

Law Offices  
Tashlik & Salomon  
110 East 59<sup>th</sup> Street  
New York, New York 10022

RECEIVED  
Nov 14 11 57 AM '77  
I. C. C.  
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(212) 935-4540

RECORDATION NO. .... Filed & Recorded

LONG ISLAND OFFICE  
55 NORTHERN BOULEVARD  
GREAT NECK, NEW YORK 11021  
(516) 466-5800  
(212) 895-7171

NOV 14 1977-12 00 7-313A108

INTERSTATE COMMERCE COMMISSION Date NOV 14 1977 November 11, 1977

Fee \$ 50

Secretary of the Interstate  
Commerce Commission  
Washington D.C. 20423  
ICC Washington, D. C

Re: Recordation of Lease  
RKO General, Inc., Owner and Lessor  
Erie Western Railway Company, Lessee

Honorable Sir:

We are enclosing herewith the original and two counterparts of the September 16, 1977 Lease ("the lease") between RKO General, Inc. ("RKO"), 1440 Broadway, New York, New York 10018 and Erie Western Railway Company ("Erie"), P.O. Box 510, Huntington, Indiana 46750. We hereby request that the two counterparts of the original lease be recorded with your office.

Under the terms of the lease, RKO leased to Erie the following ALCO 2000 HP, Four Motor Locomotives:

<u>ALCO SERIAL NUMBER</u>	<u>LOCOMOTIVE ROAD NUMBER</u>
203	84725
203	84727
207	84729

These locomotives may be further identified by the following identifying mark located on each side of the respective locomotives, written in letters not less than one (1) inch in height: RKO General, Inc., Owner and Lessor.

We are enclosing herewith a check in the amount of \$50 payable to the Interstate Commerce Commission to cover the cost of filing.

The undersigned is an associate of the firm of Tashlik & Salomon,

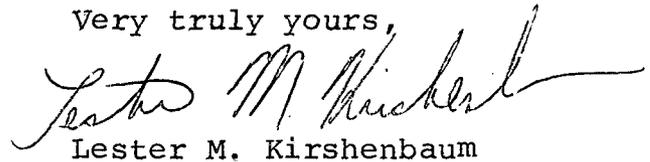
*Tashlik & Salomon*

Secretary of the Interstate  
Commerce Commission  
November 11, 1977  
Page 2

counsel to RKO, and I have personal knowledge of the matters  
set forth herein.

Please return the original of the lease to the undersigned.  
Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lester M. Kirshenbaum", with a long horizontal flourish extending to the right.

Lester M. Kirshenbaum

LMK:kw  
Enc.

cc: Mr. Henry Sabatell  
Theodore Wm. Tashlik, Esq.

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

11/14/77

OFFICE OF THE SECRETARY

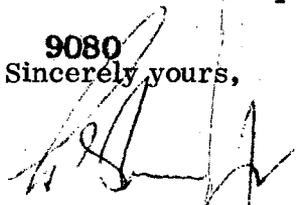
Lester M. Kirshenbaum  
Tashlik & Salomon  
110 East 59th Street  
New York, N.Y. 10022

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on \_\_\_\_\_ at \_\_\_\_\_,  
and assigned recordation number(s) <sup>11/14/77</sup> 12:00pm

9080  
Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

NOV 14 1977-12 00 PM

LEASE OF RAILROAD EQUIPMENT, dated as of September 16, 1977, between RKO GENERAL, INC., a Delaware corporation (such company and its successors and assigns being hereinafter called the "Lessor"), and ERIE WESTERN RAILWAY COMPANY, an Indiana corporation (hereinafter called the "Lessee"), relating to the following listed used Alco 2000 HP, Four Motor Locomotives (hereinafter referred to as the "Locomotives"):

<u>ALCO SERIAL NUMBER</u>	<u>LOCOMOTIVE ROAD NUMBER</u>
203	84725
205	84727
207	84729

The parties agree that upon the terms and subject to the conditions of the Lease, the Lessor leases the Locomotives to the Lessee.

Section 1. Application of Lease. Upon the execution of this Lease, the Locomotives covered hereby shall be subject to all of the terms and conditions of this Lease. The rental set forth in Section 2 hereof shall commence when the Lessee shall receive the Locomotives in Huntington, Indiana, but in no event later than September 24, 1977. The Lessor reserves the right to replace any Locomotive subject to this Lease with any other Locomotive it owns or to otherwise withdraw any Locomotive and reduce the number of Locomotives subject to this Lease. The Lessee agrees to be responsible for all costs and expenses related to the transportation of the Locomotives from their present locations

to the Lessee's trackage and for their preparation for service. Any charges for preparation for service heretofore or hereafter made by the Delaware & Hudson Railway Company will be paid by the Lessee upon demand therefor. The Locomotives are being leased on an AS IS, WHERE IS basis.

Section 2. Rentals. The Lessee agrees to pay the Lessor as Rental for each Locomotive subject to this Lease, in New York Clearing House Funds, the sum of \$2,000 per month. One month's Rental as to each Locomotive shall be paid to the Lessor in advance upon the execution hereof and thereafter, in advance, within ten days of each subsequent invoice at the Lessor's office in New York, New York, or to such other person or at such other place as the Lessor shall specify in writing.

Section 3. Term of Lease. The term of lease of each Locomotive shall for a period of twenty-four months commencing on the date such Locomotive arrives in Huntington, Indiana, but in no event later than September 24, 1977. In no event shall the term of lease as to any Locomotive terminate until a Certificate of Joint Inspection in the form attached hereto as Exhibit A is executed by each of the parties hereto. This Lease Agreement shall in any event continue in all respects as to any leased Locomotive until the termination of the Lease of such Locomotive and the full compliance by the Lessee with all terms and conditions hereof.

Section 4. Purchase Right. The Lessee shall have the right to purchase from the Lessor any Locomotive subject to this Lease agreement during the lease term of such Locomotive. The purchase

price for each Locomotive shall be \$50,000 and there shall be credited against such purchase price the Rental theretofore paid by the Lessee for such Locomotive pursuant to Section 2. The Lessee shall give the Lessor not less than ten days' prior written notice of its intention to purchase any Locomotive which notice shall specify which Locomotive is to be purchased and the date and time of a closing therefor. Any closing hereunder shall be held at the offices of the Lessor. At the closing the Lessee shall make payment of the purchase price by bank or certified check, in New York Clearing House Funds, and the Lessor shall deliver a bill of sale to the Lessee. Any Locomotive purchased hereunder shall be on an AS IS, WHERE IS basis. The Lessee's purchase right hereunder shall in any event expire not later than September 23, 1979.

Section 5. Identification Marks. If not already in place, Lessee will cause the following words to be plainly distinctly, permanently and conspicuously marked on each side of such Locomotive in letters not less than one inch in height:

RKO GENERAL, INC.  
OWNER AND LESSOR

Any other plates or stencils relative to ownership or mortgagees shall be removed by Lessee. If during the continuance of the Lease the foregoing marking is defaced or destroyed, the Lessee shall immediately cause such markings to be restored. The Lessee shall not allow the name of any person, association or corporation to be placed on any of the Locomotives as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor; but the

Lessee may letter the Locomotive with the names or initials or other insignia customarily used by the Lessee on its locomotives for convenience of identification of the right of the Lessee to use and operate the Locomotives under this Lease. In the event of any change of ownership of any Locomotive during the lease period, the Lessee agrees to promptly revise the marking on such Locomotive to correctly reflect such new ownership.

Section 6. Numbering. At all times during the continuance of this Lease, the Lessee will cause each Locomotive subject to this Lease to bear the Lessee's road number assigned to it; provided however, that the Lessee may change the road number borne by any Locomotive if prior thereto the Lessee shall have filed with the Lessor a statement of the new road number to be substituted therefor and the Lessee shall have filed, deposited, registered and recorded such statement wherever this Lease shall have been filed, deposited, registered or recorded or elsewhere as required by law.

Section 7. Taxes. In addition to the Rental for each leased Locomotive, and the purchase price for each purchased Locomotive, the Lessee shall promptly pay when due (or reimburse Lessor if it shall so pay) all taxes, assessments and other governmental charges, including but not limited to sales, use, value added, excise or similar taxes penalties and interest, levied or assessed upon such Locomotives or any interest therein or the use or operation thereof.

Section 8. Payment for Worn Out, Lost, Destroyed or Damaged Locomotives. If any Locomotive subject to this Lease shall become worn out, lost, destroyed or, in the reasonable opinion of the Lessor, irreparably damaged, then on the first day thereafter that Rental is required to be paid pursuant to Section 2 hereof, the Lessee shall, in lieu of the Rental payable on such day pursuant to Section 2, pay to the Lessor as damages in lieu of any further claim of the Lessor for Rental, the purchase price for such Locomotive as determined pursuant to Section 4. It is understood and agreed that, as in Section 4, all previously accumulated monthly Rental payments shall be credited against the purchase price in arriving at the amount of damages hereunder. The Lessee shall bear the risk of and, except as otherwise specifically provided herein, shall not be released from its obligations hereunder in the event of any loss or destruction of or damage to any of the Locomotives for any cause whatsoever.

Section 9. Reports and Inspection. The Lessee will furnish to the Lessor such reports as may be reasonably requested by the Lessor. The Lessor shall have the right, by its authorized representatives, to inspect the Locomotives to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

Section 10. Warranties; Maintenance; Compliance with Laws and Rules; and Indemnification. The Lessor warrants that at the time of the execution of this Lease Agreement it has good and

'marketable title thereto free and clear of any lien, claim or encumbrance of any nature whatsoever, except the rights of the Lessee hereunder. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE LOCOMOTIVES, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessee Agrees to deliver back to the Lessor, upon the termination of the Lease period, each Locomotive complete in all respects as theretofore delivered to the Lessee, and in good operating condition acceptable for movement through interchange. During the term of this Lease the Lessee agrees to comply with all Federal, State and Municipal Governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each Locomotive subject to this Lease and to insure each leased Locomotive for \$50,000 naming the Lessor as the beneficiary thereof. In case any equipment or appliance on any such Locomotive 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 Locomotive in order to comply with such laws, regulations, requirements and rules, the Lessee, at its own cost and expense, agrees to change, install or replace the same and in all events to maintain such Locomotive in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease. The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense or liability which the Lessor may

incur, in any manner arising out of or as a result of the use or operation or purchase of the Locomotives.

Section 11. Default. If, during the continuance of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur:

A. Default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for ten days;

B. The Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of any Locomotive 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 such Locomotives within ten days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

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

D. A decree or order by a court having jurisdiction in the premises shall have been entered,

(1) Adjudging the Lessee a bankrupt or insolvent,

(2) Approving as properly filed a petition seeking reorganization of the Lessee under the Federal Bankruptcy Act or

any other State or Federal law relating to bankruptcy or insolvency, except a petition filed under Section 20b of the Interstate Commerce Act or any similar law enacted hereafter, which petition does not seek any adjustment or impairment of any obligation of the Lease contained herein, or

(3) For the appointment of a receiver or liquidator or trustee in bankruptcy, reorganization or insolvency of the Lessee or of its property or any substantial portion of its property, and within thirty days thereafter (or in case, prior to the end of such thirty day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings, then within thirty days after the first such appointment) the obligations of the Lessee under the Lease shall neither have been assumed pursuant to order or decree of such court by the receiver or trustee in such proceedings nor otherwise have been given, pursuant to an order or decree of such court, a status comparable to that of obligations incurred by a receiver or trustee in bankruptcy, reorganization or insolvency proceedings; then, in any such case, the Lessor at its option, may

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Locomotives shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable

as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Locomotives may be located and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Locomotives for any purpose whatever; but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date such termination, together with all costs, damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

The remedies in this Lease provided in favor of the 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. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make the rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the Lease of the Locomotives.

The failure of the 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.

Section 12. Return of Locomotives. Upon the termination of the term of this Lease with respect to any Locomotive (whether by reason of an Event of Default or otherwise), the Lessee shall forthwith deliver possession of such Locomotive to the Lessor in good operating condition, acceptable for movement through interchange. For the purpose of delivering possession of any Locomotive to the Lessor as above required, the Lessee shall, at its own cost and expense:

A. Forthwith prepare for safe storage and place such Locomotives upon such storage tracks of the Lessee as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select.

B. Permit the Lessor to store such Locomotives on such tracks for a period not exceeding six months at the risk of the Lessor.

C. Prepare for dead movement and transport the same, at any time within such six month period to any place on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by and without cost to the Lessor.

The assembling, delivery, storage and transporting of the Locomotives 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 the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Locomotives.

Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 12, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Locomotive to the Lessor, to demand and take possession of such Locomotive in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Locomotive.

Section 13. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

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

any of the Locomotives.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Locomotives and to the use thereof only upon the lines owned and operated by the Lessee and on lines of other carriers where "run through" or "power pool" agreements are in force. For the purpose of such agreements only, the Lessor consents to the possession and control of the Locomotives by another carrier during the limited period required therefor. Any other use of any Locomotive shall require the prior written approval of the Lessor.

Section 14. Recording Expenses. The Lessor at the expense of the Lessee, shall cause this Lease to be filed and recorded with all appropriate Federal, State and Municipal governmental authorities. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of counsel for the Lessor of its title to the Locomotives, or for the purpose of carrying out the intention of this Lease. The Lessee will pay all costs, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such further instrument or incident to the taking of any such other action and shall deliver its check for the initial filing fees to counsel for the Lessor upon the execution hereof.

Section 15. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to the Lessor:

RKO General, Inc.  
1440 Broadway  
New York, New York 10019

Attention: Mr. Henry P. Sabatell

If to the Lessee:

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

Attention: Mr. Craig E. Burroughs

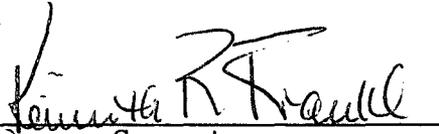
or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 16. 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 together shall constitute but one and the same instrument.

Section 17. Law Governing. This Agreement shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused this Lease to be executed in their respective corporate names by their respective duly authorized representatives as of the date first above written.

ATTEST:

  
Secretary

RKO GENERAL, INC.

By: 

ATTEST:

  
Secretary

ERIE WESTERN RAILWAY COMPANY

By: 

STATE OF NEW YORK

COUNTY OF NEW YORK

On the <sup>4<sup>th</sup></sup> day of ~~September~~ <sup>November</sup>, 1977, before me came Henry P. Sabatell, to me known, who, being by me duly sworn, did depose and say that he resides in Staten Island, New York that he is the authorized representative of RKO General, Inc., the corporation described in, and which executed, the foregoing instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

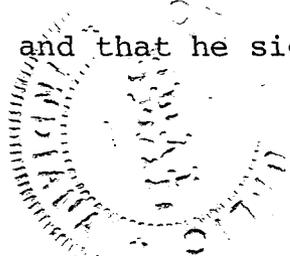
  
NOTARY PUBLIC

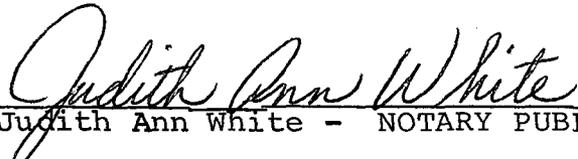
OLIVER J. JANNEY  
Notary Public, State of New York  
No. 60-1956320  
Qualified in Westchester County  
Certificate filed in New York County  
Commission Expires March 30, 1979

STATE OF INDIANA

COUNTY OF ALLEN

On the 27th day of ~~September~~ <sup>October</sup>, 1977, before me came Craig E. Burroughs, to me known, who, being by me duly sworn, did depose and say that he resides in New Lenox, Illinois ; that he is the President of the Erie Western Railway Company, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.



  
Judith Ann White - NOTARY PUBLIC

My Commission Expires:  
April 7, 1980,

EXHIBIT A

CERTIFICATE OF JOINT INSPECTION

The undersigned, each for himself, hereby certifies that he is a duly authorized representative of RKO General, Inc. ("RKO") or Erie Wester Railway Company ("EWR") respectively, and that he has been duly authorized to execute this Certificate on behalf of RKO or EWR, as the case may be, pursuant to Section 2 of the Lease, dated as of September 16, 1977, (the "Lease"), between RKO and EWR.

The undersigned, each for himself, RKO and EWR, further certifies as follows:

1. The below described Alco 2000 HP, Four Motor Locomotives manufactured by Alco Products, Inc., owned by RKO and under lease to EWR, have on this date been inspected prior to the expiration of the Lease and found to be in good operating condition acceptable for movement through interchange.

2. The Locomotives set forth above have been delivered to RKO pursuant to Section 12 of the Lease.

ERIE WESTERN RAILWAY COMPANY

By Craig E. Burroughs  
RKO GENERAL, INC.

By \_\_\_\_\_

Date: