Federal Railroad Administration under a Financing Agreement, dated February 9, 1978, as supplemented, and a Financing Agreement, dated September 24, 1981, between the United States of America, acting through the Administrator of the Federal Railroad Administration, and Delaware and Hudson Railway Company, and (vi) the release by Citibank, N. A. (formerly First National City Bank), as Trustee, of the lien under The Delaware and Hudson Railroad Corporation First and General Mortgage dated as of May 1, 1963, and the ICC Recordation of such release, and (vii) the release of liens, arising from the Conditional Sale Agreement between Bethlehem Steel Corp. and The Delaware and Hudson Railroad Corporation, and the Agreement and Assignment between Bethlehem Steel Corp. and Citibank, N. A. (formerly First National City Bank), each dated as of May 15, 1968, and the ICC Recordation of such releases, and (viii) the consent of Guilford Transportation Industries, Inc. ("GTI"), under an Acquisition Agreement dated October 20, 1981, as amended, by and among GTI, Delaware and Hudson Railway Company and Norfolk and Western Railway Company.

(e) Lessee's audited financial statements as at December 31, 1981 and 1980, and unaudited financial statements for the first ten months of 1982, copies of which have been furnished to Lessor, have been prepared in conformity with generally accepted accounting principles and present fairly the financial condition of Lessee and any consolidated subsidiaries as at the dates thereof, and the results of their operations for the periods then ended, and there has since been no material adverse change in their financial condition.

(f) The Bill of Sale and this Lease Agreement are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

(g) There are no pending or threatened actions or proceedings before any court or agency which may to a material extent

adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Lessee to Lessor).

(h) The execution and delivery by Lessee of the Bill of Sale will effectively convey good title to the Equipment to Lessor free from all claims, liens, security interests and encumbrances of any nature created by Lessee or in favor of Lessee or anyone claiming through Lessee (other than this Lease Agreement), and except as specified in Section 5(d) above, no other filing or recording or other action is required to be taken to protect Lessor's title to the Equipment or its interest as Lessor under this Lease Agreement in the United States and Canada.

## 6. CONDITIONS TO LESSOR'S OBLIGATION

Lessor shall not be obligated to purchase and lease the Equipment as provided herein unless on the Commencement Date: (a) all of Lessee's representations and warranties in Section 5 of this Lease Agreement shall be true and correct as though made as of such date; (b) no litigation or governmental proceedings shall be threatened or pending against Lessee or any Subsidiary (as defined in Section 18 hereof) which may to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis; (c) no Event of Default, or event which might mature into an Event of Default, shall have occurred or be continuing; and (d) Lessee shall have furnished in form and substance satisfactory to Lessor: (i) resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the sale and lease of the Equipment hereunder and the execution, delivery and performance of the Bill of Sale and this Lease Agreement, (ii) evidence of compliance with the insurance provisions of Section 10 of this Lease Agreement, (iii) a favorable opinion of counsel regarding the matters set forth in paragraphs (a) through (d), (f), (h) and (to the best of such counsel's knowledge) (g) of Section 5 of this Lease Agreement, and further stating that the ICC Recordation required by Section 17 herein has been duly accomplished, the Equipment has been duly and effectively released from the liens or other encumbrances referred to in Section 5 above, and all releases, approvals or consents enumerated in Section 5 above have been duly and properly obtained, and (iv) such releases, financing statements, waivers and other documents as Lessor may reasonably request to insure that the Equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest, and that the Equipment will not become a fixture to any real estate or an accession to any property not leased under this Lease Agreement. Lessee will, promptly following the Commencement Date, provide Lessor with a supplemental opinion of counsel stating that the Canadian filing and publication referred to in Section 5(d) above have been duly accomplished and that no other filing or recording or other action is required to be taken in Canada to protect Lessor's interest under this Lease Agreement.

## 7. OWNERSHIP, LOCATION, USE OF AND LIENS ON EQUIPMENT

(a) The Equipment shall be the exclusive property of Lessor, and Lessee shall have no rights therein except the right to use it so long as Lessee is not in default hereunder.

(b) Lessee agrees that the Equipment will be used solely in the conduct of its business and with due care to prevent injury thereto or to any person or property, and in conformity with all applicable laws, ordinances, rules, regulations, and other requirements of any insurer or governmental body (including, without limitation, any requirements regarding licensing or registration, or evidencing title to the Equipment, all of which shall be done in such manner as shall have previously been approved in writing by Lessor). Lessee shall not permit the Equipment to become or remain a fixture to any real estate or an accession to any personalty not leased hereunder. Lessor or any duly authorized representative of Lessor may, during reasonable business hours from time to time, inspect the Equipment and Lessee's records with respect thereto wherever the same may be located.

(c) Lessee agrees to comply in all respects with all laws of the jurisdictions in which the units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the units. In the event that such laws or rules require the alteration of the units or in case any equipment or appliance on any such unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such unit in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and Lessee agrees at its own expense to use, maintain and operate such unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease Agreement; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of Lessor hereunder.

(d) Lessee shall not permit any lien, charge, encumbrance, security interest or other similar interest to arise or remain on any Equipment other than (i) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations which Lessee is not required by this Lease Agreement to pay or discharge, (ii) liens of current taxes, not delinquent and (iii) materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent.

(e) Lessee shall, within three months after the Commencement Date, place and maintain on each unit of Equipment a notice conspicuously disclosing Lessor's ownership thereof as follows:

"XTRA, Inc.  
Owner-Lessor"

Lessee shall maintain on each unit of Equipment the road and other identifying numbers set forth in Schedule A.

#### 8. MAINTENANCE OF EQUIPMENT; EVENT OF LOSS

(a) Lessee shall at all times and at its expense keep the Equipment in good repair and in good and efficient condition and working order, reasonable wear and tear excepted. Lessee shall supply all parts, service, and other items required in the operation and maintenance of the Equipment. All parts, improvements, additions, replacements and substitutions to or for any Equipment shall immediately become Equipment and the property of Lessor. Lessee assumes all risk of, and Lessee's obligations under this Lease Agreement shall continue unmodified despite, any loss, theft, destruction, damage, condemnation, requisition or taking by eminent domain or other interruption or termination of use of any Equipment regardless of the cause thereof.

(b) Upon the happening of any total loss by theft, destruction, damage beyond economic repair, condemnation, requisition, taking by eminent domain or other termination of use of any unit of Equipment regardless of the cause thereof (each herein called an "Event of Loss"), Lessee shall promptly, on the next monthly rent payment date following such Event of Loss, furnish Lessor with an affidavit of an officer of Lessee setting forth the fact of such Event of Loss and pay to Lessor the Stipulated Loss Value (as defined in Schedule C hereto and determined after the payment of rent due on such next monthly rent payment date) of such unit of Equipment. Upon payment of (i) such Stipulated Loss Value, (ii) any rent accrued and unpaid on such unit of Equipment to and including such next monthly rent payment date and (iii) any other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such unit of Equipment it may have. Upon such transfer the lease of such unit of Equipment hereunder shall end and the monthly rental payment set forth in Section 3(a) hereof shall accordingly be reduced by \$468.75 per month.

(c) Notwithstanding the provisions of paragraph (b) above, upon the occurrence of an Event of Loss, Lessee may in lieu of paying Lessor the Stipulated Loss Value, promptly substitute a railcar of at least the same type, design, age and condition as the units of Equipment leased hereunder. Upon Lessor's acceptance in writing of such substitution, Lessee shall transfer title to such substituted

unit to Lessor and such unit shall immediately become a unit of Equipment hereunder.

(d) When Lessee has fulfilled the requirements of paragraph (b) or (c) above regarding an Event of Loss, Lessor shall (if no Event of Default, or event which might mature into an Event of Default, has occurred and is continuing) reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor because of such Event of Loss either under any policies of insurance provided for in Section 10 or as satisfaction of any claim (other than one to which an insurer is or may be subrogated) by Lessor against any person or persons liable in respect of such Event of Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereof.

## 9. TERMINATION

Upon termination of this Lease Agreement at the end of the five-year term, the Equipment shall be delivered to Lessor, which has retained title thereto, as provided in Section 3(f) hereof. If, however, Lessee exercises the Purchase Option, pursuant to Section 3(e) hereof, upon the payment and performance in full of all of Lessee's obligations contained in this Lease Agreement, whatever title to the Equipment Lessor may have shall pass to Lessee and this Lease Agreement shall terminate, and upon request of Lessee, Lessor shall deliver to Lessee a confirmatory bill of sale covering said units of Equipment.

## 10. INSURANCE

(a) Lessee will cause to be carried and maintained at all times during the term of this Lease Agreement physical damage and liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts and in such form as is commonly maintained on comparable equipment by companies similarly situated. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessee or Lessor and will be payable to Lessor and Lessee as their respective interests shall appear.

(b) The policies of insurance required under this Section 10 shall be valid and enforceable policies issued by insurers of recognized responsibility acceptable to Lessor. Upon the execution of this Lease Agreement, and thereafter not less than 10 days prior to the expiration dates of any expiring policies theretofore furnished under this Section 10, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by Lessee to Lessor except that Lessor may accept copies of the policies and certificates of insurance in lieu of original policies. Such policies may be blanket policies covering other equipment not covered by this Lease Agreement, provided that any blanket policy shall in an accompanying certificate of insurance or rider specifically designate the units of Equipment as being included therein and covered thereby to the full extent of the amounts herein required and shall name Lessor as an

insured party thereunder with respect to such units of Equipment. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least 10 days' prior written notice to Lessor and that the insurers will give notice to Lessor in the event of nonpayment of premium by Lessee when due.

#### 11. TAXES

Lessee agrees to pay (and does hereby agree to indemnify and hold Lessor and any affiliated companies with which it files a consolidated tax return harmless from and against) all sales, use, personal property, gross income, gross receipts, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) imposed against Lessor and any affiliated companies with which it files a consolidated tax return, Lessee or the Equipment by any Federal, State or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Lease Agreement (excluding, however, Federal and State taxes on, or measured by, the net income of Lessor), unless, and to the extent only, that any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings. Lessee agrees to file, on behalf of Lessor and any affiliated companies with which it files a consolidated tax return, all required tax returns and reports concerning the Equipment with all appropriate governmental agencies and to furnish Lessor a copy of each such return or report within 30 days after the due date of such filing.

#### 12. INDEMNIFICATION AND EXPENSES

(a) Lessee agrees to and does hereby indemnify and hold Lessor (including for this purpose any affiliated companies), and its agents, employees, stockholders, officers and directors harmless from and against any and all expense, liability or loss whatsoever, including (without limitation) reasonable legal fees and expenses, relating to or in any way arising out of the Bill of Sale, this Lease Agreement or the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or disposition of the Equipment hereunder or in connection herewith (including, without limitation, expense, liability or loss relating to or in any way arising out of injury to persons or property, patent or invention rights or strict liability in tort). Lessor shall give Lessee and Lessee shall give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that Lessee makes or provides to the satisfaction of Lessor for payment under the indemnity provisions hereof, Lessee shall be subrogated to Lessor's rights with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that except to the foregoing extent, Lessor shall have the right to determine such settlement. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor.

(b) All of the indemnities and agreements of Lessee contained in Section 11 and this Section 12 shall survive and continue in full force and effect notwithstanding termination of this Lease Agreement or of the lease of any or all units of Equipment hereunder.

### 13. FINANCIAL STATEMENTS

Lessee shall furnish to Lessor, (i) within 120 days after each fiscal year of Lessee, a copy of the annual audit report of Lessee and any consolidated subsidiaries, prepared on a consolidated basis and in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and signed by independent certified public accountants satisfactory to Lessor, (ii) within 45 days after each quarter (except the last quarter) of each fiscal year of Lessee, a copy of its unaudited financial statement, similarly prepared, consisting of at least a balance sheet as at the close of such quarter and a profit and loss statement and analysis of surplus for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of Lessee, (iii) with the annual audit report each year, a certificate of a responsible officer of Lessee to the effect that, except as otherwise specified therein (x) all units of Equipment are in existence and in good and efficient condition, and are marked as required by Section 7(e) hereof, and (y) no Event of Default, or event which might mature into an Event of Default, has occurred and is continuing under this Lease Agreement, and (iv) from time to time such other information as Lessor may reasonably request.

### 14. EVENTS OF DEFAULT

(a) The following shall be Events of Default hereunder:

(i) Default, and continuance thereof for 15 days, in the payment of any rent or other amount hereunder;

(ii) Any obligation of Lessee or any Subsidiary (as hereinafter defined) for borrowed money or payment of rent (other than any such obligation of any Subsidiary to Lessee or any other Subsidiary) becomes or is declared to be due and payable prior to its express maturity by reason of default by Lessee or such Subsidiary in the performance or observation of any obligation or condition.

(iii) Default in the performance of any of Lessee's covenants, agreements or obligations herein set forth (and not constituting an Event of Default under either of the preceding clauses of this paragraph (a)) and continuance of such default for 30 days after notice thereof from Lessor to Lessee;

(iv) Any representation or warranty made by Lessee in this Lease Agreement is untrue in any material respect, or any

statement, report, schedule, notice, or other writing furnished by Lessee to Lessor in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified; or

(v) Lessee or any Subsidiary becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee or a receiver for Lessee or such Subsidiary or any property of either thereof; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or any Subsidiary or for a substantial part of the property of either thereof and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee or any Subsidiary, and, if instituted against Lessee or any Subsidiary, is consented to or acquiesced in by Lessee or such Subsidiary or remains for 60 days undismitted.

When used herein, unless the context otherwise requires, the term "Event of Default" shall mean any event described in the foregoing clauses (i) through (v) and the term "event which might mature into an Event of Default" shall mean any event which with the lapse of time, or with notice to Lessee and lapse of time, would constitute an Event of Default. Lessee shall give Lessor prompt notice of any Event of Default or of any event which might mature into an Event of Default.

(b) Upon the happening of an Event of Default, Lessor shall (except to the extent otherwise required by law) be entitled to:

(1) proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants and terms of this Lease Agreement or to recover damages for the breach thereof;

(2) repossess any or all units of Equipment without prejudice to any remedy or claim herein referred to;

(3) elect to sell any or all units of Equipment after giving 30 days' notice to Lessee, at one or more public or private sales and recover from Lessee as liquidated damages for Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Stipulated Loss Value (as defined in Schedule C hereto) of such units of Equipment on the date such notice is given, (ii) all rent owing hereunder to and including the rent payment date immediately preceding the date such notice is given, (iii) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring and selling such units of Equipment, (iv) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and

expenses, incurred by Lessor as a result of Lessee's default hereunder, exceeds (B) the amount received by Lessor upon such public or private sales of such units of Equipment;

(4) upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Stipulated Loss Value on the date such notice is given of all units of Equipment which have not been sold by Lessor pursuant to clause (3) above plus, to the extent not otherwise recovered from Lessee pursuant to said clause (3) above, (i) any rent owing hereunder to and including the rent payment date immediately preceding the date such notice is given, (ii) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing and restoring such units of Equipment, (iii) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, and (iv) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such units of Equipment it may have;

(5) by notice to Lessee require Lessee to forthwith place the units of Equipment in storage upon tracks of Lessee as Lessor reasonably may designate, and permit Lessor to store such units on such tracks at the risk of Lessee until such units have been sold, leased or otherwise disposed of by Lessor, provided that Lessor agrees to pay Lessee's reasonable storage charges for any such storage after 180 days; or to transport the same to any place on the lines of railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor.

The delivery, storage (except as above provided) and transporting of the units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to deliver, store and transport the units. During any storage period, Lessee shall maintain insurance on the units of Equipment in accordance with Section 10 hereof and shall permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same.

Lessor may also, in its sole discretion, elect to abandon such unit of Equipment at its then location (and Lessee hereby consents to such an abandonment). If Lessor elects to abandon any unit of the Equipment, whatever title Lessor has to such unit of Equipment shall thereupon pass to Lessee, without any representation or warranty of any kind, express or implied.

(6) by notice to Lessee declare this Lease Agreement terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(7) avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses (3) and (4) of this Section 14 (b) shall each include, without limitation, interest (at the applicable rate specified in Section 3(c)) to the date of receipt by Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately preceding the date on which notice is given under said clause, from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit to Lessor, to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

#### 15. SUBLEASE, ASSIGNMENT, MERGER, ETC.

Lessee shall not, without Lessor's prior written consent, assign any right or interest in or to this Lease Agreement or any unit of Equipment, sublet or otherwise relinquish possession of any unit of Equipment (except in the ordinary course of business in connection with normal interchange service, pooling arrangements and transactions of a similar nature), be a party to any merger or consolidation, or sell, convey, transfer or lease all or any substantial part of its property. Lessor and any direct or remote assignee of any right, title or interest of Lessor hereunder shall have the right at any time or from time to time to assign part or all of its right, title and interest in and to this Lease Agreement. Without limiting the foregoing, Lessor and any such assignee shall have the right at any time or from time to time to transfer, subject to Lessee's rights under this Lease Agreement, any unit or units of Equipment.

Lessor may obtain financing through a financial institution and secure such financial institution ("Secured Party") by granting a security interest in or other lien on any or all of the Equipment, this

Lease Agreement and sums due under this Lease Agreement. In such event (a) the security agreement or lien instrument will specifically provide that it is subject to Lessee's rights as herein provided; (b) such assignment of this Lease Agreement will not relieve Lessor from its obligations hereunder or be construed to be an assumption by Secured Party of such obligations (but Secured Party may perform, at its option, some or all of Lessor's obligations); (c) upon request by Secured Party and with the written consent of Lessor delivered to Lessee, Lessee will make all payments of rent and other amounts due hereunder directly to Secured Party; (d) Lessee hereby agrees for the benefit of Secured Party that Lessee's obligations hereunder, including (without limitation) its obligation to pay rent and other amounts due hereunder, shall not be subject to any reduction, abatement, defense, set off, counterclaim or recoupment for any reason whatsoever; and (e) Lessee will not, after obtaining knowledge of any such assignment, consent to any modification of this Lease Agreement without the consent of Secured Party.

#### 16. LESSOR'S RIGHT TO PERFORM

If Lessee fails to make any payments required by this Lease Agreement, or to perform any of its other obligations contained herein, Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Lessor's costs and expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Lessee to Lessor upon demand as additional rent hereunder.

#### 17. RECORDING: FURTHER ASSURANCES

Lessee will, at its expense, prior to the Commencement Date, effect the ICC Recordation of all documents subject to such recording, which are enumerated in Section 5(d) above. Lessee will, promptly following the Commencement Date, cause this Lease Agreement to be filed with the Registrar General of Canada and cause publication with respect thereto to be made in the Canada Gazette in accordance with Sections 86 (1) and 86 (2) of the Canadian Railway Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the units of Equipment, or for the purpose of carrying out the intention of this Lease Agreement or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

18. MISCELLANEOUS

(a) When used herein the term "Subsidiary" shall mean a corporation of which Lessee and its other subsidiaries own, directly or indirectly, such number of outstanding shares as have the power (disregarding any voting power, solely by reason of the happening of any default, of shares of any class) to elect a majority of the board of directors.

(b) Any provision in this Lease Agreement that Lessee shall take any action shall require Lessee to do so at its sole cost and expense.

(c) Any notice hereunder shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at its address shown below, (ii) if to Lessor, at 60 State Street, Boston, MA 02109 or (iii) to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

(d) If this Lease Agreement or any provision hereof shall be deemed invalid, illegal or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this Lease Agreement in other respects and other jurisdictions shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease Agreement unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, Lessor's rights and Lessee's duties shall in no way be affected by Lessor's inspection of, or failure to inspect, the Equipment or any unit thereof or any of the documents referred to in this Lease Agreement or by Lessor's failure to inform Lessee of any failure to comply with any of Lessee's obligations under this Lease Agreement. Lessee hereby waives any right to assert that Lessor cannot enforce this Lease Agreement or that this Lease Agreement is invalid because of any failure of Lessor to qualify to do business in any jurisdiction. This Lease Agreement shall be governed by the laws of the State of New York, shall be binding upon Lessor and Lessee and their respective successors and assigns and shall inure to the benefit of Lessor and Lessee and the successors and assigns of Lessor.

(e) The section headings in this Lease Agreement are for convenience of reference only and shall not be considered to be a part of this Lease Agreement.

(f) This Lease Agreement contains the entire understanding of Lessor and Lessee and may be modified only by a written instrument signed by duly authorized officers of Lessor and Lessee.

DELAWARE AND HUDSON  
RAILWAY COMPANY (Lessee),

By *W. M. [Signature]*

Title *President*

Address: 40 Beaver Street  
Albany, New York 12207

Corporate Seal

Attest:

*R. T. Murray*  
Assistant Secretary

XTRA, Inc. (Lessor)

By *E. A. P. [Signature]*

Title *V.P.*

Address: 60 State Street  
Boston, MA 02109

Corporate Seal

Attest:

*[Signature]*  
Assistant Clerk

STATE OF

District of Columbia ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this 14th day of January, 1983, before me personally appeared C.R. McKenna, to me personally known, who, being by me duly sworn, says that he is the President of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth A. Bradley  
Notary Public

[Notarial Seal]

My Commission expires: March 31, 1986

COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF SUFFOLK )

On this 13th day of January, 1983, before me personally appeared Edward P. Roberts, to me personally known, who, being by me duly sworn, says that he is the Vice President of XTRA, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Annita T. Baker  
Notary Public

[Notarial Seal]

My Commission expires: 12-27-'85

SCHEDULE A

One hundred twenty-eight (128) 100-ton used open top triple door hopper cars, AAR car type code H250, bearing the following road numbers of Delaware and Hudson Railway Company:

DH1000 - 1005

DH1007

DH1008

DH1010 - 1052

DH1054

DH1056 - 1075

DH1077

DH1078

DH1080 - 1089

DH1091 - 1124

DH1126 - 1135

SCHEDULE B

<u>MONTH OF LEASE TERM</u>	<u>PURCHASE OPTION PRICE PER UNIT OF EQUIPMENT</u>
36	\$8,877.42
37	8,585.39
38	8,285.16
39	7,980.00
40	7,669.92
41	7,353.28
42	7,030.08
43	6,700.31
44	6,363.98
45	6,021.09
46	5,671.64
47	5,315.63
48	4,953.05
49	4,582.27
50	4,204.92
51	3,821.02
52	3,427.27
53	3,026.95
54	2,620.08

SCHEDULE C

"Stipulated Loss Value" of any unit of Equipment covered by the Lease Agreement as of a particular date shall mean the product derived from multiplying (i) the percentage figure opposite the notation for the appropriate rental period set forth in the table appearing below by (ii) the Acquisition Cost of such unit. Stipulated Loss Value does not include any amounts for which Lessor may be entitled to indemnification under Sections 11 and 12(a) of the Lease.

STIPULATED LOSS VALUE TABLE

<u>AFTER</u> <u>PAYMENT NO.</u>	<u>§</u>	<u>AFTER</u> <u>PAYMENT NO.</u>	<u>§</u>
0	100.00		
1	99.11	31	62.55
2	98.20	32	60.93
3	97.28	33	59.28
4	96.34	34	57.59
5	95.37	35	55.87
6	94.39	36	54.11
7	93.40	37	52.33
8	92.38	38	50.50
9	91.34	39	48.64
10	90.28	40	46.75
11	89.20	41	44.82
12	88.10	42	42.85
13	86.97	43	40.84
14	85.83	44	38.79
15	84.66	45	36.70
16	83.47	46	34.57
17	82.26	47	32.40
18	81.02	48	30.19
19	79.76	49	27.93
20	78.48	50	25.63
21	77.16	51	23.29
22	75.83	52	20.89
23	74.46	53	18.45
24	73.07	54	15.97
25	71.66	55	13.43
26	70.21	56	10.85
27	68.74	57	8.21
28	67.24	58	5.52
29	65.71	59	2.78
30	64.15	60	0

BILL OF SALE

DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (the "Vendor"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, convey and set over unto XTRA, INC., a Maine corporation (the "Vendee"), its successors and assigns, all right, title and interest of the Vendor in and to the railroad equipment (the "Equipment") described in Schedule A annexed hereto, which Equipment has been delivered by the Vendor to the Vendee.

To have and to hold, all and singular, the Equipment to the said Vendee, its successors and assigns, for its and their own use and behoof forever.

The Vendor hereby warrants to the Vendee, its successors and assigns, that, at the time of delivery of each unit of the Equipment by the Vendor, the Vendor had legal title to such unit of Equipment and good and lawful right to sell the same, and that title to such unit of Equipment was, at the time of such delivery, and is on the acknowledgement date hereof, free from all claims, liens, security interests and other encumbrances of any nature created by the Vendor, or in favor of the Vendor or anyone claiming through the Vendor, except the Lease Agreement dated as of December 23, 1982 between Vendor, as lessee, and Vendee, as lessor.

IN WITNESS WHEREOF, the Vendor has caused this instrument to be duly executed as of the 23rd day of December, 1982.

DELAWARE AND HUDSON RAILWAY COMPANY

By *C. R. McKenna*  
~~the~~ President

[CORPORATE SEAL]

ATTEST:

*R. T. Murray*  
Assistant Secretary

~~STATE OF~~  
District of Columbia ) ss.:  
~~COUNTY OF~~

On this 14th day of January, 1983, before me personally appeared *C. R. McKenna*, to me personally known, who, being by me duly sworn, says that he is the President of DELAWARE AND HUDSON RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elizabeth A. Bradley*  
Notary Public

[Notarial Seal]

My Commission expires: March 31, 1986

SCHEDULE A

One hundred twenty-eight (128) 100-ton used open top triple door hopper cars, AAR car type code H250, bearing the following road numbers of Delaware and Hudson Railway Company:

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