



FIRST CHICAGO
The First National Bank of Chicago

One First National Plaza
Chicago, Illinois 60670
Telephone: (312) 732-4000

13131A

RECORDATION NO. Filed 1425

1-159A070

No. JUN 8 1981

Date JUN 8 1981
Fee \$ 100.00

REGISTERED MAIL JUN 8 1981 10 25 AM

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

June 1, 1981

Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423

13134
RECORDATION NO. Filed 1425

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RECEIVED
JUN 8 10 16 AM '81
FEE OPERATIONS
I.C.C.

Dear Sir:

INTERSTATE COMMERCE COMMISSION

In accordance with 49 C.F.R. 1116, The First National Bank of Chicago hereby requests that you record the following documents:

- (1) Equipment Mortgage and Assignment of Lease Rentals

Mortgagor: DATX Associates
9235 North 107th Street
Milwaukee, Wisconsin

Mortgagee: The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670

- (2) Railroad Car Lease Agreement

Lessor: DATX Associates
9235 North 107th Street
Milwaukee, Wisconsin

Lessee: Wisconsin Industrial Fuel Oil, Inc.
9325 North 107th Street
Milwaukee, Wisconsin

Included in the property covered by the aforesaid Equipment Mortgage and Assignment of Lease Rentals are railroad cars used or intended for use in connection with interstate commerce, or interests therein, owned by DATX Associates at the date of said mortgage or thereafter acquired by it or its successors.

Please return the original recorded document to Ms. Marivonne Basten, Attorney, Law Department, One First National Plaza, Chicago, Illinois 60670.

Very truly yours,

Carl Johnson
Carl Johnson, Vice President

Enclosures

EQUIPMENT MORTGAGE AND ASSIGNMENT OF LEASE RENTALS

THIS EQUIPMENT MORTGAGE AND ASSIGNMENT OF LEASES dated as of May 26, 1981 (the "Mortgage") is executed by DATX Associates (the "Company") in favor of The First National Bank of Chicago, (the "Bank"), for the benefit of the Bank which is a party to the Loan Agreement dated as of 5/26/81, between the Company, and the Bank, ("Loan Agreement") and to secure the performance of the Company's Obligations thereunder. Unless otherwise defined in this Mortgage, capitalized terms used herein shall have the respective meanings set forth in the Loan Agreement. A copy of which Loan Agreement is appended hereto as Attachment II hereto.

NOW, THEREFORE, in consideration of the premises, the Company agrees as follows:

Section 1. Collateral.

Section 1.1 Grant of Security Interest. In order to secure the prompt and faithful performance and observance of the Obligations by the Company, the Company does hereby assign, pledge, mortgage, and grant a security interest unto the Bank in and to the following:

- (a) Any and all railroad cars presently owned or hereafter acquired by the Company including but not limited to those described in Attachment I hereto which is made a part hereof and incorporated herein by this reference (the "Equipment");
- (b) All proceeds (including, without limitation, insurance and indemnity payments) from the sale or loss or other disposition of the Equipment; and
- (c) Any and all leases, whether now or hereafter existing, of Equipment (the "Lease" or "Leases") between the Company as lessor and other persons as lessees (the "Lessees"), including that Railroad Car Lease Agreement lease between the Company and Wisconsin Industrial Fuel Oil Inc. dated December 29, 1980, and any subsequent amendments thereto, and including, without limitation, (i) the right to receive all rent due thereunder, (ii) all claims for damages arising out of the breach of any Lease, (iii) the right, if any, to terminate any Lease, to perform thereunder and to compel performance of the terms thereof, (iv) the right to take possession of the Equipment, subject to the right of the Lessee and (v) all other rights, claims, causes of action, if any, which the Company may have against any Lessee with respect to the Leases.

REGISTRATION NO. 13131
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COMMERCE COMMISSION

All such Equipment, Leases, and rights, claims, causes of action and proceeds with respect thereto are herein collectively called "Collateral."

The Bank shall provide a release of specific Collateral upon the performance of the Company's Obligations under the Loan Agreement within a reasonable time of request for such a release from the Company.

Section 1.2. Representations and Warranties. The Company represents and warrants:

(i) That to the best of the Company's knowledge and information, it is the owner of all of the Equipment, that there are no encumbrances or liens of any kind or character against any of the Equipment (other than that Lease referred to in Section 1.1(c) hereof, and the lien of this Mortgage) or any Lease and that it has good right and lawful authority to assign, pledge, mortgage, and grant a security interest in the same.

(ii) That it has not assigned, pledged or mortgaged, and hereby covenants that it will not assign, pledge or mortgage, so long as this Mortgage shall remain in effect, the whole or any part of the rights or interests hereby assigned, pledged, mortgaged, and granted by it hereunder to anyone other than the Agent, its successors assigns.

Section 1.3. Maintenance and Repair. The Company agrees that, at its own cost and expense it will maintain and keep all the Equipment in good order and repair in accordance with industry standards.

Section 1.4. Insurance. The Company agrees that it will maintain insurance (such amounts and covering such risks as is consistent with sound business practice and, in particular, to adequately insure the Equipment referred to herein. The Company further agrees to provide that insurance policies on the Equipment will name the Bank as Loss payee

Section 1.5. Inspections. The Bank shall have the right to inspect the Equipment and the records with respect thereto at such reasonable times as the Bank may request.

Section 1.6. Marking of Equipment. The Company will cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each item of Equipment suitable for marking, in letters not less than seven-sixteenths of an inch in height.

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT AND/OR VESTED IN A TRUSTEE OR OTHER PERSON OR ENTITY AS SET FORTH IN AN EQUIPMENT MORTGAGE FILED WITH THE INTERSTATE COMMERCE COMMISSION."

or other appropriate words stenciled on the item of Equipment with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Banks' security interest in the Equipment and their rights hereunder. Once the Equipment is so marked, the Company will not permit the identifying number of any item of Equipment to be changed.

Section 1.7. Destruction of Equipment. The Company will bear the responsibility for and risk of and shall not be released from its Obligations hereunder in the event of any damage to or the destruction or loss of any item of Equipment or all the Equipment.

Section 1.8. Liens. The Company will keep the Collateral free and clear of Liens and advance claims (other than the Mortgage and that Lease referred to in Section 1.1(c)) at all times. The Company will be required to take steps to remove liens created by operation of law within a reasonable period of time. The Company will reimburse the Bank upon demand for any amounts paid by the Bank to discharge Liens or satisfy claims against the Collateral.

Section 1.9. Assembly of Collateral. The Bank may designate some premises for the delivery of the Equipment to the Bank, and the Company shall, at its own expense, arrange for such Equipment to be moved to such point and shall there deliver the Equipment to the Bank. This Agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court having jurisdiction in the premises, the Banks shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Bank or its agents for damages of whatever nature in connection with any retaking of any item of Equipment.

Section 1.10. Performance of Company's Obligations Under Leases. The Company shall remain liable under any and all Leases to perform all the obligations assumed by it thereunder. During the continuance of an Event of Default the obligations of the Company under the Lease may be performed by the Bank or its nominee or any assignee of the Bank without releasing the Company therefrom. The Bank shall have no obligation or liability under the Leases by reason of, or arising out of, this Mortgage and shall not be obligated to perform any of the obligations of the Company under any Lease or make any payment or to make any inquiry of the sufficiency of any payment received by it to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder.

Section 2. Defaults

Section 2.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

- (a) There shall occur an Event of Default under Section 6 of the Loan Agreement;
- (b) The Company shall fail to perform any agreement under this Mortgage within thirty (30) days after notice from the Bank;
or
- (c) Any representation made to the Bank in this Mortgage shall prove to be false or incorrect in any material respect at the time when made.

Section 3. Remedies

Section 3.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Bank may do any one or more of the following acts regarding the Collateral, or any portion thereof, to the extent and in the manner authorized by Section 6 of the Loan Agreement:

- (a) exercise all the rights and remedies in foreclosure and otherwise granted to secured parties under the provisions of applicable laws;
- (b) institute legal proceedings for the specific performance of any covenants or agreement herein undertaken by the Company or for aid in the execution of any power or remedy herein granted;
- (c) institute legal proceedings to foreclose upon and against the security interest granted in and by this Mortgage, to recover judgment for all amounts then due and owing as Obligations, and to collect the same out of any sale of the Collateral or of collections upon the Leases;
- (d) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any Collateral;
- (e) notify any Lessees, in the name of the Company or otherwise to make Lease payments directly to the Bank or as may otherwise be directed by the Bank;
- (f) demand, collect, and retain all hire, earnings and other sums due and to become due in respect of the Collateral from any party whomsoever, accounting only for the net earnings arising from such use, if any, after charging against any receipts from the use of the same and from any subsequent sale thereof all costs and expenses of and damages or losses by reason of, such use or sale; or

- (g) sell or dispose of all or any part of the Collateral, free from any and all claims of the Company or of any other party claiming by, through, or under the Company at law, in equity, or otherwise, at one or more public or private sales, in compliance with the notice standards of Article Nine of the Uniform Commercial Code. Any right or equities of redemption otherwise required or available to the Company under applicable law are hereby expressly waived by the Company to the fullest extent permitted by applicable law. The power of sale hereunder shall not be exhausted by one or more sales, and the Bank from time to time may adjourn any sale to be made pursuant to this Section 3.1.

Section 3.2. Sale. Any sale of Collateral may be in one lot or as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Bank may determine. The Bank may bid for and become the purchaser of the Collateral, or any of it, so offered for sale. In the event that the Bank shall be the purchaser thereof, it shall not be accountable to the Company upon a subsequent disposition of the Collateral.

Section 4. General.

Section 4.1. Rights Cumulative. Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Bank's rights or the Company's Obligations hereunder. The Bank's acceptance of any payments after it shall have become due hereunder shall not be deemed to alter or affect the Company's Obligations or the Bank's rights hereunder with respect to any subsequent payments or default therein.

Section 4.2. Expenses of Collection. The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Mortgage or preparing to enforce any of its remedies after a default hereunder. In the event that the Bank shall bring any suit to enforce any rights hereunder and shall be entitled to judgment, then in such suit the

Banks or the Bank may recover reasonable expenses including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

Section 4.3. Applicable Laws. Any provision of this Mortgage prohibited by any applicable law or any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Mortgage, it being the intention of the Company that this Mortgage shall be deemed to be, inter alia, a security agreement and enforced as such.

Section 4.4. Waiver of Right of Redemption. The Company, to the full extent permitted by law, waives any and all rights of redemption.

Section 4.5. Satisfaction of Mortgage and Termination of Mortgage. When all the Obligations of the Company hereunder and under the Loan Agreement have been fulfilled, the Bank shall release the lien of this Mortgage with respect to the Collateral by an appropriate document in recordable form and thereupon this Mortgage shall be satisfied and void.

Section 4.6. Payment of Expenses. The Company will pay for all the costs and expenses incident to the enforcement of this Mortgage by the Bank, and all reasonable costs and expenses in connection with the perfection of the Bank's lien upon the Equipment.

Section 4.7. Article Headings, Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Mortgage.

Section 4.8. Modifications. No variation or modification of this Mortgage and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Bank and the Company.

Section 4.9. Notices. All notices hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to the respective addresses set forth in the Loan Agreement.

Section 4.10. Law Governing. The terms of this Mortgage and all rights and obligations hereunder shall be governed by the laws of Illinois; provided, however, that the Bank shall be entitled to all rights conferred by the filing, recording or deposit hereof in the appropriate office(s) of the Interstate Commerce Commission or in such other offices as may be appropriate in the jurisdiction in which the Equipment is operated.

Section 4.11. Counterparts. This Mortgage may be executed in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 4.12. Appointment of Bank as Attorney. If any Event of Default shall occur and be continuing, then the Company constitutes the Bank and its successors and assigns, its true and lawful attorney, irrevocably and with full power of substitution, in its name or otherwise, to demand, receive compromise, sue for, and give acquittance for, any and all moneys and claims for moneys due and to become due under the any Lease, or otherwise arising out of the Mortgage, to endorse any checks or other instruments or orders in connection therewith, and to file any claims or take any action or institute any proceedings with respect thereto which to the Bank or its successors or assigns may seem necessary or advisable. Anything herein contained to the contrary notwithstanding, neither the Bank nor its nominee or assignee shall have any obligation or liability by reason of or arising out of the Mortgage to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time or times by virtue of the Mortgage.

Section 4.13. Compliance with Laws and Rules. During the term of this Mortgage, the Company will comply, and will require every lessee or user of the Equipment to comply, with all rules, regulations, orders and laws pertaining to the use, operation, or maintenance of the Equipment existing in the jurisdictions in which its or such lessees' operations involving the Equipment may extend; provided, however, that the Company, in good faith, may contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Bank, adversely affect the property or rights of the Bank under this Mortgage.

Section 4.14. Indemnities and Warranties. The Company does hereby indemnify, protect and hold harmless the Bank from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, penalties and interest, arising out of or as the result of the entering into or the performance of this Mortgage, the use, operation, condition, purchase, delivery, rejection, storage or return of any of the items of Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the items of Equipment resulting in damage to property or injury or death to any person during the period when the lien of the Agent remains in effect. This covenant of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Obligations and the release and the conveyance of security title to the Equipment to the Company, or the termination of this Mortgage in

any manner whatsoever. The Bank shall give notice to the Company of claim arising hereunder and the Company shall have the right to take up and defend any such claim.

Section 4.15. Successors and Assigns. This Mortgage shall be binding upon the Company and inure to the benefit of the Bank, and its respective successors and assigns. The Company may not assign or transfer its rights hereunder without the prior written consent of the Bank.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed by its duly authorized representative s of the day and year first set forth above.

DATX ASSOCIATES

By *R. Byrne*
Its General Partner

WISCONSIN
STATE OF ~~ILLINOIS~~)
) ss:
COUNTY OF ~~COOK~~)
 MILWAUKEE

On this 26th day of May, 1981, before me personally appeared Richard L. Byrne, to me personally known, who, being by me duly sworn, says that he is a general partner of DATX Associates, a general partnership, and that the foregoing instrument was on May 26, 1981, signed on behalf of said partnership under authority granted in its partnership agreement, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said partnership.

Edward R. Moss
Notary Public

(NOTARIAL SEAL)
My Commission Expires *is permanent*, 19

AGREED:

THE FIRST NATIONAL BANK OF CHICAGO
BY *Samuel O. Schuch*
Its *Chicago City Officer*

ACKNOWLEDGMENT

WISCONSIN
STATE OF ILLINOIS)

)SS

COUNTY OF ~~COOK~~
MILWAUKEE

I, Edward R. Fuss, a Notary Public in and for
the County and State aforesaid, do hereby certify that Raymond E
Schmek, of The First National Bank of
Chicago, a national banking association, whose name is subscribed to
the foregoing Mortgage, appeared before me this day in person and
severally acknowledged that as such Chicago Banking Office he
signed and delivered said assignment and caused the seal of said Bank
to be affixed thereto as his free and voluntary act and as the free
and voluntary act and deed of said Bank for the uses and purposes
therein set forth.

Given under my hand and notarial seal this 26th day
of May, A.D. 19 81

Edward R. Fuss
Notary Public

ATTACHMENT I

To be attached to and become a part of that certain Equipment Mortgage and Assignment of the Lease of said Equipment dated as of _____, 19__ (the "Mortgage"), between DATX Associates and The First National Bank of Chicago

Individual Railcar Details

Type of Car

All of the cars are described as 23,635 gallon capacity, coiled and insulated tank cars with a railroad description of 111A100W1 cars.

<u>DATX Associates Number</u>	<u>Serial Number</u>	<u>Invoice Number</u>	<u>Car Cost</u>	<u>Date Shipped</u>
IFOX-10001	435592	230891	\$ 56,701	12/09/80
IFOX-10002	435593	230965	56,701	12/10/80
IFOX-10003	435594	230860	56,701	12/08/80
IFOX-10004	435595	230892	56,701	12/09/80
IFOX-10005	435596	230861	56,701	12/08/80
IFOX-10006	435597	230862	<u>56,701</u>	12/08/80
			<u>\$340,206</u>	

ATTACHMENT II

DATX ASSOCIATES TERM LOAN AGREEMENT Dated as of _____,
19____.