

WILMER, CUTLER & PICKERING

2445 M STREET, N. W.

WASHINGTON, D. C. 20037-1420

TELEPHONE (202) 683-6000  
FACSIMILE (202) 293-0074, No. 8-320A010  
293-5929, 429-4930, 429-9893  
TELEX 440239 WCPI U,  
892402 WICRING WSH  
ABA NET ABA1354  
SOURCE WCPOOI

EUROPEAN OFFICE  
4 CARLTON GARDENS  
PALL MALL  
LONDON SW1Y 5AA, ENGLAND  
TELEPHONE 011 (44) 839-4466  
FACSIMILE 011 (44) 839-3537  
TELEX 8813918 WCP LDN

ALLEN H. HARRISON, JR. RECORDATION NO. 1 6027 X Filed 1988

DIRECT LINE (202)

663-6093

NOV 15 1988 9 10 AM

INTERSTATE COMMERCE COMMISSION

November 14, 1988 Washington, D. C.

RECORDATION NO. 1 6027 Filed 1988

Date .....  
Fee \$ 26.00  
AH.....

Dear Ms. McGee:

NOV 15 1988 9 10 AM

\$ 26.00 filing fees

On behalf of CITILEASING, INC., I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, three (3) executed counterparts of a primary document, not previously recorded, entitled Lease Agreement for Railroad Freight Cars ("Lease") dated as of October 1, 1988. Also submitted for filing and recording are four (4) executed counterparts of a related secondary document, not previously recorded, entitled Memorandum of Lease Supplement No. 1 ("Supplement") dated as of October 14, 1988.

The parties to the enclosed Lease are:

Citicorp Leasing, Inc. - Lessor  
601 Midland Avenue  
Rye, New York 10580

Merchants Investment Co. - Lessee  
880 Lee Street  
Suite 801  
Des Plaines, Illinois 60016

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The parties to the related Supplement are as stated above for the Lease.

The Lease covers the leasing by the Lessor to the Lessee certain rolling stock as will be identified in supplements thereto, and the Supplement recorded herewith covers such rolling stock now leased.

The equipment covered by the Lease and Supplement is as identified in Annex I to the Supplement, namely one boxcar, 18 flat cars and 62 hoppers, copy of Annex I attached hereto.

A short summary of the document to appear in the ICC Index is as follows:

"Covers one box car, 18 flat cars and 62 hopper cars"

New Member

*Handwritten signature: C. [unclear]*

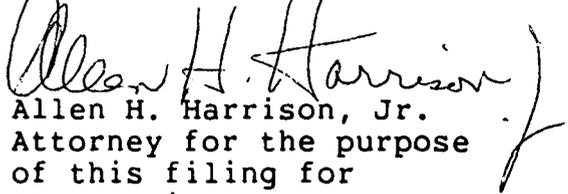
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- 2 -

Enclosed is a check in the amount of twenty-six dollars (\$26) in payment of the filing fees.

Once the filings have been made, please return to bearer the stamped counterparts of the Lease and Supplement not needed for your files, together with the fee receipt, the letter from the ICC acknowledging the filings, and the two extra copies of this transmittal letter.

Very truly yours,

  
Allen H. Harrison, Jr.  
Attorney for the purpose  
of this filing for  
CIT Leasing, Inc.

Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

AHH/iw

BY HAND

## ANNEX I

## Lease Agreement Between Citicorp Leasing, Inc. and Merchants Investment Co.

REF #	DESCRIPTION/CAR NUMBERS	NO OF CARS
1	100 TON, 60' FLATS, THRALL/JTHX 1002, 1006, 1007, 1009, 1014, 1015	6
2	70 TON, 85' FLATS/CREX 344, 346, 349	3
3	70 TON, 87' FLATS/CREX 345-347	3
4	70 TON, 85' FLATS/CREX 350-352	3
5	70 TON, 89' FLATS/UC 5901-5903	3
6	100 TON, 60' BOX/KJRY 222	1
7	100 TON, 4500' C.H./CAGY 226	1
8	100 TON, 4427' C.H./BLCL 4401-4405	5
9	100 TON, 4180' C.H. AIRSLIDE/CREX 701-709 (709)	9
10	100 TON, 4180' C.H. AIRSLIDE/CREX 710	1
11	100 TON, 3500' C.H./CREX 950, 952	2
12	100 TON, 2931' C.H./CREX 953-955	3
13	100 TON, 2600' C.H./CREX 960-969	8
14	100 TON, 2600' C.H./CREX 1100-1109	10
15	70 TON, 2800' & 2903' (1) C.H./CREX 908, 911, 912, 914, 944	5
16	100 TON, 3000' C.H. P.D., U.T.C./CREX 974	1
17	100 TON, 3000' C.H. P.D., U.T.C./CREX 975, 976	2
18	100 TON, 3000' C.H. P.D., U.T.C./CREX 971, 972	2
19	100 TON, 3500' C.H./CREX 1300-1312	13
	TOTAL MERCHANTS RAIL ASSETS	81

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

11/15/88

OFFICE OF THE SECRETARY

Larry Elkins Esq  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

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 11/15/88 at 9:10am, and assigned recordation number(s). 16027 & 16027-A, 7696-A, 8504-G, 8504-H, 8504-I, 14027-E

14028-A,  
15245-A  
15241-A  
15730-A  
15739-C

Sincerely yours,



Secretary

Enclosure(s)

1 6027  
RECORDATION NO. \_\_\_\_\_ FROM 1988

NOV 15 1988 - 4 44 AM

LEASE AGREEMENT FOR  
RAILROAD FREIGHT CARS

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT (hereinafter this "Agreement" or "Lease"), dated as of October 1, 1988 by and between CITICORP LEASING, INC., a Delaware corporation (hereinafter called "Lessor"), and MERCHANTS INVESTMENT CO., an Illinois corporation (hereinafter called "Lessee").

WITNESSETH:

§1. AGREEMENT TO LEASE - Lessor and Lessee are entering into an Asset Purchase Agreement dated as of October 1, 1988 (the "Purchase Agreement") pursuant to which Lessee has agreed to sell to Lessor, and Lessor has agreed to purchase from Lessee, the railroad cars identified therein (the "cars"). Immediately upon completion of such purchase and sale, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, each and all of the cars for the lease term and the rental and upon any other terms contained in a Lease Supplement entered into pursuant to §2 as to the car or cars identified therein, and otherwise upon all the terms and conditions hereof.

§2. LEASE SUPPLEMENTS - Concurrently with the purchase and sale of the cars pursuant to the Purchase Agreement, Lessor and Lessee agree that they will execute and deliver Lease Supplements substantially in the form of Exhibit A hereto (the "Lease Supplements") covering all of the cars. Each Lease Supplement shall identify the car or cars covered thereby and specify the rental payment dates and the rental installments payable on each such date for each car or cars identified therein and the expiration date of this Lease as to such car or cars, subject to any renewal option provided in such Lease Supplement. Any lease agreement to which Lessee is a party, as lessor, in effect upon the execution and delivery of any Lease Supplement which creates a leasehold estate in any of the car or cars identified in such Lease Supplement shall be described in such Lease Supplement, and true and complete copies thereof shall have been delivered to Lessor. All such lease agreements are herein referred to as the "Existing Leases".

§3. TERM - This Lease shall become effective on the date the cars are transferred and sold to Lessor pursuant to the Purchase Agreement. The lease term (the "Lease Term") for each car shall be for a period beginning with such effective date and ending (subject to renewal rights otherwise provided for, if any,

in the Lease Supplement therefor) on the date designated as the expiration date in the Lease Supplement for such car; provided that in the event the Existing Lease to which any car is subject shall have been terminated for any reason (other than the failure of Lessee to comply with its maintenance or any other obligation as Lessor thereunder), including, without limitation, as a result of a default by the lessee under such Existing Lease or the total damage, destruction or condemnation of a car for which no substitute is provided, and such car is not, within a period of 30 days thereafter, leased by Lessee to a sublessee under a lease substantially in the form of the Existing Lease or as otherwise satisfactory to Lessor, then this Lease shall be terminated at the end of such 30 day period (or earlier as Lessor and Lessee shall agree) with respect to such car, and Lessee shall, promptly and at Lessee's expense, do one or more of the following as Lessor, at its option, shall then direct: (i) except in the case of a car so damaged, destroyed or condemned, return such car to Lessor in the manner and condition otherwise provided herein, (ii) in the case of a car so damaged or destroyed dispose of such car, (iii) except in the case of a car so damaged, destroyed or condemned, use its best efforts to sell such car upon terms approved by Lessor, (iv) use its best efforts to collect any proceeds, awards or damages reasonably available in respect of such car from any defaulting lessee, insurer, common carrier, governmental agency or otherwise, and (v) in consideration for the early termination of this Lease in respect of such car, immediately upon receipt thereof, pay to Lessor any proceeds, settlements, awards or damages collected by or paid to Lessee in respect of such car, whether as a result of such lessee breach, claims against insurers, settlements from common carriers, compensation for taking, the sale of such car, or otherwise.

§4. DELIVERY - Subject to the leasehold estate of the Existing Leases, the cars will be in the possession of Lessee upon the transfer and sale thereof pursuant to the Purchase Agreement and shall immediately thereupon be deemed delivered by Lessor and accepted by Lessee for lease as herein provided.

§5. INSPECTION - Each of the cars is leased hereunder in the condition as transferred and sold under the Purchase Agreement, and no inspection by Lessor or Lessee is to be performed or is required to effect the lease of the cars as provided herein. The absence of any initial inspection shall not relieve Lessee of its obligation to return each car at the end of the Lease Term therefor in the condition required hereby.

§6. MARKINGS - Lessee hereby confirms that each car is marked and numbered with the mark and number set forth in the Lease Supplement therefor. Upon the expiration or earlier termination of this Lease, Lessee will remark and renumber the cars as directed by Lessor; provided that the reasonable cost thereof will be for the account of Lessor. At the first

opportunity available to Lessee without interfering with the leasehold under the Existing Leases, and at all times during the Lease Term, Lessee will maintain upon each side of each car a plate or stencil printed in contrasting color in letters not less than one inch in height stating: "Owned by a Lessor and subject to a Lease Agreement filed with the Interstate Commerce Commission" provided that the reasonable cost thereof will be for the account of Lessor. The Lessee will not change the mark or number of any car during the Lease Term except with the prior written consent of Lessor and in accordance with a statement of new marks and numbers to be substituted therefor which shall have been delivered to Lessor and shall be filed and recorded with the Interstate Commerce Commission and any other public offices reasonably designated by Lessor.

§7. RENTAL - The monthly (or other periodic) rental for each of the cars is the amount per car specified in the Lease Supplement therefor, payable on the dates specified in such Lease Supplement. All rentals will be invoiced by Lessor approximately 15 days prior to the due date thereof, but whether or not invoiced shall be paid to Lessor by check at Lessor's principal office, 601 Midland Ave., Rye, New York 10580, Attention: Air Special Projects, Operations Manager or at such other address as Lessor shall designate in writing. Lessee shall pay to Lessor interest on any payment due hereunder whether as rental or otherwise not received by Lessor within 10 days of the due date thereof from and after such due date until the date paid at a rate per annum equal to Citibank Base Rate plus 200 basis points. Citibank Base Rate shall mean the fluctuating interest rate per annum equal at all times to the rate of interest announced publicly by Citibank, N.A. in New York, New York, from time to time as Citibank, N.A.'s base rate, each change in such fluctuating interest rate to take effect simultaneously with the corresponding change in such base rate.

§8. CAR HIRE - Any per diem or mileage allowance, car hire rental, and/or other compensation paid by reason of off-line use of any car directly to the Lessee shall be retained by Lessee as compensation for its interest in such car.

§9. USAGE - Lessee covenants that it shall use the cars in the United States and Canada only for shipment of commodities appropriate for the design of such car, and Lessee shall not, under any circumstances, use the cars for shipment of any other commodity without the prior written consent of Lessor. Lessee may not sublease any cars or assign any interest hereunder to third parties except pursuant to the Existing Leases or with the prior written consent of Lessor, which consent shall not be unreasonably denied, and any attempted sublease or assignment without such consent shall be void. Upon request, Lessee will execute a memorandum of this Lease in form appropriate for filing with the Interstate Commerce Commission (the "ICC"). Lessor, at its discretion, will file and record this Lease and/or such

memorandum with the ICC, and will provide a copy of such filing to Lessee.

§10. MAINTENANCE AND REPAIRS - During the term hereof, Lessee, at its own cost and expense, will perform, or cause to be performed, such maintenance and repairs of the cars as is necessary to insure that each car, while it is in service (whether or not loaded) on any date during the Lease Term, is in the condition required by the then prevailing applicable rules of the Association of American Railroads (the "AAR") and Federal Railway Administration or successor entities or any other agency having jurisdiction over the operation or use of the cars (the "Regulators") for railcars operating on the lines of Class 1 railroads. Nothing herein relieves Lessee of its obligations to pay the rent for each car or to return each car to Lessor at the time and in the condition required by this Lease. Except as required by §11 hereof, Lessee is not permitted to make any material modification of any part of any car without the prior written consent of Lessor. Any parts installed or replacements made upon the cars by Lessee shall be considered accessions to the car and title thereto shall be immediately vested in Lessor at no cost or expense to Lessor, and shall remain on and not be removed from the cars upon the return thereof.

§11. REQUIRED CAR MODIFICATIONS - Should any car require modifications or additions by the Regulators, Lessee shall be responsible for such modifications or additions at its own expense to the extent (but only to the extent) that Lessee is required to make, or cause to be made, such modifications or additions by the express terms of those leases designated in Schedule 2 to the Purchase Agreement as providing for such Lessee obligations; provided that, in the case of any such modifications and additions for which Lessee is not responsible it will make the same, or cause the same to be made, at Lessor's expense upon the written request of Lessor. Rental will continue to be payable while modifications or additions are made and any parts or items added, whether as replacements or additions, to the cars by Lessee shall be considered accessions to the cars and title thereto shall be immediately vested in Lessor at no cost or expense to Lessor, and shall remain on and not be removed from the cars upon the return thereof.

§12. CAR RETURN - Lessee shall return each car to Lessor on the Lease expiration date or within thirty (30) days after it has received a notice from Lessor that the lease with respect to such car has been terminated pursuant to §21 or at any other time and for any other reason Lessee is required pursuant to this Lease to return a car to Lessor: (a) subject for each car to the ordinary wear and tear of usage under its Existing Lease, (i) empty, clean, and in a condition which permits it to be used for the transport of items normally transported by railcars of similar type and age, and, (ii) in a condition suitable for normal

interchange service with Class I railroads in compliance with the then prevailing applicable rules of the Regulators; (b) if Lessee owns or leases railroad tracks, to a place on such tracks, and otherwise on tracks of a third party that are located within a 500 mile radius of Lessee's principal office, in either case as designated in good faith by Lessor in writing at least thirty (30) days before the Lease termination date which place shall be reasonable in light of the intended disposition of the cars by Lessor pursuant to a bona fide commercial transaction commencing after this Lease is terminated for any reason (the "Delivery Point"). Any car not returned in compliance herewith due to the fault of the Lessee shall earn rent at the higher of the average daily lease rate factor or the daily fair market rental from the required return date until the date it is so returned. If a car is returned by Lessee to Lessor pursuant to §21, at the election of Lessor, Lessee shall store or arrange to store each such car: (1) on storage tracks owned or leased by Lessee, or (2) if Lessee does not own or lease such tracks, on the storage tracks of a third party that are located within a 500 mile radius of the Lessee's principal office, in both cases as directed by and without cost to Lessor; and during such storage, Lessee shall remain obligated to pay the rental for and insure each such car required hereby. If Lessor fails to designate a Delivery Point for a car thirty (30) or more days before the end of the Lease Term and Lessee is not in default pursuant to §21, Lessee shall until the date specified in a notice (the "Return Notice") from Lessor to Lessee designating the time and Delivery Point for the return of each such car, which date shall be at least thirty (30) days after the date of the Return Notice, store or arrange to store each such car: (1) on storage tracks owned or leased by Lessee, or (2) if Lessee does not own or lease such tracks, on the storage tracks of a third party that are located within a 500 mile radius of the Lessee's principal office, in both cases as directed by the Lessor and, for a period of up to thirty (30) days after the end of the Lease Term, without cost to Lessor; provided that, in each case Lessor shall pay to Lessee or such railroad the fair market value of any such storage for a period from the 31st day after the end of the Lease Term until the date specified in the Return Notice by the Lessor; provided further that Lessee shall not be obligated to pay the rental for or insure any such car after the end of the Lease Term.

§13. COLLATERAL ASSIGNMENT BY LESSEE OF RENTALS UNDER EXISTING LEASES - As collateral security for the payment of any and all of the obligations and liabilities of Lessee due hereunder, Lessee does hereby grant a security interest in and assigns to Lessor all of the right, title and interest which it has acquired or may have acquired under and pursuant to each and all Existing Leases, including, without limitation the immediate and continuing right to receive all rental and other payments now or hereafter payable to Lessee pursuant to any Existing Leases; it being the intent and purpose hereof that the assignment and

transfer to Lessor of said rights shall be effective and operative immediately and shall continue in full force and effect at all times during the Lease Term.

Notwithstanding the provision of the preceding paragraph, so long as Lessee is not in default on any of its obligations hereunder Lessee shall have the right to receive all rentals and other sums payable under any Existing Lease; provided, however; that Lessee shall (i) receive and retain any rental payments under any Existing Lease in trust for the benefit of Lessor, (ii) deposit any such payment in the original form in which received into a separate account established for such purpose, into which no payments other than those described in clause (i) above shall be deposited, (iii) remit from such separate account all amounts due and owing to Lessor hereunder, and (iv) only after the full amount required to be remitted to Lessor pursuant to clause (iii) above shall, at any given time, have been so remitted, remit the balance in such separate account to a general account of Lessee.

Without limiting the obligations of Lessee in the case of rental or other payments received by Lessee, Lessor is hereby authorized by Lessee, at Lessor's option, to give notice to any lessee under any Existing Lease of the assignment thereof provided by this §14 and may direct said lessee to thereafter make all such rental and other payments directly to Lessor as Lessor may designate, and Lessee will, upon request, confirm in writing directly to any such lessee its agreement and consent to such lessee's payment of rental and other sums under any Existing Lease directly to Lessor.

At any time Lessee shall default in any of its obligations hereunder, Lessor shall, in addition to all other rights and remedies provided for herein, have in connection with the assignment provided for in this §14, all the rights of a secured party under the Uniform Commercial Code of New York (regardless of whether such Code is the law of the jurisdiction where the rights or remedies are asserted).

Without limiting the foregoing Lessee hereby agrees that it will deliver to Lessor the original executed counterparts of each Existing Lease and any riders or schedules thereto, clearly marked to indicate that such counterpart is the original counterpart for purposes of the Uniform Commercial Code, and shall clearly mark on any other executed counterparts of the Existing Leases, including such riders or schedules, in its possession that they do not constitute the original counterpart for purposes of the Uniform Commercial Code. Lessee further covenants that it will, upon the written request of Lessor execute and deliver such further instruments and do and perform such other acts and things as are necessary to effectively invest in and secure to Lessor the interests assigned pursuant to this §14 or other rights or interests due or hereafter to become due.

All distributions and payments to Lessor received pursuant to this §13 shall be applied by Lessor to the payment and reduction of the obligations and liabilities of Lessee under this Agreement.

The assignment provided in this §13 is a collateral assignment only, granted to secure the obligations of Lessee under this Agreement, and Lessor shall not be responsible to any lessee under any Existing Lease or any other person for the discharge or performance of any duties or obligations to be performed or discharged by Lessee pursuant to or in connection with any Existing Lease.

The assignment provided for in this §13 shall remain in full force and effect so long as any amount remains unpaid on any obligations or liabilities of Lessee under this Agreement.

§14. INSURANCE - Lessee has delivered to Lessor evidence of insurance in effect pursuant to §2.8 of the Purchase Agreement. Lessee will maintain such insurance in effect for each car throughout the Lease Term thereof, and not later than each anniversary date of this Lease, Lessee will furnish Lessor with an insurance broker's certificate evidencing such coverage for the 12 months following such anniversary date. In respect of any casualty insurance so maintained, Lessee will cause Lessor to be the sole loss payee for any loss, damage or destruction of any car.

§15. INDEMNIFICATION - Lessee agrees to indemnify and hold Lessor harmless from and against any loss, liability, claim, damage or expense (including, but not limited to, and unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claims for damages) arising out of or in connection with the use, operation, maintenance or safekeeping of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the cars which is attributable to the willful misconduct or gross negligence of Lessor, or its employees.

§16. TAXES AND OTHER CHARGES - Lessee shall pay and indemnify and hold Lessor harmless from all:

(a) taxes including, without limitation, any taxes (withholding or otherwise), including personal property taxes imposed by the United States, Canada or Mexico, or any state or province thereof or any governmental or administrative subdivision thereof, and any sales and/or use taxes, gross receipts, franchise and single business taxes, and

(b) license fees, assessments, charges, fines, levies, imposts, duties, tariffs, customs, switching, and

demurrage, including penalties and interest thereon, levied or imposed by any foreign, federal, state or local government or taxing authority, railroad or other agency,

upon, or imposed upon or with respect to, either the cars or Lessor in connection with the cars or this Agreement. Lessee has the right, however, to protest all such taxes or other charges that it feels are improperly or unfairly assessed.

Notwithstanding the provisions of the preceding paragraph, Lessor is solely responsible for the payment of all income taxes assessed against it for any rental payments or other income received under this Agreement.

§17. ASSIGNMENT, TRANSFERS, ENCUMBRANCES - All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, sold or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer, sell or otherwise dispose of title to the cars, with or without notice to Lessee. In such event, this Agreement and all rights of Lessee hereunder or those of any person, firm or corporation who claims or who may hereafter claim any rights in this Agreement under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any security agreement, conditional sales agreement, equipment trust agreement or other agreements or assignments covering the cars heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such secured party, assignee, trustee or other holder of legal title to or security interest in the cars; provided, however, that so long as Lessee is not in default hereunder, Lessee shall be entitled to use of the cars in accordance with the terms and conditions hereof.

§18. WARRANTIES AND REPRESENTATIONS - LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER CONCERNING THE CARS. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY CLAIMS CAUSED BY THE CARS OR BY ANY DEFECT THEREIN. During the term of this Agreement and so long as Lessee renders faithful performance of its obligations, Lessor hereby assigns any factory, repair or dealer warranty, whether express or implied, or other legal right Lessor may have against the manufacturer, repairer or dealer in connection with defects in the cars covered by this Agreement.

§19. RIGHT OF INSPECTION - Lessor or its assignee shall have the right, at any reasonable time, and without unreasonably interfering with Lessee's operations or the operations of any lessee under any Existing Lease, to inspect the cars and Lessee's books and records with respect to the cars, by its authorized representative, for the purpose of determining compliance by Lessee with its obligations hereunder or in connection with the sale or release of the cars.

§20. DEFAULT - If Lessee shall fail to perform any of its obligations hereunder, and should such failure continue, in the case of any obligation to pay rental or any amount pursuant to clause (v) of the proviso in §3, for a period of fifteen (15) days after the due date thereof, and otherwise for a period of thirty (30) days after written notice from Lessor thereof, or Lessee shall make any representation in connection with this Lease which shall be materially incorrect, or there is made by or against Lessee any filing required or permitted under any bankruptcy or insolvency law, or in the event Lessee makes any general assignment for the benefit of its creditors, or if Lessee is involved in any similar legal process, Lessor may terminate this Lease immediately, and, at its option, Lessor or its representatives may repossess the cars and take any and all actions permitted to Lessor at law or in equity, and whether or not Lessor exercises any such rights, Lessee agrees to store, if necessary, and return the cars to Lessor in accordance with §12, and to pay all of Lessor's reasonable expenses of restoring the cars to the return conditions provided in this Lease, if any, plus legal fees and costs incurred by Lessor in connection therewith, if any, and further, Lessee agrees to pay Lessor the then present value of the entire remaining balance of the rental set forth in this Lease (discounted at a rate equal to Citibank Base Rate), less all sums paid to Lessor (or to be paid to Lessor adjusted to its present value at said discount rate) pursuant to the exercise of the obligations of Lessor to mitigate its damages.

§21. REPORTS.

(i) Within ninety (90) days after the end of each calendar year beginning with the calendar year ending December, 1989, an accurate statement, as of the preceding December 31, showing the amount, description and road numbers of the cars then leased hereunder, the amount, description and numbers of the cars that have suffered a casualty or which have received heavy bad order maintenance or repairs during the twelve (12) months ending on such December 31 (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;

(ii) Within forty-five (45) days after the end of each calendar quarter other than the last quarter of a fiscal year of Lessee and within ninety (90) days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee and its consolidated subsidiaries as of the end of such calendar quarter, and a statement of income, stockholders' equity and changes in financial position of Lessee and its consolidated subsidiaries for the period from the beginning of the current fiscal year to the end of such calendar quarter, setting forth in each case in comparative form the figures for the corresponding period of the

previous fiscal year, all in reasonable detail and certified by the principal financial or accounting officer of Lessee;

(iii) Within ten (10) days after any sale, transfer or other disposition of the stock of Lessee which results in a five (5) percent or greater change in the ownership of Lessee, notice of such sale, transfer or other disposition stating the date of such sale, transfer or disposition and the name and address of the transferee; and

(iv) Such other notices, reports or other information related to this Agreement, the Existing Leases or the cars as the Lessor may reasonably request.

§22. GOVERNING LAW - This Agreement shall be interpreted under and performance shall be governed by the laws of the state of New York.

§23. NOTICES - Unless otherwise provided, any notice sent pursuant to this Agreement must be in writing and addressed as follows:

To Lessor: Citicorp Leasing, Inc.  
601 Midland Ave.  
Rye, New York 10580

To Lessee: Merchants Investment Co.  
880 Lee Street, Suite 801  
DesPlaines, Illinois 60016

§24. NON-WAIVER - The failure of either party to enforce any provision of this Agreement or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

§25. TITLES - All titles to paragraphs are for the information and convenience of the parties and are not substantive.

§26. This Agreement shall be binding upon and shall inure to the benefit of Lessor and Lessee and, except as limited by §9, their respective successors and assigns.

§27. ENTIRE UNDERSTANDING - This Agreement constitutes the entire understanding of the parties. It shall remain in full force and effect until Lessee has fulfilled all of its obligations hereunder. Any modification to this Agreement must be in writing and signed by both parties. The indemnity of Lessee hereunder shall survive termination of this Agreement. This Agreement may be executed in more than one counterpart, but only the original retained by Lessor and marked "Lessor Original Copy" shall be deemed the original for purposes of the Uniform Commercial Code.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

CITICORP LEASING, INC.  
(Lessor)

DATE: Oct 14, 1988

BY: Thomas F. Herlihy  
VICE PRESIDENT

MERCHANTS INVESTMENT CO.  
(Lessee)

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

CITICORP LEASING, INC.  
(Lessor)

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

MERCHANTS INVESTMENT CO.  
(Lessee)

DATE: OCTOBER 14, 1988

BY: *Thomas D. Dick*  
*President*

STATE OF SS  
CITY OF SS

On this \_\_\_\_\_ day of October, 1988, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ President of MERCHANTS INVESTMENT CO., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

STATE OF New York SS  
COUNTY OF WESTCHESTER SS

On this 13<sup>th</sup> day of October, 1988, before me personally appeared THOMAS F. HERLIHY, to me personally known, who being by me duly sworn, says that he is the VICE President of CITICORP LEASING, INC., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.



\_\_\_\_\_  
NOTARY PUBLIC

ROBERT R. GOLDBERG  
Notary Public, State of New York  
No. 4690571  
Qualified in Westchester County  
Commission Expires November 30, 1989

My commission expires: 11/30/89

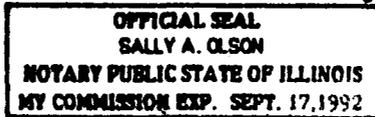
STATE OF ILLINOIS SS

CITY OF COOK SS

On this 14th day of October, 1988, before me personally appeared Thomas D. Hicks, to me personally known, who being by me duly sworn, says that he is the        President of MERCHANTS INVESTMENT CO., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of said instrument was his free act and deed.

Sally A. Olson  
NOTARY PUBLIC

My commission expires:



STATE OF SS

COUNTY OF SS

On this \_\_\_\_\_ day of October, 1988, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ President of CITICORP LEASING, INC., that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

LEASE SUPPLEMENT

This Lease Supplement No. \_\_\_\_\_ dated as of the \_\_\_\_\_ day of October, 1988 among CITICORP LEASING, INC., a Delaware corporation (the "Lessor") and MERCHANTS INVESTMENT CO., an Illinois Corporation (the "Lessee") supplements the Lease Agreement for Railroad Freight Cars dated as of October 1, 1988 (the "Lease").

1. Car Description; Existing Lease and Lessee. The Railroad Freight Cars described in Annex 1 hereto constitute cars (as defined in the Lease) and are the cars covered by this Lease Supplement. References contained hereinafter to Cars shall mean the cars covered by this Lease Supplement. The Cars are subject to the Existing Lease with the lessee identified in Annex 1.

2. Rentals. The rental installments payable by Lessee for each Car under the Lease and the payment dates therefor are set forth in Annex 2 hereto.

3. Lease Term. The expiration date of the Lease for the Cars is set forth in Annex 2 hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Supplement the day and year first above written.

CITICORP LEASING, INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

MERCHANTS INVESTMENT CO.

By \_\_\_\_\_  
Its \_\_\_\_\_