

RECORDATION NO. 8306 Filed & Recorded

APR 28 1975 4 10 PM

INTERSTATE COMMERCE COMMISSION

MORTGAGE ON FLAT CARS

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the undersigned mortgagor, BRS RAILROAD EQUIPMENT ASSOCIATES, having its principal office and place of business in the City of Port Huron, Michigan, hereinafter sometimes referred to as Parties of the First Part, have this day borrowed from Michigan National Bank, Port Huron, Michigan, the sum of One Hundred Ten Thousand Dollars, and to evidence their obligation therefor have made, executed and delivered to said Michigan National Bank their promissory note of even date therewith in the principal sum of One Hundred Ten Thousand Dollars, shall be repaid in Forty-eight (48) monthly installments beginning on the first day of June, 1976, and thereafter on the first day of each succeeding month through and including the month of May, 1980, and said note bearing interest at the rate of Michigan National Bank's Prime Rate plus 2% per annum payable monthly at the time of the principal payment.

NOW THEREFORE, in consideration of the promises and to secure the prompt and punctual payment of the note first described above, payable to the order of said bank, as aforesaid, and any note or notes which may hereafter be given by the undersigned payable to the order of said Bank prior to the release of this Mortgage, and of each and every installment of principal and interest of said notes and of any extensions or renewals from time to time of any of said notes, or any installment thereof, the Parties of the First Part do hereby mortgage,

assign, transfer, set over and convey unto said Michigan National Bank, its successors and assigns, the following described property of the undersigned, to wit:

Twenty-three (23) ACF Highway Trailer Flat Cars of 85 foot length and 70 ton capacity

Serial Numbers: Chicago and North Western Transportation Company numbers 52600 to 52622, inclusive.

(Previously serial numbers RTX 8500 to 8511 and 8513 to 8520 and 8522 to 8524 inclusive.)

together with all fittings and appliances now or hereafter connected therewith, and any replacements of any parts thereof or additions thereto.

TO HAVE AND TO HOLD said property hereby granted, transferred, assigned and mortgaged unto said Michigan National Bank, its successors and assigns, forever, free and clear of all encumbrances of whatsoever kind or character, and the undersigned Parties do hereby covenant and agree with said Michigan National Bank, its successors and assigns, as follows:

FIRST: That the undersigned Parties are the owner of each and all of said flat cars, and that there are no encumbrances or liens of any kind or character against any of said property, and that it has good right and lawful authority to transfer, convey, assign and mortgage the same; that the main office of the undersigned mortgagors is at Port Huron, Michigan, and that the City of Port Huron, County of St. Clair, State of Michigan, is hereby declared to be the home port of each of said flat cars.

SECOND: That it will not voluntarily create or suffer to be created or to arise any lien or charge upon any of the property described herein and mortgaged hereby having priority to or preference

over the lien of the Bank upon said mortgaged property, or any part thereof; that it will pay all lawful claims and demands of all persons whomsoever which, if unpaid, might by law be given preference to this mortgage as a lien or charge upon said mortgaged property, or any part thereof.

THIRD: That it will at all times during the time of this mortgage being in force and effect keep all said flat cars in first-class condition and repair.

FOURTH: That it will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon any part of said mortgaged property, as well as any demurrage or freight charges against the same, so that the priority of this mortgage shall be fully preserved in respect of such property.

FIFTH: That it will exercise all reasonable care in the protection and possession of said property so long as said indebtedness remains unpaid, and that the property so mortgaged and pledged by this instrument shall not, during such time, be sold, encumbered or otherwise disposed of without the express written permission of Michigan National Bank.

SIXTH: That if default be made in the payment, when due, of any installment of principal and interest of any note secured hereby, or if the Parties should fail to observe or perform any of the covenants or agreements herein contained, or in any other mortgage securing any of the indebtedness secured hereby, or if any proceeding be commenced by or against said Parties for the adjudication of the Parties as a bankrupt, or for a reorganization, or for any other relief of the undersigned as a debtor under the Code of Bankruptcy, or if a receiver be appointed for the Parties, or for a substantial portion of its property, or if any of the mortgaged property be levied upon or attached and the same is not within five (5) days thereafter released

therefrom (all of which shall be deemed "Events of Default"), then in any such event all sums provided by said note or notes to be paid, may, at the option of the holder thereof, and without notice to the undersigned, become due and payable, and the Bank shall thereupon be entitled to any or all of the following remedies, which shall not be exclusive, but shall be cumulative of any other rights or remedies at law or in equity which the Bank may have, to-wit:

- (a) To demand and within ten (10) days thereafter to receive from the Parties peaceable possession of all said flat cars at some place designated by the Bank upon the tracks in St. Clair County, Michigan, the Parties agreeing that they will, at their expense, within said ten (10) days, deliver possession of said cars to the Bank at the place so designated, and in case of the failure of the Parties so to do, possession of said cars may be taken by the Bank wherever the same may be found, and at the election of said Bank may be removed by said Bank to St. Clair County, Michigan, at the expense of the Parties, and for the purpose of having said cars removed to St. Clair County, Michigan, the Parties agree that they will, upon demand, deliver to the Bank, or its assigns, possession of all records it may have, showing or tending to show the location of said cars, and said Bank, by any of its officers, in the name of the Parties, may give any orders, directions or instructions to any railroad company or other person, and may sign the Parties name to any transfer, documents and agreements for the purpose of removing said cars, and may pay the expense of such removal and recover same from the proceeds of the sale of any of the mortgaged cars.
- (b) The Bank, its agents, attorneys or representatives shall have the right and power, with or without exercising any of the rights given in the preceding subsection, to sell at public auction, to the highest bidder, for cash, at one or more sales, all or any part of the mortgaged property, upon giving notice of the time and place thereof, by posting same at five (5) public places in the County in which such sale is to be held, at least ten (10) days before such sale, by publication thereof in a newspaper published at least weekly in such County, and of general circulation therein, and by giving such other notice as may be required by law at the place where such sale shall be held. Any such sale may be held at the courthouse door, or at any place where sales at public auction are customarily held in any county in any state in which any of the property to be sold may at the time be located; or at the courthouse door in the County of St. Clair, State of Michigan. Notice to the Parties of any such sale shall be deemed to have been duly given if, not less than ten (10) days before the date of such sale, a copy of such notice shall be delivered to it or mailed by ordinary mail addressed to the Parties at Port Huron, Michigan. It shall

not be necessary that the Bank, or the person conducting said sale, be in actual or constructive possession of said property at the time of such sale, or that the same be physically present at such sale, nor shall it be necessary, if said sale be held in St. Clair County, Michigan, that said property be actually present in the County or State in which said sale is held; and the title and right of possession of such property shall pass to the purchaser at such sale as if said property had been actually present and delivered at such sale, and the Parties covenants and agrees to deliver all of such property to the purchaser within a reasonable time thereafter, and for that purpose to execute and deliver all proper instructions, orders, or documents to any railroad company, or other person, and such other and further assurances as may be proper or required; and such purchaser shall be entitled to exercise all rights and privileges herein given to the Bank in the preceding subsection (a) hereof for the recovery of possession of any of said cars. At any such sale, the Bank, if the highest bidder therefor, may become the purchaser of any such property. The proceeds of any such sale shall be applied:

First: To the payment of all costs and expenses of such sale, including any expenses which may have been advanced or incurred by the Bank in recovering possession or custody of, or in causing the return of said property to the place of sale, if any, together with an attorney's fee of ten percent (10%).

Second: To the payment of the indebtedness secured by this mortgage, with interest and attorney's fees.

Third: Any excess shall be paid to the Parties or their assigns.

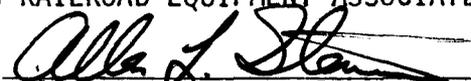
(c) The Bank may proceed in action or actions in any court or courts of competent jurisdiction to foreclose this mortgage.

The provisions of this mortgage shall be binding upon the successors and assigns of the Parties, and shall inure to the benefit of the successors and assigns of the Bank.

IN WITNESS WHEREOF, the undersigned, BRS RAILROAD EQUIPMENT ASSOCIATES, have caused this instrument to be executed in its name by its duly authorized representative this 23rd day of April, 1976.

BRS RAILROAD EQUIPMENT ASSOCIATES

By:


Allen L. Stevens, Partner

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 23RD day of April, 1976, before me personally
appeared ALLEN L. STEVENS, to me know to be the person described
in and who executed the foregoing instrument and he acknowledged
that he executed the same as his free act and deed.

(SEAL)

Joseph M. Troise

My commission expires 3/30/78

JOSEPH M. TROISE
Notary Public, State of New York
No. 24-9382250
Qualified in Kings County
Commission Expires March 30, 1978