



JOHN A. MARISCOTTI
EXECUTIVE VICE PRESIDENT
AND CHIEF FINANCIAL OFFICER

NATIONAL RAILWAY UTILIZATION CORP.

1100 Centre Square East / 1500 Market Street / Philadelphia, Pennsylvania 19102 / (215) 569-2220

RECORDATION NO. **9443** Filed & Recorded

JUN 14 1978 - 1 00 PM June 14, 1978

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th & Constitution Avenues NW
Washington, DC 20432

Attention: Ms. Lee, Room 1227

8-166A030

No. **8**
Date **JUN 15 1978**
Fee \$ **50**

ICC Washington, D. C.

Dear Ms. Lee:

I transmit for filing the following document:

Lease and Management Agreement dated as of June 13, 1978 between National Railway Utilization Corporation as Lessee and Richard O. Jacobson as Lessor, covering 20 Type XM 50 foot, six inch boxcars bearing Road Numbers NSL 155036 through NSL 155055, both inclusive.

The address for Richard O. Jacobson is: P. O. Box 224, Des Moines, Iowa 50301. The address for National Railway Utilization is 1100 Centre Square East, 1500 Market Street, Philadelphia, PA 19103.

We enclose herewith the original and two copies together with check in the amount of \$50.00 in payment of the filing fee.

Please return the two copies with the recording certification data stamped thereon.

Sincerely,

John A. Mariscotti
John A. Mariscotti

JAM:tws
Enclosures

RECEIVED
JUN 15 12 53 PM '78
CERTIFICATION UNIT

Richard O. Jacobson

Interstate Commerce Commission
Washington, D.C. 20423

6/15/78

OFFICE OF THE SECRETARY

John A. Mariscotti
National Railway Utilization Corp.
1100 Centre Square East
1500 Market Street
Philadelphia, Pennsylvania 19102

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 **6/15/78** at **1:00pm**, and assigned recordation number(s) **9443**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

JUN 14 1978 - 1 00 PM

INTELLIGENCE COMMERCIAL COMMISSION
LEASE AND MANAGEMENT AGREEMENT

AGREEMENT made this 13th day of June, 1978 between National Railway Utilization Corporation (NRUC), and Richard O. Jacobson (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 twenty 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 all risks and benefits of ownership.

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 4 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 two additional terms of five years each upon the same terms and conditions. Notice of the exercise of these options shall be given to NRUC in writing not later than six (6) months prior to the expiration of the ten year term or any option 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 upon inspection by NRUC 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 at its expense 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 and shall perform all necessary administrative acts to ensure the proper utilization of said boxcars and the protection of the Lessor's interest therein. NRUC shall have the authority to enter into arrangements with other railroads to grant per diem reclaim in NRUC's discretion when deemed prudent to maximize revenues.

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.

C. NRUC shall prepare for filing all documents relating to the registration, maintenance and record keeping functions for the boxcars in accordance with the rules and regulations of the Association of American Railroads (AAR), Interstate Commerce Commission (ICC), Department of Transportation and any other governmental or industry authority. 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 the 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. Except for property taxes, 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 all liability and property damage insurance, government fees, 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.

6. Conflicts of Interest. It is understood and agreed that NRUC is managing other boxcars for its own account and that NRUC may have conflicts of interest between the management of the Lessor's boxcars

and other boxcars owned, controlled or managed by NRUC. Although 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, NRUC agrees to use reasonable efforts to integrate the Lessor's boxcars into the "Captive Utilization" fleet of boxcars controlled by NRUC and to manage the Lessor's boxcars in a manner consistent with the management by NRUC of boxcars for its own account. NRUC shall have no liability under this Section except for fraud, bad faith or gross mismanagement.

7. Rental Charges. In consideration of the use of the leased boxcars, NRUC agrees to pay as rental charges to Lessor for the use of Lessor's boxcars all of the mileage charges and car hire revenue (including both basic and incentive per diem) received by NRUC with respect to the boxcars. NRUC may withhold from such rental charges: (i) the management fees provided in Section 8; (ii) the maintenance fee provided in Section 9 and (iii) the operating expenses noted in Section 10. Such rental payments shall be made on January 15, April 15, July 15, and October 15 of each year.

8. Management Fees. In consideration of the management services performed by NRUC, the Lessor agrees to pay NRUC 22 1/2% of all car hire (both basic and incentive per diem) net of reclaims, and mileage revenues.

9. Maintenance Fee. The Lessor shall pay to NRUC a maintenance fee of \$1.96 per boxcar per day during the term of this Agreement. Such fee shall be held in escrow by NRUC in an account segregated from all other funds of NRUC. The funds in such account shall only be used for maintenance. Other than as set forth, herein Lessor shall have no maintenance cost. The cost of maintenance in excess of such funds shall be at the expense of NRUC.

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. Any expense incurred in the movement or inspection of the boxcars pursuant to this provision shall be at the expense of the Lessor.

The maintenance fee shall be subject to increase (but not decrease) as follows:

If the labor rate established by the Association of American Railroads and in effect on December 31 of each year commencing December 31, 1978 (the Prevailing Labor Rate) shall differ from the labor rate so established and in effect on the date hereof (the Current Labor Rate), the maintenance fee shall be adjusted to be the product obtained by multiplying the maintenance fee by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which shall be such Current Labor Rate. Any such adjustment shall be instituted by Notice from NRUC to Lessor and shall take effect with respect to maintenance fees coming due next after the date of such notice; provided, however, that no adjustment shall be made which would reduce the maintenance fee below the initial maintenance fee.

10. Operating and Other Expenses. NRUC may deduct or withhold from the rental payments due hereunder the following expense:

- A. Movement and storage expenses.
- B. Ad Valorem and other taxes.
- C. Car hire reclaim relief allowed any railroad by NRUC.
- D. Adjustments or refunds payable to railroads or others.

11. 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 all risks, physical loss or damage insurance in an amount sufficient to satisfy the remaining principal balance of debt, if any, 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 of 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 thirty (30) 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.

12. 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 indirectly 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. 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.

13. Default.

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

(i) The non-payment by either party after 10 days written notice of any sum required hereunder to be paid by the other party;

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

(iii) 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 subjecting 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.

B. NRUC hereby agrees to give Lessor prompt notice of any event specified in sub-paragraph A(iii) through A(v) of this paragraph 13.

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

A. 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

B. 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 by 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.

C. 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).

15. Termination. At the expiration of termination of this Agreement as to any boxcars, NRUC will surrender possession of such boxcars to Lessor by delivering the same to Lessor at such place as Lessor shall designate in writing to NRUC. The assembling, delivery, storage and transporting of the boxcars shall be at the expense and risk of Lessor (except termination by Lessor by reason of default by NRUC under paragraph 13). 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. NRUC, at the expense of Lessor, shall arrange for storage of the boxcars for such period of time as shall be required by Lessor.

If such boxcars are not on the railroad line of NRUC or its affiliates upon termination, all cost of assembling, delivering, storing, and transporting such boxcars, except as provided above, to NRUC's rail-

road 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.

16. NRUC Exclusive Agent for Disposition of Boxcars. Upon the expiration of the initial Lease term or either of the five (5) year extensions thereof, whichever is later, Lessor may sell or lease the boxcars or shall have the option of abandoning the boxcars. NRUC is hereby designated the exclusive agent for the Lessor for the disposition of the boxcars upon termination or expiration of this Agreement or otherwise. NRUC shall be entitled to a commission of 22 1/2% of the consideration received upon sale or lease of any boxcars subject to this Agreement.

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

A. Any and all loss or damage of or to the boxcars, usual wear and tear excepted;

B. 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, except personal property taxes.

18. 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. NRUC is not a party to any agreement or instrument 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 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 18 A through F.

19. Assignment.

NRUC shall not have the right to assign this Lease.

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 Agreement 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 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.

20. 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: P. O. Box 224
Des Moines, Iowa 50301

NRUC at: 1100 Center Square East
1500 Market Street
Philadelphia, Pennsylvania 19102

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

C. 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.

D. 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.

E. 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: [Signature]
Exec. V.P. President

DATE: 6/14/78

ATTEST:

T.W. Strzepak
Asst. Secretary

RICHARD O. JACOBSON

[Signature]

DATE: _____

WITNESS:

STATE OF Iowa - COUNTY OF Polk

On this 13 day of June, 1978, before me personally appeared Richard O. Jacobson, to me personally known, who being by me duly sworn, says that he is the Lessor in the foregoing Agreement, and he acknowledged that the execution of the foregoing instrument was his free act and deed.

My Commission Expires: Sept. 30, 1978 [Signature]
Notary Public

STATE OF Pennsylvania - COUNTY OF Philadelphia

On this 14th day of June, 1978, before me personally appeared John A. Mariscotti, to me personally known, who being by me duly sworn, says that he is Exec. Vice President of National Railway Utilization Corporation, and T.W. Strzepak, to me personally known to be the Asst. 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: _____ [Signature]
Notary Public

GERARD McWILLIAMS
Notary Public, Phila., Phila. Co.
My Commission Expires May 10, 1982

EXHIBIT A

LEASE SCHEDULE NO. 1

Lease Schedule, to Lease and Management Agreement dated the 13 day of June, 1978, by and between National Railway Utilization Corporation (NRUC) and Richard O. Jacobson (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 June , 1978.

DESCRIPTION OF CAR: 50' 6" 70-ton Rigid Underframe Outside Stake Boxcar with 10' Sliding Doors at \$35,404 per boxcar.

NUMBER OF CARS: Twenty (20)

REPORTING NUMBERS AND MARKS:

NSL 155036 through NSL 155055
(both inclusive)

SPECIFICATION DESIGNATED BY LESSEE:

National Railway Utilization Corporation specifications

PLACE OF DELIVERY:

DATE OF DELIVERY:

Prior to June 30, 1978