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ALYCE S. FORSYTH
MICHAEL C. STOVALL, JR.

AUG 7 - 215A060
Date AUG 8 1977
Fee $ 50
ICC Washington, D. C.

RECORDATION NO. 8922 Filed & Recorded
AUG 8 1977 - 12 15 PM
INTERSTATE COMMERCE COMMISSION

July 29, 1977

Office of the Secretary
Interstate Commerce Commission
Washington, D. C.

RE: Lease and Management Agreement between National Railway Utilization Corporation and Don Elliot Heald

Dear Sir:

We enclose for recording the original Lease and Management Agreement dated July 11, 1977 by and between National Railway Utilization Corporation, 860 Suburban Station, 1617 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103 and Don Elliot Heald, 505 Kingwood Lane, N.W., Atlanta, Georgia 30305.

The equipment covered by the Lease and Management Agreement is railroad freight cars, specifically two Rigid Underframe 70 Ton XM Boxcars, Serial Nos. NSL100856-NSL100857, inclusive. Don Elliot Heald is not a common carrier by rail, motor or water. It is our understanding that there has been no prior recordation of any document concerning the above-mentioned boxcars.

We are also enclosing our check in the amount of $50.00 to cover the fees to be collected by your office in connection with the recording of this Lease and Management Agreement.

Please return the original Lease and Management Agreement to us stamped with the date and time of recording and the recordation number.

RECEIVED
AUG 3 12 09 PM '77
I. C. C.
FEE OPERATION BR.

Very truly yours,

JOHNSTON AND FORSYTH

W. Eugene Johnston, III

W. Eugene Johnston, III

WEJ/af

Enclosures

RECORDATION NO. 9922 Filed & Recorded
AUG 8 1977 -12 23 PM
INTERSTATE COMMERCE COMMISSION

LEASE AND MANAGEMENT AGREEMENT

AGREEMENT made this 11 day of July, 1977 between National Railway Utilization Corporation (NRUC), and DON ELLIOT HEALD, 505 KINGWOOD LANE, N.W., Atlanta, Georgia 30305 (Lessor);

WITNESSETH:

WHEREAS, Lessor desires to lease to and place under the management of NRUC the boxcars described in any schedules from time to time attached hereto (the Boxcars); and

WHEREAS, NRUC is willing to lease the Boxcars from Lessor and assume and perform the management duties described herein, subject to the terms hereof, and to pay the rent provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Scope of Agreement. Lessor agrees to deliver and lease the Boxcars to NRUC to be leased and managed by NRUC and placed in the service of a railroad controlled by NRUC or with which NRUC has entered a per diem lease subject to the terms of this Agreement.

2. Description of Boxcars. The Boxcars subject to this Agreement shall be a minimum of two (2) Boxcars of the type and description set forth in any schedules executed by the parties at the time of execution of this Agreement or from time to time hereafter. The word "schedule" as used herein includes the schedule attached hereto at the time of execution and all additional schedules and amendments thereto whether for Boxcars or other railroad equipment, either of which when signed by both parties shall become part of this Agreement. It is the intent of the parties that Lessor shall at all times be and remain the owner of the Boxcars subject to the rights of NRUC hereunder and of the railroad whose markings are placed upon the

Boxcars to utilize the Boxcars in its service until this Agreement is terminated.

3. Term. This Agreement shall remain in force until it shall have been terminated as to all of the Boxcars. The term of this Agreement with respect to each Boxcar shall commence upon the date of delivery of such Boxcar as provided in Paragraph 3 and shall continue for not less than ten years, unless sooner terminated as hereinafter provided. Lessor shall have an option upon the conclusion of the ten year term to extend this Agreement for an additional term of five years. Notice of the exercise of this option shall be given to NRUC in writing not later than six (6) months prior to the expiration of the ten year term.

4. Delivery and Inspection of Cars. NRUC shall have the right to approve the manufacturer for all Boxcars hereafter made subject to this Agreement and may, in its sole discretion, specify that some or all of the cars be manufactured by the Golden Tye shops.

If NRUC approves the manufacturer and if the Boxcars conform to any specifications prescribed by NRUC or by any governmental agency having jurisdiction and if this Agreement has not been terminated, NRUC will accept delivery of and lease such Boxcars and shall notify Lessor in writing of such acceptance.

5. Management Duties. The management functions to be performed by NRUC shall include those set forth in this Paragraph 5 and such other functions and duties as shall be agreed upon by the parties.

A. NRUC shall manage and arrange for the utilization of the Boxcars at NRUC's complete discretion and shall perform all necessary administrative acts to ensure the proper utilization of said Boxcars and the protection of the Lessor's interest therein.

B. NRUC shall make available for the Boxcars the markings of a railroad controlled by NRUC or with which NRUC has executed a per diem lease. Lessor agrees that on or before delivery of the Boxcars to NRUC, the Boxcars shall be lettered with such railroad markings and the name and/or other insignia used by such railroad. Such name or insignia shall comply with all applicable regulations.

The NRUC logotype insignia shall be affixed to each side of the cars in standard size. Lessor's name shall appear or owner of the cars.

C. NRUC shall prepare all documents for filing relating to the registration, maintenance and record keeping functions required with respect to the Boxcars and shall perform all record keeping functions related to the use of the Boxcars in accordance with AAR railroad interchange agreement. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars; (ii) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Such registration shall direct that correspondence from railroads using such Boxcars shall be addressed to NRUC; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars. Any record keeping performed by NRUC and all record of payments, charges, and correspondence related to Scheduled Boxcars shall be separately recorded and maintained by NRUC in a form suitable for reasonable inspection by Lessor from time to time during regular business hours of NRUC. NRUC shall supply Lessor with such reports regarding the use of Boxcars as Lessor may reasonably request.

D. NRUC shall perform all car accounting services for the Boxcars and send reports to Lessor on a quarterly basis itemizing all revenues by Boxcar number.

E. NRUC will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during the term of this Agreement, including but not limited to repairs, maintenance, and servicing. Lessor hereby transfers and assigns to NRUC for and during the term of this Agreement all of its right, title and interest in any warranty in respect to the Boxcars. Any recovery under such warranty shall be made payable.

to NRUC. All proceeds from such recovery shall be used to repair or replace the Boxcars.

F. NRUC shall make or cause to be made such inspections of and maintenance and repairs to the Boxcars as may be required. NRUC shall also make or cause to be made at its expense. all alterations, modifications, or replacements of parts as shall be necessary to maintain the Boxcars in good operating condition (ordinary wear and tear excepted), as determined by NRUC, throughout the term of this Agreement. NRUC shall be responsible for arranging repairs and maintenance at its expense.

G. It is understood and agreed that NRUC may have conflicts of interest between the management of Lessor's Boxcars and other Boxcars owned, controlled or managed by NRUC. There can be no assurance that the Lessor's Boxcars will earn revenues equal to those of other Boxcars owned, controlled or managed by NRUC. In recognition of the possibility that NRUC may discriminate against Lessor's Boxcars, it is agreed that in the event the Boxcars of Lessor fail to achieve a utilization rate of 83%, Lessor shall have the option of cancelling this Agreement for sixty (60) days following any quarterly period during which Lessor's Boxcars do not achieve an 83% utilization. In consideration of the foregoing right to cancel this Agreement, Lessor hereby releases, waives and discharges any right, claim or cause of action against NRUC by reason of any alleged discrimination by NRUC of Lessor's Boxcars. Lessor's sole remedy for any such claim shall be the right of cancellation set forth hereinabove.

6. Rental Charges.

A. In consideration of the use of the leased Boxcars to improve its freight revenues, NRUC agrees to pay the following rental charges to Lessor for the use of Lessor's Boxcars:

(i) Lessor shall receive all of the mileage charges and car hire revenues (including both straight and incentive per diem) payable with respect to the Boxcars.

B. NRUC shall have no liability for any reclaims by any railroad of any care hire charges at any time.

C. NRUC may withhold from such rental charges the management fees provided in Paragraph 5.

7. Management Fees. In consideration for the management services to be performed by NRUC, Lessor agrees to pay $2.70 per Boxcar for each day during the term of this Agreement, provided, however, that in the event the utilization rate in any calendar quarter averaged for all Boxcars subject to this Agreement is less than 83%, the management fee shall be reduced by 4.5 cents per day per Boxcar for each percent or portion thereof by which the utilization rate shall be less than 83% to a minimum daily charge per Boxcar of $1.50 per Boxcar per day at 50% utilization. The management fee shall under no circumstances be less than $1.50 per Boxcar per day. In the event the ICC during the term of this Agreement shall increase the car hire rates (including incentive per diem) and mileage rates, NRUC shall be entitled to additional daily management fees equal to 25% of the increase in such car hire and mileage rates.

8. Maintenance Fee. Lessor shall pay to NRUC a maintenance fee of $1.81 per Boxcar per day during the term of this Agreement. The maintenance fees shall be held in escrow by NRUC in an account completely segregated from all other funds of NRUC. The funds in such account shall only be used for maintenance. At the termination of this Agreement any funds not expended for maintenance shall be retained by NRUC, provided, however, Lessor

shall have the right to inspect the Boxcars at the termination of this Agreement to determine that the Boxcars are in good working order and repair (normal wear and tear excepted) and NRUC shall cause to be made at its expense such repairs as are necessary to restore the Boxcars to such condition. The Maintenance Fee shall be subject to increase (but not decrease) to conform to AAR billing procedure increases as set forth in the office manual of Interchange Rules adopted by the Association of American Railroads Mechanical Division, Operations and Maintenance Department.

9. Insurance.

NRUC will at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained insurance with respect to all Boxcars subject hereto, and property damage and public liability insurance in amounts and against risks customarily insured against NRUC on similar equipment. NRUC will furnish Lessor concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months proof of insurance coverage for the ensuing year. NRUC will agree to advise Lessor promptly of any lapse of any such insurance or of any default of payment of any premium and of any other act or omission of NRUC of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Boxcars. All insurance shall be taken out in the name of NRUC and Lessor (or its assignee) as their interests may appear. The policies or certificates shall provide that there shall be no recourse against Lessor for the payment of premiums and shall provide for at least twenty (20) business days prior written notice to be given to Lessor by the underwriters in the event of cancellation. If NRUC shall default in the

payment of any premium in respect of any such insurance policies, Lessor may, but shall not be obliged to, pay such premium, and if Lessor does so, NRUC shall repay the amount thereof to Lessor on demand.

10. Possession and use.

NRUC shall be entitled to the possession of the Boxcars and shall also be entitled (i) to the use of the Boxcars by it or any affiliate upon lines of railroad owned or operated by it or any affiliate or upon lines of railroad over which NRUC or any such affiliate has trackage or other operating rights or over which railroad equipment of NRUC or any such affiliate is regularly operated pursuant to contract; (ii) to permit the use of the Boxcars upon connecting and other carriers in the usual interchange of traffic or pursuant to runthrough agreements; and (iii) to sublease any Boxcar or Boxcars to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, but only upon and subject to all the terms and conditions of this Lease; provided, however, that NRUC shall not assign or permit the assignment of any Boxcar to service involving the regular operation and maintenance thereof outside the United States of America.

NRUC agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the

laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or NRUC may in good faith and by appropriate proceedings contest the application of any such rule, regulation, or order in any reasonable manner at the expense of the contesting party. NRUC will not directly or indirectoy create, incur, assume or suffer to exist, any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or Schedule thereto. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time by persons claiming through or under NRUC.

11. Default.

A. The occurrence of any of the following events shall be events of default:

(i) The nonpayment by either party of any sum required hereunder to be paid by the other party within ten days after notice thereof;

(ii) The default by either party under any other term, covenant, or condition of this Agreement which is not cured within ten days after notice thereof from such party.

Any affirmative act of insolvency by NRUC, or the filing by NRUC of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against NRUC that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of NRUC, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of the property of NRUC to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs the capacity of NRUC to fulfill its performance under this Agreement.

12. Remedies Upon Default. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may:

(i) Proceed by appropriate court action to enforce performance by NRUC of this Agreement or to recover direct financial damages which result from a breach thereof (and NRUC agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcements); or

(ii) By notice in writing to NRUC, terminate the right of possession of NRUC of the Boxcars, whereupon all right and interest of NRUC in the Boxcars shall terminate; and thereupon Lessor may be its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of NRUC, or by notice in writing to Lessor NRUC may terminate its obligation hereunder.

(iii) Upon the occurrence of breach of this Agreement by Lessor, NRUC may proceed by appropriate court action to enforce performance by Lessor of this Agreement or to recover direct financial damages which might result from a breach thereof (and Lessor

agrees to bear the costs and expenses of NRUC, including reasonable attorney's fees, in securing such enforcements).

13. Termination. At the expiration or termination of this Agreement as to any Boxcars set forth on a Schedule attached herein, NRUC will surrender possession of such Boxcars to Lessor by delivering the same to Lessor. The assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of Lessor. A Boxcar shall be deemed terminated and no longer subject to this Agreement upon the removal of the railroad markings from the Boxcar placed thereon by NRUC and the placing thereon of such markings as may be designated by Lessor.

If such Boxcars are on the railroad line of NRUC or its affiliates upon such expiration or termination or are subsequently returned to NRUC's railroad line, NRUC shall grant immediate access to Lessor or Lessor's agents to remove the railroad markings from the Boxcars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, NRUC shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment.

If such Boxcars are not on the railroad line of NRUC or its affiliates upon termination, all costs of assembling, delivering, storing, and transporting such Boxcars, except as provided above, to NRUC's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor.

From and after termination of this Agreement with respect to any Boxcar and until its return to Lessor, all revenues earned by such Boxcar shall be paid to Lessor as additional rental for use of the Boxcar during the term hereof.

14. Indemnities. NRUC will defend, indemnify and hold harmless Lessor from and against:

(i) any and all loss or damage of or to the Boxcars, usual wear and tear excepted;

(ii) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar) as a result of the use, maintenance, repair, replacement, operation or the condition thereof.

15. Warranties and Covenants. NRUC represents, warrants and covenants that:

A. NRUC is a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to NRUC, or result in any breach of or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NRUC or on the Boxcars pursuant to any instrument to which NRUC is a party or by which it or its assets may be bound.

C. There is no action or proceeding pending or threatened against NRUC before any court or administrative agency or other governmental body which might result in any material adverse effect on the business properties and assets, or conditions, financial or otherwise, of NRUC.

D. There is no fact which NRUC has not disclosed to Lessor in writing, nor is NRUC a party to any agreement or instru-

ment or subject to any charter or other corporate restriction which, so far as NRUC can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of NRUC or the ability of NRUC to perform its obligations under this Agreement.

E. NRUC or its affiliated railroad, during the years 1964-1968 has not purchased any Boxcars. NRUC or its affiliated railroad is eligible and entitled to collect incentive per diem charges on the Boxcars in the possession of other railroads and to apply the incentive per diem charges to the payment of all rentals due under this lease.

F. Neither NRUC nor its counsel know of any requirements for recording, filing or depositing this Agreement other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Lessor or its assignee or mortgagee, in the United States of America.

Upon request of Lessor or its assignee or mortgagee at any time or times, NRUC shall deliver to Lessor an opinion of its counsel addressed to Lessor or its assignee or mortgagee, in form and substance satisfactory to Lessor or its assignee or mortgagee, which opinion shall confirm and be to the effect of the matters set forth in this Paragraph 15 A through F.

16. Sublease and Assignment.

A. NRUC shall have the right to assign this Lease or sublease the Boxcars without the written consent of Lessor.

B. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to NRUC. This lease and NRUC's rights hereunder are and shall be subject and subordinate to any

chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by Lessor. If Lessor shall have given written notice to NRUC stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by NRUC hereunder, NRUC shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by NRUC or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

17. At the conclusion of the initial term of this lease or at the first five year extension thereof, whichever is later, NRUC shall be the exclusive agent for disposition of the Boxcars. In the event of disposition by Lease, NRUC shall receive as a commission for its services 20% of the lease revenues. In the event of a disposition by sale, Lessor shall receive from the sales proceeds the first monies up to 5% of the original cost of the cars; NRUC shall receive the next monies up to 5% of the original cost. Any sales proceeds in excess of 10% of the original cost shall be divided equally between NRUC and Lessor.

18. Miscellaneous.

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

B. Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or

certified, postage prepaid, addressed to:

Lessor at:	Don Elliot Heald 505 Kingwood Lane, N. W. Atlanta, Georgia 30305
NRUC at:	860 Suburban Station 1617 John F. Kennedy Boulevard Philadelphia, Pennsylvania 19103

or such other address as either party may from time to time designate by such notice in writing to the other.

C. NRUC shall keep the Boxcars free from any encumbrances or liens, which may be a cloud upon or otherwise affect the title of Lessor, which arise out of any suit involving NRUC or any act, omission or failure of NRUC or NRUC's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. NRUC shall take all action requested by Lessor to confirm the interest of Lessor in the Boxcars as Lessor and that NRUC has no interest in the Boxcars other than as Lessee hereunder.

D. During the continuance of this Lease, Lessor shall have the right, at its own cost and expense, to inspect the Boxcars at any reasonable time or times wherever the Boxcars may be.

E. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof the exercise of any other right, power or remedy.

F. This Agreement shall be governed by and construed according to the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement as of the date above written.

NATIONAL RAILWAY UTILIZATION CORPORATION

BY: _____
Vice - President

DATE: July 27, 1977

ATTEST:

Marge Brezee
Asst Secretary

_____
Don Elliot Heald, Lessor

DATE: 7-11-77

WITNESS:

Lorna Franklin

- -

STATE OF GEORGIA - COUNTY OF Fulton

On this 11 day of July, 1977, before me personally appeared Don Elliot Heald, to me personally known and acknowledged the execution of the foregoing Agreement. Witness my hand and notarial seal, this 11 day of July, 1977.

My Commission Expires: Notary Public, Georgia, State at Large My Commission Expires January 9, 1981

Janice W. Ward
Notary Public

- -

STATE OF ~~PENNSYLVANIA~~ SOUTH CAROLINA - COUNTY OF ~~PHILADELPHIA~~ GREENVILLE

On this 27th day of July, 1977, before me personally appeared Ronald K. Gooding, to me personally known, who being by me duly sworn, says that he is Vice President of National Railway Utilization Corporation, and Marge Brezee, to me personally known to be the Assistant Secretary of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires: 5-6-81

Elizabeth B. Wood
Notary Public

EXHIBIT A

LEASE SCHEDULE NO. 1

Lease Schedule, dated this 27th day of July, 1977, by and between National Railway Utilization Corporation (NRUC), and Don Elliot Heald, (Lessor).

The Boxcars described herein are leased to NRUC subject to the terms and conditions of that certain Lease and Management Agreement of which this Schedule is a part between NRUC and Lessor, dated July 11, 1977.

DESCRIPTION OF CAR: 50 foot, 70 ton All Purpose Boxcar

NUMBER OF CARS: 2

REPORTING NUMBERS AND MARKS: NSL 100856 - NSL 100857

SPECIFICATION DESIGNATED BY LESSEE: XM

PLACE OF DELIVERY: Pickens, South Carolina

NATIONAL RAILWAY UTILIZATION CORPORATION

BY: Vice President

Don Elliot Heald, Lessor