

MERCHANTS INVESTMENT CO.

105 W. MADISON STREET

SUITE 1202

CHICAGO 60602

FINANCIAL 6-4550

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I.C.C.
FEE OPERATION BR.

May 15 1979
RECORDATION NO. 10377 Filed 1425

No. 9-371200
Date MAY 17 1979
Fee \$ 50.⁰⁰
ICC Washington, D. C.

MAY 17 1979 - 2 03 PM
INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Pursuant to part 1116 of Title 49 of the Code of Federal Regulations, there are enclosed for your recording an original, acknowledged, executed Railroad Equipment Lease and two copies which have attached thereto Notarial Certificates of accurate reproduction. This Lease covers six covered hopper-type railroad cars which are marked ERES 7800 through 7805 and bear A.A.R. mechanical designation L.O. The parties to this Lease are:

Lessor: Merchants Investment Co.
Suite 1202
105 West Madison Street
Chicago, Illinois 60602

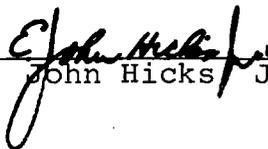
Lessee: Erie Western Railway Co.
P. O. Box 510
Huntington, Indiana 46750

There is also enclosed a check payable to the Interstate Commerce Commission in the amount of \$50 to cover the prescribed statutory recording fees.

Upon recordation of the above document, the original executed copy, with proper recording stamps imprinted thereon, should be returned to the undersigned at the above address.

Sincerely,

MERCHANTS INVESTMENT CO.


E. John Hicks Jr.

rm
Enclosures



Interstate Commerce Commission
Washington, D.C. 20423

5/17/79

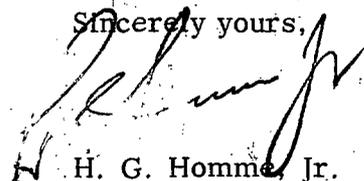
OFFICE OF THE SECRETARY

E. John Hicks, Jr.
Merchants Investment Co.
105 W. Madison Street
Suite 1202
Chicago 60602

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 **5/17/79** at **2:05pm**, and assigned recordation number(s). **10377**

Sincerely yours,



H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

MAY 17 1979 -2 05 PM

RAILROAD EQUIPMENT LEASE INTERSTATE COMMERCE COMMISSION

This RAILROAD EQUIPMENT LEASE, dated as of February Fifteenth, 1978, between MERCHANTS INVESTMENT CO., an Illinois corporation (hereinafter referred to as "Lessor"), and ERIE WESTERN RAILWAY CO., (hereinafter referred to as "Lessee").

WITNESSETH:

In consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, the parties hereto covenant and agree as follows:

1. Procurement and Delivery of Cars. Lessor has procured and is in the process of modifying up to six Covered Hopper type railroad cars (hereinafter referred to collectively as "Cars" and separately as "Car"), which are more fully described in Appendix A attached hereto. Lessor shall lease said Cars to Lessee on a net-net basis, and Lessee shall hire the Cars from Lessor subject to the terms and conditions hereinafter set forth.

Lessor will cause the Cars to be delivered for acceptance on the tracks of Lessee in Indiana or to other railroads as directed. Lessor shall use its best efforts to deliver the Cars at said location commencing on March 1, 1978, or such later date as may be mutually agreed upon by Lessor and Lessee. Lessor shall not, however, be liable to Lessee for any failure or delay in making delivery thereof due to cause or causes beyond Lessor's control. Lessee shall arrange to have present at the place of delivery of the Cars an authorized representative to accept delivery of each Car. Lessee will then inspect each Car, and if the Car tendered for delivery conforms to the applicable specifications set forth in Appendix A, and is suitable for interchange service, as that term is defined by the Association of American Railroads and the Interstate Commerce Commission, Lessee will accept delivery thereof and execute and deliver to Lessor a Certificate of Acceptance, substantially in the form of Appendix B attached htereto.

Lessee's execution and delivery to Lessor of the Certificate of Acceptance with respect to a Car shall conclusively establish that such car, when accepted, is acceptable to and accepted by Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition, or in any other respect, and that such Car, when accepted, is in good order and condition and appears to conform to the specifications, if any. Lessor represents that it has no knowledge of any such defect.

2. Rentals. Lessee agrees to pay to Lessor, in advance, as fixed rent for each Car the sum of \$135.00 per month. The first of said rental obligations shall accrue from the date of delivery and acceptance of the Car at the pro rata rate per day covering the number of days to the end of the month. All subsequent rental payments shall be made for each Car on the first day of each succeeding month. The last payment of rental shall cover the number of days from the first day of the final month to the termination date of this Lease at the pro rata rate.

3. Term of the Lease and Renewal Option. The term of this Lease shall begin on the date on which the first Car is delivered to Lessee pursuant to paragraph 1 hereof and shall continue for a period of 5 years after the date of the delivery of the last Car pursuant to paragraph 1 hereof. Lessee shall have the option to renew the Lease under the same terms and conditions as provided for in this Lease for a period of between one and five years at the fixed rent per month which is equal to the fair market rental value for the Cars for railroad interchange service. The exact length of said period is to be unilaterally determined by Lessee. If Lessee desires to exercise this renewal option, it shall, at least ninety days before the expiration of the term of this Lease, give Lessor written notice of its election to so renew and state therein the length of time, from one to five years, of the renewal.

4. Title to the Equipment. Lessor shall and hereby does retain full legal title to the Cars notwithstanding the delivery thereof to and the possession and use thereof by Lessee.

At all times during the continuance of this Lease, Lessee will cause each Car to be kept numbered with the applicable identifying road numbers as set forth in Appendix A hereof which shall not be changed without the prior written consent of Lessor. In case of such a change, the new number shall be set forth in a supplement to this Lease which supplement shall be executed by Lessor and Lessee, and Lessee shall file or record such supplement in the same manner as this Lease is filed or recorded pursuant to paragraph 20 hereof.

Before the delivery to Lessee of each Car under this Lease, Lessor has caused the Cars to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in a contrasting color, upon each side of each Car, the following legend in letters not less than one inch (1") in height:

"THIS CAR IS LEASED BY THE ERIE WESTERN RAILWAY CO.
PURSUANT TO A LEASE AND SECURITY INTEREST RECORDED
WITH THE I.C.C."

In case, during the continuance of this Lease, any such markings shall at any time be defaced or destroyed on any Car, Lessee shall immediately cause the same to be restored or replaced. Lessee shall not allow the name of any person, association or corporation other than Lessor to be marked on the Cars, but, for the convenience of identification the Cars may be lettered with the name, initials or other insignia customarily used by Lessee, or its affiliates, on equipment of the same or similar type. Lessee shall indemnify Lessor against any liability, loss or expense incurred by Lessor as a result of the aforesaid marking of the Cars with the name, initials or insignia of Lessee or its affiliates.

5. Disclaimer of Warranty as to Fitness of Merchantability of Cars. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CARS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTA-

BILITY, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, SHALL BE BORNE BY LESSEE.

6. Indemnification Clause. From and after the date hereof, until the termination of this Lease, including any renewals hereof, the possession, use, and operation of the Cars in the possession of Lessee shall be at the sole risk and expense of Lessee. Lessee hereby agrees to indemnify, hold harmless, and defend Lessor from any and all claims, demands, liabilities, damages, suits, judgments, costs, and expenses, including attorney's fees, arising, or alleged to arise, from property damage, including loss of use thereof, or personal injury, including death, due to possession, use and/or operation of any of the Cars, no matter whether any act, omission or negligence of Lessor contributed thereto, including, but not limited to, any loss or damage of or to the Cars (usual wear and tear excepted) and any claim for personal injury of employees of Lessor arising from use and/or operation of any of the Cars.

7. Insurance. Lessee shall at all times during the term of this Lease, including any renewals hereof, insure and keep insured at its own expense, each Car against general liability and property damage from the time the first Car is delivered to Lessee to the time the last Car is returned to Lessor in the following forms and minimum limits:

- (a) Workmen's compensation and employers' liability (or such equivalent as may be applicable to railroads) - statutory, including employers' liability limits of at least
- (b) Comprehensive general liability insurance - including blanket coverage for all written contracts (contractual liability coverage). Bodily injury per person/
per occurrence. Property damage of per occurrence.
- (c) Property damage to the Cars.

The form and carrier used to provide such insurance shall be subject to the approval of Lessor. Lessee agrees to furnish certificates from its insurance carrier. Each such certificate shall set forth the amount of coverage, the number of the policy, and the date of expiration. Also, each carrier must agree to furnish written notice to Lessor thirty (30) days prior to cancellation or material change in coverage.

8. Rules, Laws and Regulations. Lessee shall comply with all applicable federal, state and local laws, regulations, requirements and rules, including those with respect to the registration, licensing, use, maintenance and operation of the Cars.

9. Use and Maintenance of Cars. Lessee shall use the Cars only in the manner for which they were designed and intended and as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Cars in good order, condition and repair, ordinary wear and tear excepted, suitable for use in railroad interchange service. Lessee shall not modify any Car without the written

authority and approval of Lessor which shall not be unreasonably withheld. Any all replacements of parts and modifications of the Cars shall constitute accessions thereto and shall be subject to all of the terms and conditions of this Lease as though part of the original Car delivered hereunder.

10. Liens on the Cars. Lessee shall pay or satisfy and discharge any and all sums claimed against, through, or under the Lessee and its successors or assigns which, if unpaid, might become a lien or a charge upon the Cars, and any liens or charges which may be levied against or imposed upon any Car as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease; but Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of Lessor to the Cars. Lessee's obligations under this paragraph 10 shall survive termination of this Lease.

11. Filing; Payment of Fees and Taxes. Prior to commencement of the term hereof, Lessee will, at its sole expense, cause this Lease, any assignment hereof or of monies due and to become due hereunder and any chattel mortgage or other security agreement covering or relating to the Cars to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act, or other applicable statutory authority, and/or in such other place or places within or without the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonable requested by Lessor, for the purpose of protecting title to the Cars to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease and, in connection with any such action, will deliver to Lessor proof of such filings and an opinion of Lessee's counsel that such action has been properly taken. Lessee will pay all costs, charges and expenses incident to any such filing, re-file, registering, re-registering, recording or re-recording of any such instruments or incident to the taking of any such action.

Lessee, or Lessor at Lessee's expense, shall pay and discharge when due all license and registration fees, assessments, sales, use, property taxes, gross receipt taxes arising out of receipts from use or operation of Cars and other taxes (excluding any tax on or measured by rent payable hereunder or Lessor net income therefrom; provided, however, Lessee agrees to pay any such tax on or measured by rents payable hereunder or the net income therefrom which is in substitution for, or relieves Lessee from, a tax on the Cars which Lessee would otherwise be obligated to pay under the provisions of this paragraph 11), together with any penalties or interest thereon, imposed by any federal, state or local government upon any Car and whether or not the same shall be assessed against or in the name of Lessor or Lessee; provided, however, that Lessee shall not be

required to pay or discharge any such tax or assessment so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of Lessor to the Cars, but Lessee shall reimburse Lessor for any damages or expense resulting from such failure to pay or discharge.

12. Payment for Casualty Occurrence of Equipment Unservicable for Use. In the event that any Car shall be or become lost, stolen, destroyed, irreparably damaged, obsolete or economically unservicable for use from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (any such occurrence, except for any requisition which by its terms does not exceed the remaining term of the term of this Lease, being hereinafter called a "Casualty Occurrence") during the term of this Lease, Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto and Lessee shall thereupon pay Lessor a sum equal to the Casualty Value (as hereinafter defined) of such Car on the next succeeding rental payment date and upon making (and not until) such payment in respect of any Car or Cars, the rental for such Car or Cars shall cease to accrue as of such rental payment date and Lessee shall be entitled to the salvage of such Car or Cars. Notwithstanding above, Lessee shall pay the AAR settlement value as soon as that value has been remitted by the Carrier responsible for loss or damage.

The Casualty Value of each Car shall be as fixed by the then prevailing Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the Interchange of Traffic, promulgated by the Association of American Railroads, and said Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing to such Code of Rules and moving the Cars over its lines in respect of all matters to which said Code of Rules relate. In the event that any Car is lost, damaged or destroyed while on the tracks of Lessee, or any private track, such repairs, renewals or replacements as may be necessary to replace the Car or to place it in good order and repair shall be at the sole cost and expense of Lessee. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested, but without affecting their respective obligations under this paragraph, to establish proper claims against parties responsible for loss or destruction of or damage to the Cars.

Lessee shall bear the risk of and, except as hereinabove in this paragraph 12 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Car after the date thereof.

In the event that during the term of this Lease the use of any Car be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. Lessor shall retain for its own account all sums payable by such governmental authority as

compensation for requisition or taking of possession in excess of such portion of those sums as equals the rent paid for that period, if any, and shall remit the balance to Lessee.

13. Annual Reports. Within four months of the end of Lessee's fiscal year, commencing with the year 1978, Lessee will furnish to the Lessor or its assigns an accurate statement (a) showing the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have suffered a Casualty Occurrence during the preceding twelve (12) months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Cars as Lessor may reasonably request, and (b) stating that, in the case of all Cars repainted during the period covered by such statement, the markings required by paragraph 4 hereof shall have been preserved or replaced, and that the name of no person, association or corporation appearing on any Car may be interpreted as indicating a claim of ownership thereof by any such person, association or corporation except as contemplated pursuant to this Lease.

At its sole cost and expense, Lessor or its assigns or by its authorized representative shall have the right to inspect the Cars and Lessee's records with respect thereto, at such times as Lessor may deem it to be reasonably necessary for efficient administration of this Lease.

14. Return of Cars Upon Expiration of Term. Within thirty days of the expiration of the Term of this Lease, or any renewal hereof, with respect to any Car, Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Car to the Lessor at such place as Lessor may direct on the tracks of the Lessee, and Lessee, at its sole expense, will store each such Car for a period not exceeding six (6) months. During any such storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Car, to inspect the same. THE ASSEMBLING, STORAGE AND TRANSPORTING OF THE CARS AS HEREINBEFORE PROVIDED ARE OF THE ESSENCE OF THIS LEASE, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee to so assemble, deliver, store and transport the Cars. Risk of loss during such storage shall be at Lessors expense.

15. Assignment of Earnings on Cars. To further secure its obligations under this Lease, Lessee agrees that at Lessor's request, Lessee will give Lessor assignments or other transfer instruments, in form acceptable to Lessor, of accounts and of other monies due or to become due, including per diem receipts, attributable to any of the Cars, from other railroads or persons so as to allow Lessor to collect such monies due to Lessee as it so chooses and to thereupon apply such monies collected against the obligations of Lessee to Lessor, it being understood that any such assignment and collection shall reduce the obligation of Lessee hereunder only up to the amount collected, less reasonable expenses of collection.

16. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

- (a) Default shall be made in the payment of any part of the rental provided in paragraph 2 hereof and such default shall continue for ten (10) calendar days;
- (b) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Cars, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of said Cars within ten (10) calendar days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession; or
- (c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for ten (10) calendar days after written notice from Lessor to Lessee, specifying the default and demanding the same to be remedied; then, in any such case, Lessor, at its option, may to the extent not prohibited by mandatory requirements of law in force and applicable thereto:
 - (i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease and/or to recover damages for the breach thereof; and
 - (ii) by notice in writing to Lessee, terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars be and take possession of all Cars or any Car and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars for any purpose whatever. In such event, Lessor shall have the usual and customary duty of taking reasonable steps to mitigate its losses resulting from such default.

The remedies in this Lease 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. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the

remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rental payments due hereunder, and agrees to make the rental payments regardless of any off-set or claim which may be asserted by Lessee or on its behalf in connection with this Lease of the Cars.

The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

17. Return of Cars Upon Default. If Lessor shall terminate this Lease pursuant to paragraph 16 hereof, the Lessee shall forthwith deliver possession of the Cars to the Lessor. For the purpose of delivering possession of any Car to the Lessor as above required, Lessee shall at its own cost, expense and risk (except as hereinafter stated):

- (a) Forthwith place such Cars in such storage place as the Lessor may designate or, in the absence of such designation, as the Lessee may select; and
- (b) Permit the Lessor, at Lessee's sole expense, to store such Car in such reasonable storage place on Lessee's line of railroad for a period not exceeding six (6) months at the risk of Lessee.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this paragraph 17, Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Car to Lessor, to demand and take possession of such Car in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Car.

18. Assignment, Possession and Use. This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. Upon notice being given Lessee hereunder, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Lessor under this Lease or otherwise.

So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease; but, without the prior written consent of Lessor, Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Cars. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except in the ordinary

course of business of Lessee, including interchange and subleasing and except to the extent permitted by the provisions of the next succeeding paragraph hereof. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder.

Nothing in this paragraph 18 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Cars or possession of the Cars to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the assets and property of Lessee as an entirety or substantially as an entirety.

Lessee agrees that during the term of this Lease, including any renewals hereof, Lessee will not use or permit the use of any Car outside the United States of America.

19. Opinions of Counsel of Lessee. Concurrently with the execution and delivery of this Lease, Lessee will upon written request of Lessor deliver to Lessor the written opinion of counsel for the Lessee, in scope and substance satisfactory to Lessor, to the effect that:

- (a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of
- (b) Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary;
- (c) this Lease has been duly authorized, executed, and delivered by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;
- (d) registration with, approval of, filing with, or any other action by or with any federal, state or other governmental commission (including, without limitation, the Interstate Commerce Commission) is not required in connection with execution and delivery of the Lease; or, if so required, such registration has been made, such approval given, such filing made, or other appropriate action taken;
- (e) the execution and delivery by Lessee of the Lease does not violate any provision of any law, any order of any court or governmental agency, the Certificate of Incorporation or By-laws of Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property, is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of

time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessee, except as contemplated and permitted hereby; and

(f) as to any other matters which Lessor shall reasonably request.

20. Recording; Expenses. Lessee will, at its expense, from time to time do and perform any act and will execute, acknowledge, deliver, file, register, record and deposit (and will re-file, re-register, re-record and re-deposit whenever required) by law or reasonably requested by Lessor, for the purpose of proper protection, to the satisfaction of Lessor, of its title to the Cars or for the purpose of carrying out the intention of this Lease.

Lessor shall have the right, at any time during the term of this Lease, to appoint a bank or trust company selected by it to act as agent or trustee for it hereunder.

21. Interest on Overdue Rentals and Amounts Paid by Lessor. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by Lessor on behalf of Lessee, shall result in the obligation on the part of Lessee to pay to Lessor (i) interest at the rate of ten percent (10%) per annum (or the lawful rate, whichever is less) on any overdue rentals and (ii) any amounts expended by Lessor on behalf of Lessee.

22. Notices. Any notice and/or payment required or permitted to be given by any party hereto to another party hereto shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

If to the Lessor:

Merchants Investment Co.
Suite 1202
105 West Madison Street
Chicago, Illinois 60602

If to the Lessee:

Erie Western Railway Co.
P.O. Box 510
Huntington, Indiana 46750

or at such other address as either party shall hereafter furnish to the other party in writing.

23. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

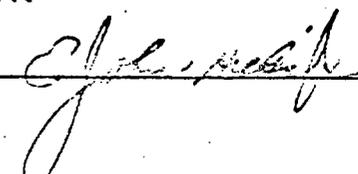
24. Law Governing. This Lease shall be governed by and construed in accordance with the laws of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

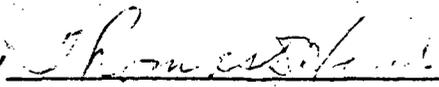
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers and their corporate seals to be hereunto affixed as of the day and year first above written.

(SEAL)

MERCHANTS INVESTMENT CO.
(Lessor)

ATTEST:

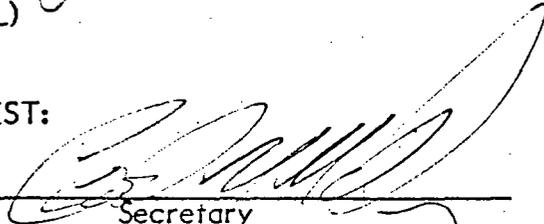
By 

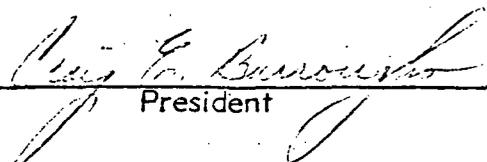
By 

(SEAL)

ERIE WESTERN RAILWAY CO.
(Lessee)

ATTEST:

By 
Secretary

By 
President

APPENDIX A

DESCRIPTION OF RAILROAD CARS, ETC.

Cars formerly owned by
and formerly numbered in Series

BASIC SPECIFICATIONS

| | | |
|----------------|---|----------------|
| Type | - | Covered Hopper |
| Capacity | - | 70 Tons |
| Inside length | - | 35' 1" |
| Inside width | - | 9' 5" |
| Outside length | - | 41' 1" |
| Outside width | - | 10' 2" |
| Cubic capacity | - | 2800 cu. ft. |
| Year built | - | 1952-53 |

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this April 5, 1978, before me personally appeared Thomas D. Nicks, to me personally known, who being by me duly sworn, says that he is the President of Merchants Investment Co., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and 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.

Bernice T. Gregor
Notary Public

(Notarial Seal)

STATE OF Indiana)
) SS.
COUNTY OF Huntington)

On this May 9, 1978, before me personally appeared Craig E. Burruss to me personally known, who being by me duly sworn, says that he is the President of ERIE WESTERN RAILWAY CO., 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.

Jean M. Vosburgh
Notary Public

(Notarial Seal)

JEAN M. VOSEBURGH, Notary Public
A Resident of Huntington County, Indiana
My Commission expires, November 21, 1981

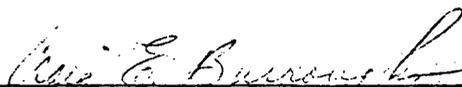
CERTIFICATE OF ACCEPTANCE

I, duly appointed inspector and authorized representative of the ERIE WESTERN RAILWAY CO. (hereinafter "Lessee") for the purposes of the agreement dated as of February 15, 1978, between MERCHANTS INVESTMENT CO., as Lessor, and Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of Lessee and under said Agreement, of the following Cars:

| | |
|-----------------|----------------------------------------------------------------|
| TYPE OF CAR: | Covered Hopper |
| PLACE ACCEPTED: | Burlington Northern Inc. Railroad Tracks, Chicago, Illinois |
| DATE ACCEPTED: | |
| NUMBER OF CARS: | Six (6) |
| NUMBERED: | ERES 7800 - 7801 - 7802 - 7803 - 7804 - 7805 |

I do hereby certify that the foregoing Cars appear to be in good order and condition, and appear to conform to the specifications applicable thereto.

The execution of this certificate will no no way relieve or decrease the responsibility of the manufacturer or subsequent owner of the Cars for any warrants it has made, express or implied, with respect to the Cars.


Inspector and Authorized Representative of ERIE
WESTERN RAILWAY CO.