



NATIONAL RAILWAY
UTILIZATION CORP.

100 NORTH TWENTIETH STREET
SECOND FLOOR
PHILADELPHIA, PA 19103
215•569•2220

RECORDATION NO. 14664 Filed 1425

JUN 4 1985 -10 00 AM

INTERSTATE COMMERCE COMMISSION

June 3, 1985

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423
Attn: Mr. Bains

Dear Mr. Bains:

Enclosed for recording are one copy and one original of a lease agreement dated December 20, 1982.

The agreement is a five year XP assignment of 250 boxcars owned, leased, and or managed by NRUC and assigned to the ICG Railroad.

The address for the parties to this transaction are as follows:

LESSOR: NRUC CORPORATION
100 North 20th Street - Suite 200
Philadelphia, Pennsylvania 19103

LESSEE: ILLINOIS CENTRAL GULF RAILROAD
233 N. Michigan Ave.
Chicago, IL. 60601-5799

Your cooperation is appreciated.

Sincerely,

Charles Craft
Charles Craft
Director of Marketing

CC/cbs

ICG
JWD
Deal

JUN 4 1985 - 10 00 AM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 20th day of December, 1982, between NATIONAL RAILWAY UTILIZATION CORPORATION, 100 N. Twentieth Street, Suite 200, Philadelphia, Pennsylvania 19103, (hereinafter referred to as "Lessor"), and ILLINOIS CENTRAL GULF RAILROAD COMPANY, a Delaware corporation with its principal place of business at 233 North Michigan Avenue, Chicago, Illinois 60601 (the "Lessee") as lessee.

RECITALS

Lessee desires to lease from Lessor certain railroad cars hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. Lease of Cars. Lessor agrees to and does hereby lease to Lessee and Lessee agrees to and does hereby lease from Lessor those certain railroad cars identified on Schedule 1 attached hereto (hereinafter referred to as the "Cars"); provided, however, that Lessor reserves the right, at any time during the term or any renewal term of this Lease Agreement, to remove any Car and substitute therefor a similar car of equal or better condition and equal or higher car-hire value.

2. Inspection and Delivery of Cars. Some of the Cars are presently located at various storage points and have not yet been delivered to Lessee's line of railroad. As to such Cars, Lessee is hereby granted the right and option to inspect said Cars at their present points of storage, said option to be exercised on or before December 31st, 1982 upon reasonable notice to Lessor and during ordinary business hours. If, upon such inspection, Lessee shall reject any Car as not being in good operating condition, Lessor shall have the right to substitute another car of the same type and series as such rejected Car. Each Car not so rejected by Lessee and each Car tendered to Lessee as to which Lessee has not exercised its right of inspection on or before said date, shall be deemed to be in good operating condition and suitable for Lessee's intended use thereof.

On or before December 31st, 1982, but not prior to December 27th, 1982, Lessor shall commence delivery of the Cars at the rate of twenty-five Cars per month or at such greater rate as Lessor may elect, not to exceed twenty-five Cars per week. Lessor shall deliver each Car, in a reasonably clean condition, to a point on Lessee's line of railroad. Transportation charges to the delivery point, not exceeding a total of \$600, shall be shared equally between Lessor and Lessee. Lessor shall pay the entire charges initially and shall reimburse itself by deducting an amount equal to Lessee's portion of said charges from the payments to be made by Lessor to Lessee pursuant to Paragraph 7 hereof.

3. Railroad Markings and Record-Keeping.

A. Lessor agrees that at Lessor's expense and before delivery to Lessee the Cars will be lettered with the Lessor's reporting marks.

B. Lessor shall during the term of this Lease Agreement prepare and file all documents related to the registration, maintenance and record-keeping function normally performed with respect to equipment similar to the Cars. Such matters shall include, but are not limited to: (1) registration of the equipment in the Official Railway Equipment Register and the Universal Machine Language Equipment Register (UMLER); and (2) such reports as may be required from time to time by the I.C.C. and/or other regulatory agencies with respect to the Cars.

C. Lessor shall perform at its own expense all record-keeping functions related to the use of the Cars by Lessee and other railroads in accordance with the interchange rules as defined in Paragraph 22 A. hereof ("Interchange Rules"). All records of payments, charges and correspondence related to the Cars shall be maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during regular business hours. Lessor shall supply Lessee with monthly reports covering an accounting of car-hire revenues.

4. Use and Possession. Throughout the continuance of the term of this Lease so long as no Event of Default (as hereunder defined) has occurred, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; and Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) and in the use, service and manner customary for railcars.

5. Term

A. The initial term of the lease as to each of the Cars shall commence upon the date of delivery to the Lessee of the last Car and shall extend for five (5) years after said date, unless sooner terminated as hereinafter provided.

B. If this Lease Agreement has not been earlier terminated and if no Event of Default (as defined herein) has occurred and is continuing, the term with respect to each Car shall be automatically extended for not more than five (5) renewal terms consisting of twelve (12) months each. Either party shall have the right to terminate this Lease Agreement as to any or all of the Cars upon expiration of the initial term or any renewal term applicable to such Car by giving written notice at least ninety (90) days prior to the expiration of the initial term, or, in the case of any renewal term, at least sixty (60) days prior to the expiration of such renewal term.

C. In the event this Lease Agreement is not extended as to any Car in accordance with the provisions of Subparagraph B above of this Paragraph 5, Lessor shall notify Lessee before the end of the initial term or any renewal term, as the case may be, if it intends to again lease such Car, in which case Lessee shall have the right, within 90 days after the end of such term, to elect to retain such Car by meeting the terms and conditions which shall have then been submitted to Lessor by any third party in a bona-fide proposed rental agreement.

6. Rental Per Car. After delivery of each of the Cars to Lessee's line of railroad, such Car may be utilized by Lessee on Lessee's line of railroad without payment of hourly car hire and mileage charges. All off-line Car-Hire Revenues earned from the use of each Car after such delivery will be shared equally by Lessor and Lessee. Such car-hire will be calculated in accordance with the most recently published rates at the time of such off-line utilization as published in the Universal Machine Language Equipment Register (UMLER) and payable in U.S. funds.

7. Payments.

A. Lessor shall collect all car-hire revenues with respect to the Cars in connection with the use of the Cars by other railroads and shall pay to Lessee fifty percent (50%) of the amount of such collected revenues. Such

payments shall be made monthly, within ninety days following the end of the month in which such revenues were earned, to the Director, Car Accounting, Illinois Central Gulf Railroad Company, P. O. Box 1328, Mobile, Alabama, 36633.

B. If, at any time during the term of this Lease, the Car Hire Rules of the Association of American Railroads shall be terminated or amended in any material respect, the parties hereto shall negotiate new rental terms placing the parties in substantially the same relative positions as existed prior to such termination or amendment of such Rules.

C. If the off-line utilization of the Cars shall fall below an average of fifty (50) percent for any consecutive three-month period which begins on the first day of any month after the commencement of the Lease term hereof, as to all Cars in the Lessee's possession at the beginning of such three-month period, Lessor may, within 30 days after all car-hire revenue payments shall have become due and payable for such period by Lessor in accordance with the provisions of Paragraph 7A above, give Lessee not less than 30 days' written notice of its election to reclaim and remove from this Lease Agreement a sufficient number of Cars to bring the off-line utilization of the remaining Cars to fifty (50) percent. (As used herein, the term "off-line utilization" shall mean, for any period during the term of this Agreement, the percentage equivalent of a fraction, the numerator of which shall be the aggregate Car-Hire Revenues actually received for the Cars by Lessor and Lessee hereunder with respect to such period, and the denominator of which shall be the maximum amount of Car-Hire Revenues which could have been earned by the Cars which are servicable during such period pursuant to the car hire rate tables of the Association of American Railroads in effect during such period, assuming operation of the Cars off the lines of the Lessee during all hours of such period and moving an average of 40 miles per car per day and taking into effect the actual UMLER value of each Car.) If such notice of election to remove Cars from the Lease Agreement is given, Lessee may, but shall not be required to, within the 30-day notice period pay to Lessor such additional amount as will make the total portion of Car-Hire Revenues retained by Lessor for such three-month period equal to the minimum amount which would be required for all Cars under the Lease Agreement if the off-line utilization of the Cars were fifty percent (50%). If such additional payment is made, such Cars shall not be removed from the Lease Agreement.

8. Title. Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right of title in the Cars.

9. Maintenance.

A. Except as otherwise provided below, Lessee shall be required to preserve the Cars in good operating condition while the Cars are on Lessee's trackage. All repairs, whether on or off Lessee's trackage, shall be performed at Lessor's expense.

B. It is the intent of this Lease Agreement that Lessor have all of the rights and obligations of an owner of the Cars (including but not limited to inspection, maintenance and repair obligations), except for any rights reserved or given to Lessee herein. Lessee shall have the right to perform all repairs necessary except as provided in Paragraph 9C below, to maintain the Cars in good working order and in compliance with all pertinent rules, regulations and agreements at Lessor's expense without Lessor's prior consent.

C. Should a Car require extensive repairs or modification, upon Lessor's instructions, Lessee will bill the Car to a repair shop off Lessee's trackage for any such repair or modifications. The repair shop shall be designated by Lessor and all transportation costs off Lessee's trackage shall be for the account of Lessor.

D. Lessee shall not make any alteration, improvement or addition to any Car without the prior written consent of Lessor thereto. Such consent shall not be unreasonably withheld in regard to any alteration required by the AAR or governmental body authorized to require such change. Any alteration, improvement or addition made to a Car shall be at the sole expense of Lessor and shall become the property of Lessor upon installation.

E. All settlements for loss or destruction of any Car occurring on Lessee's property shall be in accordance with terms set forth in the Office Manual of the AAR Interchange Rules.

F. Notwithstanding anything herein contained, Lessor may notify Lessee that it is withdrawing from this Agreement any Car which in the opinion of Lessor has been destroyed, damaged or needs repairs in excess of its economic value, whereupon this Agreement will terminate as to such withdrawn Car.

10. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect Lessor's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

11. Indemnities -- Patent Covenants. Lessor warrants that the Cars will satisfy all FRA, AAR, and interchange requirements at the time of delivery. All other warranties express or implied, including the implied warranty of merchantability and fitness for a particular purpose, are hereby excluded. Lessee agrees to indemnify Lessor and hold it harmless from any loss, expenses or liability which Lessor may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from Lessor's negligence. Lessor agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by Lessor, upon delivery of a Car or upon the making of repairs thereto by Lessor, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "Lessor" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 11. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

12. Lettering -- Inventory. All Cars shall be marked with Lessor's reporting marks. All Cars may be marked to indicate the rights of any assignee, mortgagor, trustee, pledgee or security holder of Lessor, or a party leasing the cars to Lessor and may bear the following inscription: "Title to this Car subject to documents required under Section 11303 of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking other than Lessor's logo and reporting marks shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of Lessor. Lessor may at its

own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of Lessor, but not more than once every year, furnish to Lessor its certified inventory of all Cars then covered by this Lease.

13. Loss, Theft or Destruction of Cars. In the event any Car is lost, stolen, destroyed or damaged beyond economic repair while on Lessee's line of railroad, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Lessor of such occurrence.

14. Termination. At the expiration or termination of this Lease Agreement as to any of the Cars, Lessee will surrender possession of such Cars which are on Lessee's railroad lines or on the line of an affiliate of Lessee to Lessor by delivering the same to Lessor at a designated point on Lessee's line of railroad. All transportation charges beyond said point will be paid by Lessor. Lessee agrees to follow Lessor's instructions in directing railroads in possession of the Cars to return the Cars, at Lessor's expense. Lessor shall be entitled to one hundred percent (100%) of the Car-Hire Revenues for the period after termination of this Lease Agreement and shall be responsible for all obligations, other than those caused by Lessee's negligence, relative to the Cars which accrue after such termination. Each Car so surrendered shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee, and shall be in substantially the same condition as delivered, normal wear and tear excepted. Lessee shall provide up to sixty (60) days' free storage on its railroad tracks for any terminated Car or Cars and up to ninety (90) days' storage thereafter at the rate of \$10 per Car per day.

15. Default; Remedies.

A. The occurrence of any of the following events shall be an Event of Default:

(i) The default by Lessee under any other term, covenant or condition of this Lease Agreement which is not cured within thirty (30) days after receipt by Lessee of written notice thereof from Lessor;

(ii) 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 for the relief of debtors;

(iii) The adjudication of Lessee as a bankrupt under the Bankruptcy Act;

(iv) The declaration by any court of competent jurisdiction that this Lease Agreement is null and void or has ceased to be in full force and effect;

(v) The contesting of the validity or enforceability of this Lease Agreement in any court or in any insolvency or reorganization proceeding by Lessee or by the Trustee of Lessee's properties; or

(vi) The subjection of a substantial part of Lessee's property to any levy, seizure assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any Event of Default, Lessor may, at its option, terminate this Lease Agreement and also may proceed by appropriate court action to enforce the performance by Lessee of its obligations hereunder or to recover damages (if any) for which Lessee is responsible at law, under contract or otherwise. Lessee agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in taking such action or actions.

Nothing in this Paragraph 15 shall be deemed an admission by Lessee that any damages will result from any Event of Default.

The remedies provided in this Paragraph 15 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in Lessor's favor existing at law or in equity.

16. 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 or sublease or loan any of the Cars without the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided, however, that Lessee shall have the right to sublease any of the Cars to its wholly-owned affiliates, or may sublease, for a term not exceeding one year, to a responsible company as determined by the Lessee (without being released from the obligations hereunder). Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease.

B. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without consent of Lessee but Lessee shall be given notice thereof within 30 days after such pledge, mortgage, transfer or disposition. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease to Lessor or any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Lessor, provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars.

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.

17. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

National Railway Utilization
Corporation at:

100 N. Twentieth Street
Suite 200
Philadelphia, Pa. 19103
Attention:

Illinois Central Gulf Railroad
at:

233 North Michigan Avenue
Chicago, Illinois 60601
Attention: Treasurer

or at such other addresses as Lessor or Lessee may from time to time designate by notice in writing.

18. Governing Law -- Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

19. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

20. Severability -- Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Lessor to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

21. Terminology. In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

22. Definitions. For all purposes of this Lease the following terms shall have the following meaning.

A. "Interchange Rules" -- All codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

B. "Car-Hire Revenues" -- The hourly per diem and mileage earnings of the Cars prescribed by the car-hire rate tables of the Association of American Railroads then in effect.

23. Benefit. Except as otherwise provided herein, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and their successors and assigns. Without limiting the generality of the foregoing, the indemnities given by the Lessee in Paragraph 11 hereof shall apply to and inure to the benefit of any assignee of Lessor, and if such assignee is a trustee or secured party under an indenture under which evidence of

indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

24. Taxes. All property taxes which, from time to time, during the Lease term, shall be assessed against the Cars, shall be paid by Lessor.

NATIONAL RAILWAY UTILIZATION CORPORATION

By Robert F. Shiner, Jr.
Vice - President

(Corporate Seal)

ATTEST:

Barbara A. Lagan
Assistant Secretary

ILLINOIS CENTRAL GULF RAILROAD COMPANY

By A. D. Husted
Vice President - Car Management

(Corporate Seal)

ATTEST:

W. Henders
Assistant Secretary

SCHEDULE 1

Description of Cars: 50-foot, 70-ton XP Boxcars

Number of Cars: 200 250 C.C.C.
Roll Roll

Lease Term: Five years (60 months)

Identification Number:

NRUC _____



ADDENDUM TO LEASE AGREEMENT

By and between Illinois Central Gulf Railroad Company, Lessee, and National Railway Utilization Corporation, Lessor:

1. Lessor and Lessee do hereby agree that Lessee will have the right at any time during the term of this agreement to reject a Car for mechanical and or design defects ^{within 10 days after} ~~prior to~~ that Car's arrival to the tracks of Lessee.

2. Lessor and Lessee do hereby agree that if a Car is damaged as described in Section 9(C) of the Agreement that Lessee will have the right to participate in competitive bidding of repair work on such Car or Cars.

ILLINOIS CENTRAL GULF RAILROAD
COMPANY (LESSEE)

By: *N. N. Husted*
Title: *VP - Car Management*
Date: *1/13/83*

NATIONAL RAILWAY UTILIZATION
CORPORATION (LESSOR)

By: *Robert L. Shiner, Jr.*
Title: *Vice-President Operations*
Date: *1/7/83*



An **IC Industries** Company

D. D. Hagestad
Senior Vice President
Marketing

**Illinois Central
Gulf Railroad**
Two Illinois Center
233 North Michigan Avenue
Chicago, IL 60601 - 5799
(312) 565 1600

March 15, 1984

Mr. Charles C. Craft
Director of Marketing
National Railway Utilization Corporation
100 North Twentieth Street
Philadelphia, PA 19103

Dear Mr. Craft:

In reference to our Lease Agreement dated December 20, 1982, by and between National Railway Utilization Corporation (NRUC) and Illinois Central Gulf Railroad (ICG) concerning 250 XP boxcars marked NSL, PICK and MNJ, the parties agree that said Agreement is hereby amended as follows:

Section 5A covering the initial Term of the Agreement is hereby amended as follows:

- A. The initial term of this lease as to all of the Cars shall end on December 31, 1986 unless sooner terminated as hereinafter provided.

This letter, when signed by Illinois Central Gulf and confirmed by National Railway Utilization Corporation shall constitute an amendment to the Agreement.

Please evidence your agreement by signing one copy of this letter and returning it to Ms. Yildiz Ozyurt.

Very truly yours,

A handwritten signature in cursive script that reads 'D. D. Hagestad'.

ACKNOWLEDGED AND ACCEPTED:

A handwritten signature in cursive script that reads 'Robert L. Shiner'.

National Railway Utilization Corporation