

# THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON E. NEUENSCHWANDER  
EXECUTIVE VICE PRESIDENT  
& GENERAL COUNSEL

G. EDWARD YURCON  
ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH  
ATTORNEY

12072  
RECORDATION NO. .... Filed & Recorded

324 P&LE TERMINAL BUILDING  
PITTSBURGH, PA. 15219  
PHONE (412) 261-3201

AUG 4 1980 - 3 30 PM

August 1, 1980  
INTERSTATE COMMERCE COMMISSION

0-217A085  
No. AUG 4 1980  
Date  
Fee \$ 50.00  
ICC Washington, D. C.

RECEIVED  
Aug 4 3 23 PM '80  
I.C.C.  
FEE OPERATION BR.

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

Dear Ms. Mergenovich:

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

Railroad Equipment Lease, dated as of July 22, 1980, between The Pittsburgh and Lake Erie Railroad Company and Excel Railcar Corporation.

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, Pennsylvania 15219

LESSEE: Excel Railcar Corporation  
5501 Elinor Avenue  
Downers Grove, Illinois 60515

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>
44	35 foot, 70-ton steel, covered hopper cars	LO	ERCX 2000 - 2021; ERCX 3000 - 3021

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Page 2

Also enclosed is The Pittsburgh and Lake Erie Railroad Company voucher no. 112328, dated August 1, 1980, 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 an original and three copies of the document.

Very truly yours,

  
Richard A. Porach

RAP:ts

enclosures

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

8/5/80

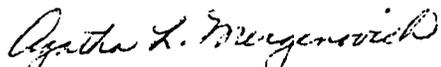
OFFICE OF THE SECRETARY

**Richard A. Porach, Atty.  
The Pittsburgh & Lake Erie RR Co.  
324 P&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 **8/4/80** at **3:30pm**, and assigned re-  
recording number(s). **12072**

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT AND LEASE, dated as of the 22nd day  
of July, 1980, by and between THE PITTSBURGH  
AND LAKE ERIE RAILROAD COMPANY, hereinafter called "Lessor," and  
EXCEL RAILCAR CORPORATION

hereinafter called "Lessee."

12072  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

W I T N E S S E T H :

AUG 4 1980 - 3 30 PM

1. Lease of Cars. Lessor agrees to lease to Lessee  
and Lessee agrees and does hereby lease from Lessor 44  
Covered Hopper cars (any one of said cars here-  
inafter referred to as "Car" and more than one or all of which  
are hereinafter referred to as "Cars"), bearing numbers as set  
forth in 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, and shall continue in  
effect, as to any Car, until redelivered pursuant to Paragraph  
17 hereof.

2. Delivery of Cars. Lessor shall deliver the Cars  
as promptly as is reasonably possible. Delivery of any Car to  
Lessee 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 Lessee.

3. Condition of Cars - Acceptance. All Cars delivered  
hereunder shall be in satisfactory condition for movement in  
normal interchange service, shall comply with interchange rules



and shall conform to the provisions and specifications of AAR Interchange Rule No. 88. Interchange rules shall mean all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and other matters pertaining to the interchange of freight traffic applicable to the Cars, as adopted and in effect by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation which may be responsible for or have authority to impose such codes, rules, interpretations, laws or orders. The Cars shall be transported without cost to Lessor to such point as Lessee shall designate. Lessee will inspect all of the Cars on the lines of Lessor prior to their delivery in accordance with Paragraph 2. Lessee agrees to accept the same without objection as to condition upon delivery provided that a Certificate of Acceptance is executed and delivered to Lessor by an officer of Lessee with respect to each such Car, within fifteen (15) days of said inspection. Lessee 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 Lessee is not in default of the provisions hereunder, Lessee 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,

Canada, and the Republic of Mexico for the uses for which they were designed.

5. Term. This lease shall be for an initial term which shall commence on the average date of delivery of all of the Cars by Lessor and shall terminate ten (10) years from said average date of delivery. If Lessee has fully performed all of its obligations under this Agreement and Lease, Lessee may, by written notice to Lessor given no later than 120 days prior to the conclusion of the preceding term or any renewal term, 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, Lessee shall pay Lessor See Rider Attached per month during the initial ten (10) year period from the date of delivery thereof in accordance with the provisions of Paragraph 2 hereof, and the same rental amount as shown in attached Rider No. 1 per month for each month of any additional term retained in accordance with the provisions of Paragraph 5 hereof. Lessee shall make monthly payments of the aforesaid rental to Lessor within fifteen (15) days from billing date. It is specifically agreed that Lessee will retain all Daily Time Charges and Mileage Charges attributable to the use of the Cars during the term of this lease.

7. Title. Lessee 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, Lessee 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 (30) percent of the value of any Car or Cars, Lessee 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 17 hereof. Except as provided in the preceding sentence and in Paragraph 16 hercof with respect to the loss, theft, or destruction of Cars, all of the foregoing maintenance and replacements shall be provided at the sole cost and expense of Lessee and without any reduction or abatement in rent or other loss, cost or expense to Lessor.

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 Lessor without cost or expense to Lessor. No additions, alterations, removals or basic structural repairs, requiring in excess of twenty (20) man-hours direct labor to complete, shall be made to any Car

without prior written consent of Lessor.

10. Taxes. Lessee 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 or the interest of Lessee therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against Lessor 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 Lessor therefrom, Lessee will promptly pay or reimburse Lessor for the same except that Lessee 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. Freight and Other Charges. Lessor shall not be obligated for the payment of any freight or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this Agreement and Lease.

12. Lading. Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, for whatever reason such loss or damage may be caused or shall result. Lessee agrees to assume responsibility for, to indemnify Lessor against, and save Lessor harmless from any such loss or damage or claim therefor.

13. Prohibition Against Liens. Lessee shall pay or set aside and discharge any and all sums claimed by any party by,

through or under Lessee and its successors and assigns which, if unpaid, might become a lien or a charge upon the Cars. Lessee 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.

14. Identification of Cars. At all times during the continuance of this lease, Lessee 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, Lessor will paint the Cars and shall replace the P&LE markings thereon with Lessee's markings. With respect to each Car bearing Lessee's reporting marks, Lessor 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."  
"EXCEL RAILCAR CORPORATION, LESSEE."

Upon termination of this lease for any reason, Lessee shall restore Lessor's markings to all Cars prior to their redelivery to Lessor. All changes in markings made upon the Cars as provided herein shall be performed at the sole cost and expense of Lessee.

15. Indemnity. Lessee hereby agrees to forever indemnify, defend and save Lessor harmless from and against any and all damages, claims, actions, liabilities, costs and expenses, including attorneys' fees, 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 Lessee until their redelivery

to Lessor, whether or not due to the negligence in whole or in part of Lessor, its agents or employees, Lessee, its agents or employees, or of Lessor and Lessee, their agents or employees jointly. If Lessor is named as a party to any lawsuit as a result of the above, Lessee agrees to undertake the defense and costs associated therewith immediately upon tender of said defense, including payment of any judgment directed against Lessor, jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, taxes, fines, and levies arising from the operations of said Cars under this Agreement and Lease.

16. Loss, Theft or Destruction of Cars. In the event that any Car shall be lost, stolen, destroyed or irreparably damaged beyond economic repair (to be determined by Lessor) from any cause whatsoever at any time during the term of this lease, Lessee shall be relieved of its obligation to pay rentals in respect of such Car from the date of such occurrence. Lessee shall forthwith advise Lessor of such occurrences, and shall make settlement for each such Car by payment in cash to Lessor of a sum calculated, as of the date of said loss, theft, 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. Such settlement shall be made no later than forty-five (45) days after the occurrence, however, so long as Lessee shows good faith in pursuing settlement with the responsible party, Lessor shall extend the settlement period. Upon payment of such settlement, this lease shall terminate as to such Car as of

said date and Lessee shall be entitled to salvage, if any.

17. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to Paragraph 16 hereinabove), Lessee shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of same to be made to Lessor at the nearest point or points on the lines of Lessor where cars are normally interchanged with connecting railroads. Lessee shall return all Cars to Lessor in as good condition (ordinary wear and tear excepted) as when the same were accepted by Lessee and in furtherance of this obligation, Lessee and Lessor 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 Lessee at its sole expense prior to redelivery to Lessor. Until such time as each Car has been redelivered to Lessor, Lessee shall continue to pay rental at the rate being paid immediately prior to termination of this lease and Lessee shall make all other payments and perform all obligations and requirements of Lessee under all provisions of this lease as though such termination had not occurred.

18. Substitution of Cars. In the event the lease as to any Car or Cars shall be terminated pursuant to Paragraph 8 or 16 hereinabove, Lessor shall have the right, but not the obligation, to substitute therefor another Car or Cars of the same type and capacity.

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

- (a) Non-payment by Lessee within twenty-five (25) days after written notice to Lessee from Lessor of default in payment of rental or any other sum required to be paid hereunder by Lessee;
- (b) Lessee shall default or fail for a period of thirty (30) days in the observance or performance of any agreement required to be observed or performed 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 Lessor;
- (c) A decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under Federal or State law;
- (d) The institution by Lessee 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 Lessee of a general assignment for the benefit of creditors.

20. Remedies. Lessor shall have the right in the event of default by Lessee to terminate this Agreement and Lease immediately by giving notice to Lessee, and Lessor 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 Lessor's right to receive payment of all sums payable by Lessee to Lessor under this Agreement and Lease, or any other rights or remedies conferred upon Lessor under applicable laws.

21. Recording. Lessee, immediately upon execution and without expense to Lessor, shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

22. Sublease and Assignment. Lessee shall not assign or sublease this lease or any of the Cars without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessor may sell or otherwise dispose of the Cars or may assign and reassign all or part of its rights under this lease, including the rent to be paid, without the consent of Lessee, if said sale, disposition, assignment or reassignment does not diminish, interfere or prejudice the rights of Lessee under this lease, and Lessor shall give to Lessee notice of any such sale, disposition, assignment or reassignment.

23. Successors and Assigns. The covenants, conditions and agreements contained in this Agreement and Lease shall bind

and insure to the benefit of the parties, their successors and assigns (to the extent permitted by Paragraph 22 hereof).

24. 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.

25. 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.

WITNESS:

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

James Darnell

BY

H.S. Allsup  
President

WITNESS:

EXCEL RAILCAR CORPORATION

[Signature]

BY

Eugene R. Constance  
President



COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 22nd day of July, 19 80,

before me, the undersigned Notary Public, personally appeared

H.G. Allyn, Jr., who being duly sworn according  
to law, acknowledged that he is President

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.

Molly A. Tegeler  
Notary Public

MOLLY A. TEGELER, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES OCT. 17, 1983  
Member, Pennsylvania Association of Notaries

STATE OF  
COUNTY OF

)  
) SS:  
)

On this 22nd day of July, 19 80,

before me, the undersigned Notary Public, personally appeared  
Eugene R. Constance, who being duly sworn according to  
law, acknowledged that he is President of  
Excel Railcar Corporation,

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.

*Molly A. Tegeler*  
\_\_\_\_\_  
Notary Public  
MOLLY A. TEGELER, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES OCT. 17, 1983  
Member, Pennsylvania Association of Notaries

RIDER No. 1  
 Forming Part of  
 EXCEL RAILCAR CORPORATION and  
 THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY  
 CAR LEASING AGREEMENT  
 22 ERC  
 DATED JULY 22, 1980

The cars described herein shall be subject to the terms and conditions of said Agreement during the term of use and for the rental set forth below:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Monthly Rental Per Car</u>
22*	Covered Hopper, 70 ton, 2006 cubic ft. capacity, Reporting Marks ERCX 2000-2021.	\$217.00
22*	Covered Hopper, 70 ton, 2893 cubic ft. capacity, Reporting Marks ERCX 3000-3021.	\$262.00

The term of use of the cars hereinabove described shall commence on the date of delivery thereof to Lessee, and shall continue for a period ending ten (10) years from the first day of the month following the average date of delivery of such cars to Lessee.

\*Estimated number of cars per type; minimum total 44.

Dated this 22nd day of July, 1980.



WITNESS:

THE PITTSBURGH AND LAKE ERIE  
 RAILROAD COMPANY

J. W. Mc Donnell

BY H. S. Allyn Title

WITNESS:

EXCEL RAILCAR CORPORATION

[Signature]

BY Eugene R. Constance Title  
 President

EXHIBIT "A"

Forming part of EXCEL RAILCAR CORPORATION and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, Car Leasing Agreement dated July 22, 1980, the following P&LE Cars will be renumbered to ERCX Series 2000 through 2021, and ERCX Series 3000 through 3021:

ERCX 2000-2021

PLE 1304  
PLE 1324  
PLE 1328  
PLE 1342  
PLE 1363  
PLE 1376  
PLE 1385  
PLE 1391  
PLE 1392  
PLE 1401  
PLE 1433  
PLE 1435  
PLE 1436  
PLE 1471  
PLE 1494  
PLE 1497  
PLE 1502  
PLE 1515  
PLE 1527  
PLE 1582  
PLE 1648  
PLE 1674

ERCX 3000-3021

PLE 1700  
PLE 1704  
PLE 1708  
PLE 1711  
PLE 1719  
PLE 1730  
PLE 1734  
PLE 1743  
PLE 1748  
PLE 1749  
PLE 1752  
PLE 1756  
PLE 1759  
PLE 1760  
PLE 1770  
PLE 1773  
PLE 1776  
PLE 1781  
PLE 1782  
PLE 1784  
PLE 1785  
PLE 1792



EXHIBIT "B"

Forming part of EXCEL RAILCAR CORPORATION and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY Car Leasing Agreement dated July 21, 1980.

For purposes of this Agreement, average date of delivery shall mean the date derived by multiplying the number of cars delivered on each date of delivery times the number of elapsed days from the first date of delivery and by deviding the total of the foregoing by a total number of cars delivered.

The above may be illustrated by the following example, which is for illustrative purposes only:

April 1, 1980 (1st date of delivery) - 50 cars delivered = 0 Car Days

April 11, 1980 - 50 cars delivered = 500 car days (10 elapsed days from 1st date of delivery X 50 cars)

May 3, 1980 - 50 cars delivered = 1600 car days (32 elapsed days from 1st day of delivery X 50 cars)

May 6, 1980 - 50 cars delivered = 1750 car days (35 elapsed days from 1st day of delivery X 50 cars)

Total Car Days = 3850 - Total Number of Cars (200) = 19.25

Average Date of Delivery = April 20, 1980 (1st day of delivery, April 1, 1980, plus 19, average number of elapsed days from 1st day of delivery)

Termination is the first day of the month following the average day of delivery. Therefore, the Lease as to each Car will terminate on May 1, 1990. The commencement date of the Lease as to each Car is unaffected and will begin upon delivery of the particular Car.