NATIONAL RAILWAY UTILIZATION CORP.
860 Suburban Station / 1617 John F. Kennedy Blvd., Phila., Pa. 19103 / (215) 569-2220
TWX: 710-620-0498 NRUC PHA

November 14, 1977

7-322A020
NOV 18 1977
50

Interstate Commerce Commission
12th & Constitution Avenues NW
Washington, D. C. 20423

Attention: Ms. Lee, Room 1227

RECORDATION NO. 9094 Filed & Recorded
NOV 18 1977 9 40 AM
INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

I transmit for filing the following document:

Lease Agreement dated October 1, 1977 between Pickens Railroad Company and National Railway Utilization Corporation, covering One Hundred Seventy-nine (179) 70 ton, 50 foot, 6 inch, Type XM Boxcars bearing Numbers NSL 101600 through NSL 101778 (both inclusive).

The address for Pickens Railroad Company is P. O. Box 216, Pickens, S. C. 29671. The address for National Railway Utilization Corporation is as shown above.

Enclosed herewith is the original and two certified copies, together with check in the amount of $50.00 in payment of the filing fee.

Please return the certified copies to William W. Kehl, Esq., P. O. Box 10207, Greenville, S. C. 29603, with the recording certification data stamped thereon.

Very truly yours,

NOV 17 1977
ADMINISTRATIVE SERVICES
MAIL UNIT

John A. Mariscotti

John A. Mariscotti
Executive Vice President

JAM:ebw

Enclosures

Nov 18 9 35 AM '77
I.C.C.
FEE OPERATION BR.

11/18/77

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mr. John A. Mariscotti
Excutive Vice President
National Railway Utilization Corp.
860 Suburban Station
1617 John F. Kennedy BLVD.
Phila. Pa. 19103

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 11/18/77 at 9:40am, and assigned recordation number(s) 9094

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

THIS LEASE AGREEMENT, made as of this 1st day of October, 1977, between Pickens Railroad Company, a South Carolina corporation (PICKENS), as Lessor, and National Railway Utilization Corporation (NRUC), a South Carolina corporation (the Lessee), as Lessee.

RECORDATION NO. 9094 Filed & Recorded
NOV 18 1977 9 40 AM
INTERSTATE COMMERCE COMMISSION

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, a minimum of One Hundred Seventy-nine (179) boxcars, Type XM, and having the descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto whether for Boxcars or other railroad equipment, each of which when signed by both parties shall be part of this Agreement.

B. It is the intent of the parties of this Agreement that PICKENS shall at all times be and remain the Lessor of all scheduled Boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars. The term of a lease with respect to each Boxcar shall commence upon the date of delivery of such Boxcar as set forth in Section 3 hereof and shall continue with respect to such Boxcar for the term provided in the Schedule covering such car unless sooner terminated as hereinafter provided.

3. Supply Provisions

Lessor will inspect each Boxcar tendered by the manufacturer for delivery to Lessee. If the Boxcar conforms to the specifications of the equipment ordered by Lessor, and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, Lessor will accept delivery and shall notify Lessee in writing of this acceptance. The Boxcars shall be deemed delivered to Lessee upon acceptance by Lessor.

4. Railroad Markings and Record Keeping

A. Lessor agrees that on or before delivery of the Boxcars to Lessee, the Boxcars may be lettered with the railroad markings of Lessee, and the name and/or other insignia used by Lessee. 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. If it should be deemed illegal, removal will be at Lessee's expense.

B. Lessor shall prepare all documents for filing relating to the registration, maintenance and record keeping functions normally performed by Lessee with respect to the Boxcars and shall perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements. 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; 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.

C. Lessee shall register each and every Boxcar leased hereunder in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

D. Any record keeping performed by Lessee hereunder and all record of payments, charges, and correspondence related to Scheduled Boxcars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular business hours of Lessee. Lessee shall supply Lessor with such reports regarding the use of Boxcars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance

A. Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including but not limited to repairs, maintenance, and servicing unless the same was occasioned by the fault of Lessee while a Boxcar was in the physical possession of Lessee. Lessee shall be responsible to inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to Lessor for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessor at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to Lessor. All proceeds from such recovery shall be used to repair or replace the Boxcars.

B. Lessee shall make minor repairs only with Lessor's permission to facilitate continued immediate use of a Boxcar, but shall not otherwise make any alterations, improvements, or additions to the Boxcars without Lessor's prior written consent. If Lessee makes an alteration to any Boxcar without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement, or addition occurring in the course of or as a result of normal and customary maintenances shall be and remain with Lessor.

C. Lessor shall make or cause to be made such inspections of and maintenance and repairs to the Boxcars as may be required. Lessor shall also make, at its expense, all alterations, modifications, or replacements of parts as shall be necessary to maintain the Boxcars in good operating condition, as determined by Lessor, throughout the term of the lease of such Boxcars. Lessee shall immediately notify Lessor of any necessary maintenance and repairs transmitted to Lessee by any other railroad or shipper. Lessor shall be responsible for arranging repairs and maintenance at its expense except as noted in 5A.

D. Lessee 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 by railroad companies on similar equipment. The insurance required by this Section 5D may be satisfied by a self-insurance program acceptable to Lessor and maintained by Lessee in accordance with sound actuarial principles. Lessee will furnish Lessor concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months proof of insurance coverage for the ensuing year. Lessee 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 Lessee 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 Lessee 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 20 business days prior written notice to be given to Lessor by the underwriters in the event of cancellation. If the Lessee 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, the Lessee shall repay the amount thereof to Lessor on demand.

E. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Boxcar and on the Lease delivery of operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on Lessee. Lessor and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. Lessor shall review all tax returns prior to filing.

6. Rental Charges

A. In consideration of the use of the leased Boxcars to improve its freight revenues, Lessee 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 to Lessee by other railroad companies.

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

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. Lessee 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 Lessee 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.

B. Lessee 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 or in this Agreement or Schedule thereto. Lessee 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.

8. Remedies Upon Default

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

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

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

(iii) Any affirmative act of insolvency by Lessee, or the filing by Lessee 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 Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, 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 Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs Lessee's capacity to fulfill its performance under this Agreement.

B. 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 Lessee of this Agreement or to recover direct financial damages which result from a breach thereof (and Lessee agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcements); or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee 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 Lessee.

(iii) Upon the occurrence of breach of this Agreement by Lessor, Lessee 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 Lessee's costs and expenses, including reasonable attorney's fees, in securing such enforcements).

9. Termination

A. At the expiration or termination of this Agreement as to any Boxcars set forth on a Schedule attached herein, Lessee 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 Lessee's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by Lessor, either at the option of Lessor (1) upon delivery of such Boxcars to Lessee's railroad line subsequent to termination of such Boxcar's lease term; or (2) removal and replacement of the markings by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such Boxcar.

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

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

D. If requested by Lessor, Lessee shall provide three months uninterrupted, free storage, on its tracks for Boxcars as to which this Agreement is terminated, provided that risk of loss during such storage shall be on Lessor. After three months, storage shall be at the rate of $1 per day per car.

E. 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.

10. Indemnities

Lessor will defend, indemnify and hold harmless Lessee from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring through the fault of Lessee while Lessee has physical possession of Boxcars; and (2) 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 (unless occurring through the fault of Lessee) relating to the Boxcars or any part thereof, including without limitation the construction, purchase, delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Lessor or Lessee).

11. Warranties and Covenants

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated 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 Lessee, 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 Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

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

D. There is no fact which the Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can

now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

E. Lessee has during the years 1964-1968 not purchased any Boxcars. Lessee 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 Lessee 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, Lessee 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 11 A through F.

12. Inspection of Leased Equipment; Lessee Reports to Lessor

Lessor shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Boxcars including in such report the time, place, and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien, or other judicial process shall attach to any Boxcar. Lessee shall furnish to Lessor promptly upon its becoming requested, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Sublease and Assignment

The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

A. Lessee shall have no right to assign this Lease or sublease or loan any of 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 Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease, chattel mortgage, security agreement

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

The making of an assignment or sublease by Lessee 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.

14. 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: Post Office Box 216
Pickens, South Carolina 29671

Lessee at: 860 Suburban Station
1617 John F. Kennedy Blvd.
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. Lessee 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 Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by Lessor to confirm the interest of Lessor in the Boxcars as Lessor and that Lessee 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 Lessor shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or 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.

PICKENS RAILROAD COMPANY

BY: John A. Marcoatti
Vice President

ATTEST:

T. W. Strzepek
Assistant Secretary

NATIONAL RAILWAY UTILIZATION CORPORATION

BY: John A. Marcoatti
Exec. Vice President

ATTEST:

T. W. Strzepek
Assistant Secretary

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 1st day of October, 19 77, before me personally appeared John A. Mariscotti, to me personally known, who, being by me duly sworn, says that he is Exec. V. President of National Railway Utilization Corporation and T. W. Strzepek, 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.

Elizabeth B. Wood
Notary Public

My Commission Expires: 5/6/81

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 1st day of October, 19 77, before me personally appeared John A. Mariscotti, to me personally known, who, being by me duly sworn, says that he is Vice President of Pickens Railroad Company, and T. W. Strzepek, 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.

Elizabeth B. Wood
Notary Public

My Commission Expires: 5/6/81

Exhibit A

LEASE SCHEDULE NO. 1

Lease Schedule, dated this 1st day of October, 1977, by and between Pickens Railroad Company (Pickens), and National Railway Utilization Corporation (Lessee).

The Boxcars described herein are leased to Lessee subject to the terms and conditions of that certain Lease of which this Schedule is a part between Pickens and Lessee, dated October 1, 1977.

DESCRIPTION OF CAR: Seventy-ton, 50 foot, 6 inch, Type XM Boxcar

NUMBER OF CARS: One Hundred Seventy-nine (179)

REPORTING NUMBERS AND MARKS: NSL 101600 through NSL 101778 (both inclusive)

TERM: From date of delivery and acceptance to March 31, 1993

PLACE OF DELIVERY: Bessemer, Alabama

NATIONAL RAILWAY UTILIZATION CORPORATION, Lessee

BY: [signature]
Exec. Vice President

PICKENS RAILROAD COMPANY
Lessor

BY: [signature]
Vice President