

# THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

RECORDATION NO. 11074  
 Filed 1425  
 NOV 21 1979 - 10 45 AM

324 P&LE TERMINAL BUILDING  
 PITTSBURGH, PA. 15106  
 PHONE (412) 261-3201

GORDON E. NEUENSCHWANDER  
 EXECUTIVE VICE PRESIDENT  
 & GENERAL COUNSEL

G. EDWARD YURCON  
 ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH  
 ATTORNEY

November 20, 1979

No. 9-325A043

Date NOV 21 1979

Fee \$ 50.00

ICC Washington, D. C.

NOV 21 10 30 AM '79  
 FEE OFFICE  
 INTERSTATE COMMERCE COMMISSION

*Countersign - E. Kononov*

Miss Agatha L. Mergenovich, Secretary  
 Interstate Commerce Commission  
 12th and Constitution Ave., N.W.  
 Washington, D.C. 20423

Dear Miss Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303(a) of the Interstate Commerce Act are the original and four copies of the following document:

Railroad Equipment Lease, dated as of November 7, 1979, between The Pittsburgh and Lake Erie Railroad Company and Refined Syrups and Sugars, Inc.

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

OWNER: The Pittsburgh and Lake Erie Railroad Company  
 Smithfield and Carson Streets  
 Pittsburgh, PA 15219

LESSEE: Refined Syrups and Sugars, Inc.  
 1 Federal Street  
 Yonkers, NY 10702

The following is a general description of the railroad equipment covered by said document:

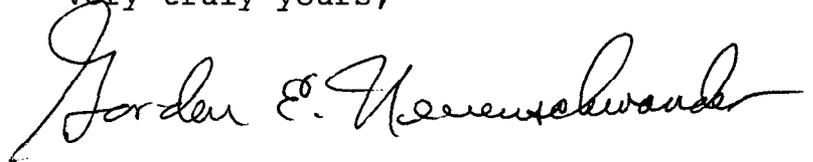
<u>No. of Units</u>	<u>Description</u>	<u>A.A.R. Mechanical Designation</u>	<u>Identifying Road Nos.</u>
15	35' 70-ton steel, covered hopper cars	LO	RSYX Nos. 100-114

Miss Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
November 20, 1979  
Page Two

Also enclosed is Pittsburgh and Lake Erie Railroad Company voucher, dated November 20, 1979, in the amount of \$50.00, payable to the Treasurer of the United States, to cover the filing fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt at your earliest convenience by stamping and returning to me three copies of the document.

Very truly yours,

A handwritten signature in cursive script, reading "Gordon E. Heenechwaude". The signature is written in dark ink and is positioned to the right of the typed name "Gordon E. Heenechwaude".

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

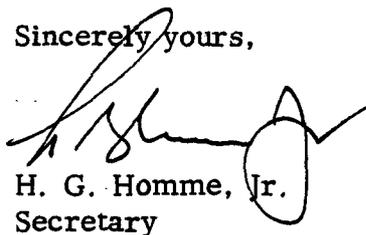
**OFFICE OF THE SECRETARY**

Gordon E. Neuenschwander  
The Pittsburgh & Lake Erie RR Co.  
324 F&LE Terminal Building  
Pittsburgh, PA. 15219

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 11/21/79 at 10:45AM, and assigned recordation number(s). 11074.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'H. G. Homme, Jr.', with a large, stylized flourish at the end.

H. G. Homme, Jr.  
Secretary

Enclosure(s)

SE-30  
(3/79)

RAILROAD EQUIPMENT LEASE

RECORDATION NO. **11074** Filed 1425  
NOV 21 1979 - 10 45 AM  
INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT AND LEASE, dated as of the 7th day of November, 1979, by and between THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, hereinafter called "P&LE", and REFINED SYRUPS AND SUGARS, INC., hereinafter called "RS&S".

W I T N E S S E T H :

1. Lease of Cars. P&LE agrees to lease to RS&S and RS&S agrees and does hereby lease from P&LE fifteen (15) steel covered hopper cars (any one of said cars hereinafter referred to as "Car" and more than one or all of which are hereinafter referred to as "Cars"), bearing numbers as set forth on Exhibit A, attached hereto and made a part hereof. The lease shall become effective as to any Car immediately upon its acceptance pursuant to paragraph 3 hereof.

2. Delivery of Cars. P&LE shall deliver the Cars as promptly as is reasonably possible. Delivery of any Car to RS&S shall be effective upon the date when such Car has been accepted in interchange by a connecting railroad at such point as is designated by RS&S.

3. Condition of Cars - Acceptance. All Cars delivered hereunder shall be in satisfactory condition for movement in normal interchange service and shall conform to the provisions and specifications of AAR Interchange Rule No. 88. The Cars shall be transported without cost to P&LE to such point as RS&S shall designate. RS&S will inspect all of the Cars on

the lines of P&LE prior to their delivery in accordance with paragraph 2. RS&S agrees to accept the same without objection as to condition upon delivery provided that a Certificate of Acceptance is executed and delivered to P&LE by an officer of RS&S with respect to each such Car, within fifteen days of said inspection. RS&S shall not be responsible, however, for damage which may have occurred to any Car subsequent to said inspection but prior to delivery.

4. Use and Possession. During the term of this lease, so long as RS&S is not in default of the provisions hereunder, RS&S shall be entitled to possession of each Car from the date the lease becomes effective as to such Car, and the same may be used on its own property or lines and upon the lines of any other railroad in interchange service; provided, however, that the Cars shall be used only in the United States of America or Canada and for the uses for which they were designed.

5. Term. This lease shall be for an initial term which shall commence on the date of delivery by P&LE and shall terminate five years from said date. If RS&S has fully performed all of its obligations under this Agreement and Lease, RS&S may, by written notice to P&LE given no later than thirty (30) days prior to the conclusion of the preceding terms, renew this lease for up to but not exceeding five (5) additional terms of one (1) year each. During any additional term or terms all of the provisions and conditions of this

Agreement and Lease shall continue in effect.

6. Rental. As rental for the use of each Car, RS&S shall pay P&LE Three Hundred Ten Dollars (\$310.00) per month during the initial five year period from the date of delivery thereof in accordance with the provisions of paragraph 2 hereof and Two Hundred Seventeen Dollars (\$217.00) per month for each month of any additional term retained in accordance with the provisions of paragraph 5 hereof. RS&S shall make monthly payments of the aforesaid rental to P&LE within fifteen (15) days from the end of each month. It is specifically agreed that RS&S will retain all Daily Time Charges and Mileage Charges attributable to the use of the Cars during the term of this lease.

7. Title. RS&S shall not by reason of this Agreement and Lease or any action taken hereunder acquire or have any right or title in and to the Cars except as to the rights herein expressly granted to it as lessee.

8. Maintenance. During the continuance of this lease, RS&S shall promptly and with due diligence keep and maintain the Cars in good working order and repair, and make all replacements and repairs to the Cars or their equipment and appliances to the extent required by presently effective Interchange Rules of the Association of American Railroads and laws and regulations of any Federal, State or governmental body or department. In the event that any modifications are made in said Interchange Rules, laws or regulations during

the term of this lease which would require expenditures exceeding thirty per cent (30%) of the value of any Car or Cars, RS&S shall have the right, upon written notice thereof, to terminate this Agreement and Lease with respect to any or all of the Cars affected by said modifications upon redelivery thereof in accordance with paragraph 15 hereof. Except as provided in the preceding sentence and in paragraph 14 hereof with respect to the loss or destruction of Cars, all of the foregoing maintenance and replacements shall be provided at the sole cost and expense of RS&S and without any reduction or abatement in rent or other loss, cost or expense to P&LE.

9. Additions to Cars. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall be immediately vested in P&LE without cost or expense to P&LE.

10. Taxes. RS&S shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes, levied or assessed during the continuance of this lease upon the Cars of the interest of RS&S therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against P&LE on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of P&LE therefrom, RS&S will promptly pay or reimburse P&LE for the same except that RS&S shall not be required to

pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings protest the validity or amount of such levy or assessment.

11. Prohibition Against Liens. RS&S shall pay or set aside and discharge any and all sums claimed by any party by, through or under RS&S and its successors and assigns which, if unpaid, might become a lien or a charge upon the Cars. RS&S shall not be required, however, to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title in and to the Cars.

12. Identification of Cars. At all times during the continuance of this lease, RS&S will cause each Car to bear the number assigned to it and appearing thereon as of the date of its delivery. Prior to acceptance of any Car, an agent, approved by P&LE, will paint the Cars and shall replace the P&LE markings thereon with RS&S markings. With respect to each Car bearing RS&S reporting marks, said agent shall plainly, distinctly and conspicuously stencil on each side of such Cars in letters not less than 3/4" in height the following legend:

"THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
OWNER/LESSOR"

Upon termination of this lease for any reason, RS&S shall restore P&LE markings to all Cars prior to their redelivery to P&LE. All changes in markings made upon the Cars as provided herein shall be performed at the sole cost and expense of RS&S.

13. Indemnity. RS&S hereby agrees to forever indemnify, defend and save P&LE harmless from and against all expenses, damages, claims, actions, or liabilities based upon personal injury, death or property damage arising directly or indirectly out of or in connection with the condition, operation or use of all or any of the Cars from and after their delivery to RS&S until their redelivery to P&LE, whether or not due to the negligence in whole or in part of P&LE, its agents or employees, RS&S, its agents or employees, or of P&LE and RS&S, their agents or employees jointly.

14. Loss or Destruction of Cars. In the event that any Car shall be lost, destroyed or irreparably damaged beyond economic repair from any cause whatsoever at any time during the term of this lease, RS&S shall be relieved of its obligation to pay rentals in respect of such Car from the date of such occurrence. RS&S shall forthwith advise P&LE of such occurrences and shall make prompt settlement for each such Car by payment in cash to P&LE of a sum calculated, as of the date of said loss, destruction or damage, in accordance with the prevailing rules applicable thereto in the Field Manual of the Interchange Rules prescribed by the Association of American Railroads, plus any unpaid rental and charges as herein provided to such date. Upon payment of such settlement this lease shall terminate as to such Car as of said date and RS&S shall be entitled to salvage, if any.

15. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to paragraph

14 hereinabove), RS&S shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of same to be made to P&LE at the nearest point or points on the lines of P&LE where cars are normally interchanged with connecting railroads. RS&S shall return all Cars to P&LE in as good condition (ordinary wear and tear excepted) as when the same were accepted by RS&S and in furtherance of this obligation, RS&S and P&LE shall perform a joint inspection of all Cars prior to redelivery, each party to assume the expense of its own inspection. Such repairs as may be determined by said joint inspection to be required to place the Cars in as good condition (ordinary wear and tear excepted) as when accepted under this lease will be performed by RS&S at its sole expense prior to redelivery to P&LE. Until such time as each Car has been redelivered to P&LE, RS&S shall continue to pay rental at the rate being paid immediately prior to termination of this lease and RS&S shall make all other payments and perform all obligations and requirements of RS&S under all provisions of this lease as though such termination had not occurred.

16. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) Non-payment by RS&S within ten (10) days after written notice to RS&S from P&LE of default in payment of rental or any other sum required to be paid hereunder by RS&S;

- (b) RS&S shall default or fail for a period of thirty (30) days in the observance or performance on its part under this Agreement and Lease, except as referred to in the foregoing clause (a), and said default or failure shall continue for a period of thirty (30) days after the giving of written notice thereof by P&LE;
- (c) A decree or order shall be entered by a court having jurisdiction in the premises adjudging RS&S bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under the Federal or State law;
- (d) The institution by RS&S of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (c), or the making by RS&S of a general assignment for the benefit of creditors.

17. Remedies. P&LE shall have the right in the event of default by RS&S to terminate this Agreement and Lease immediately by giving notice to RS&S, and P&LE may without any notice of demand take or cause to be taken immediate possession of the Cars and sell or otherwise dispose of the same, provided,

however, that such retaking shall not be deemed a waiver of P&LE's right to receive payment of all sums payable by RS&S to P&LE under this Agreement and Lease or any other rights or remedies conferred upon P&LE under applicable laws.

18. Recording. RS&S, immediately upon execution and without expense to P&LE, shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

19. Sublease and Assignment. RS&S shall not assign or sublease this lease or any of the Cars without the prior written consent of P&LE, which shall not be unreasonably withheld, P&LE may assign and reassign all or part of its rights under this lease, including the rent to be paid, without the consent of RS&S if said assignment or reassignment does not diminish, interfere or prejudice the rights of RS&S under this lease, and P&LE shall give to RS&S notice of any such assignment or reassignment.

20. Successors and Assigns. The covenants, conditions and agreements contained in this Agreement and Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted by paragraph 19 hereof).

21. Governing Laws - Amendments. The terms of this Agreement and Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania. The terms of this Agreement and Lease and the

rights and obligations of the parties hereto may not be amended or terminated orally, but only by agreement in writing by the party against whom the enforcement of such amendment or termination is sought.

22. Execution. This Agreement and Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

23. Option. P&LE agrees to lease an additional five (5) cars to RS&S prior to December 31, 1980, at lease rate to be negotiated at that time.

WITNESS:

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

Richard A. Brack

By G. E. Neuenschwander  
G.E. Neuenschwander  
Executive Vice President  
and General Counsel

WITNESS:

REFINED SYRUPS AND SUGARS, INC.

William E. Budin

By William R. Davies  
William R. Davies  
Vice President  
Refinery Operations

EXHIBIT A

P&LE 2,000 Cubic Foot Covered Hopper Cars

<u>P&amp;LE Nos.</u>	<u>RSYX Nos.</u>
1312	100
1318	101
1347	102
1394	103
1396	104
1466	105
1470	106
1475	107
1487	108
1490	109
1507	110
1511	111
1518	112
1519	113
1547	114

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 7th day of November, 1979,

before me, the undersigned Notary Public, personally appeared G.E. NEUENSCHWANDER, who, being duly sworn by me, acknowledged that he is the Executive Vice President and General Counsel of The Pittsburgh and Lake Erie Railroad Company, that he executed the foregoing instrument for and on behalf of said company, and that the execution of the foregoing instrument was the free act and deed of said company.

*Ronald E. Miller*  
Notary Public

My Commission expires:

Notary Public, Pittsburgh, Allegheny County  
My Commission Expires June 20, 1982

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COMMONWEALTH OF PENNSYLVANIA) )  
COUNTY OF ALLEGHENY ) ) SS:

On this 15th day of November, 1979,

before me, the undersigned Notary Public, personally appeared William R. Davis who, being duly sworn by me, acknowledged that he is the Vice President of Operations of Refined Syrups and Sugars, Inc., that he executed the foregoing instrument for and on behalf of said company, and that the execution of the foregoing instrument was the free act and deed of said company.

JOSEPHINE G. MORLEY  
Notary Public State of New York  
No. 03-4639670  
Qualified in Bronx County  
Commission Expires March 30, 1980

Josephine G. Morley  
Notary Public

My Commission expires:

March 30, 1980