

B

LAW OFFICES

JACKSON, CAMPBELL & PARKINSON, P. C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N. W.

WASHINGTON, D. C. 20036

(202) 457-1600

MARYLAND OFFICE
414 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
2000 N. 16TH STREET
ARLINGTON, VIRGINIA 22201
(703) 522-1330

EDMUND D. CAMPBELL *
THOMAS SEARING JACKSON +
JAQUELIN AMBLER MARSHALL
H. DONALD KISTLER
BENJAMIN W. DULANY *
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON +
THOMAS PENFIELD JACKSON +
ARTHUR C. ELGIN, JR. +
JAMES P. SCHALLER *
ROGER V. BARTH +
JAMES E. BRAMMER
PATRICIA D. GURNE
NICHOLAS STILLWELL McCONNELL +
ALAN R. SWENDIMAN +
PATRICK L. WOODWARD +
JAMES R. MICHAL
CLIFFORD A. WILPON +
DAWN V. WHITE +
DAVID H. COX

* ALSO ADMITTED IN MARYLAND
* ALSO ADMITTED IN VIRGINIA

RECORDATION NO. 10404-A
Filed 1425
JUN 10 1980 - 12 50 PM

RECORDATION NO. 10678-B
Filed 1425
JUN 10 1980 - 12 50 PM

INTERSTATE COMMERCE COMMISSION

June 10, 1980

ROGER H. MUZZALL
COUNSEL
DIRECT DIAL NUMBER
457-1634

INTERSTATE COMMERCE COMMISSION

RECEIVED
JUN 10 12 44 PM '80
FEE OPERATION BR.
I. C. C. BR.

Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Room 2215
Washington, D. C. 20423

Dear Ms. Mergenovich:

As special counsel for American Fletcher Leasing Corporation, an Illinois corporation, I have been requested to ask that you file the following enclosed documents:

1. An Equipment Lease Termination Agreement, dated as of June 6, 1980, by and between American Fletcher Leasing Corporation, an Illinois corporation ("Lessor") and National Railway Utilization Corporation, a South Carolina corporation ("Lessee"), for the termination of an Equipment Lease Agreement, dated as of July 24, 1979, Recordation No. 10678, as amended by Letter Agreement dated March 20, 1980, and as amended by Supplement No. 1 to the Equipment Lease Agreement, which Supplement has been amended by an amendment dated February 15, 1980. This Equipment Lease Termination Agreement involves one hundred (100) 50'6" 70-ton, XM-rated box cars, manufactured by Berwick Forge & Fabrication Company, bearing Road Nos. NSL 150900 through NSL 150910, inclusive, MISS 150911, NSL 150912 through NSL 550917, inclusive, MISS 150918, NSL 150919, MISS 150920, NSL 150921 through NSL 150951, inclusive, MISS 150952, NSL 150953 through NSL 150959, inclusive, MISS 150960, NSL 150961 through NSL 150994, inclusive, MISS 150995, NSL 150996 through NSL 150999, inclusive.

David H. Cox

0-162A066

JUN 10 1980

Date _____
Fee \$ 20.00

ICS Washington, D. C.

Agatha L. Mergenovich
June 10, 1980
page 2

2. An Individual Equipment Record (IER) No. 4, dated as of June 5, 1980, by and between American Fletcher Leasing Corporation ("Lessor"), and Illinois Central Gulf Railroad Company ("Lessee"), which is intended to serve as a supplement to the Equipment Lease Agreement dated as of May 21, 1979, by and between these same parties. The above-referenced Equipment Lease Agreement was filed with and recorded by the ICC on May 30, 1979, and was assigned Recordation No. ~~10404~~. The box cars affected by the terms of Individual Equipment Record No. 4 are one hundred (100) units of 50'6" 70 ton-type XM railroad box cars, manufactured by Berwick Forge & Fabrication Company, bearing Road Nos. NSL 150900 through NSL 150910, inclusive, MISS 150911, NSL 150912 through NSL 150917, inclusive, MISS 150918, NSL 150919, MISS 150920, NSL 150921 through NSL 150951, inclusive, MISS 150952, NSL 150953 through NSL 150959, inclusive, MISS 150960, NSL 150961 through NSL 150994, inclusive, MISS 150995, NSL 150996 through NSL 150999, inclusive.

I am delivering a total of three manually-executed copies of the Equipment Lease Termination Agreement and Individual Equipment Record No. 4. I would appreciate it if you would have two copies of each stamped as recorded and return to me.

Thank you for your assistance. I look forward to hearing from you at your earliest convenience.

Sincerely yours,

JACKSON, CAMPBELL & PARKINSON, P.C.

David H. Cox

David H. Cox

DHC:bjp

Enclosures

cc: E. Lowell Dinius

Special Conditions

1. Except as provided below, the covenants, terms and conditions appearing in that certain Equipment Lease Agreement dated as of May 21, 1979 (including Lease Addendums No. 1 and No. 2) between the Lessor and Lessee (the "Lease"), shall be deemed to be incorporated herein by reference. The obligation of the Lessee to pay rent for each unit of equipment described on the face of this IER (individually referred to as a "unit of equipment" and collectively as "the equipment") shall commence January 1, 1980.

2. Upon notification by Lessor to Lessee that any of the units of equipment are available for inspection, Lessee shall inspect such units of equipment. If Lessee finds, after inspection of a unit of equipment, that such unit of equipment is in such condition that it cannot be made acceptable for interchange for a reasonable cost, Lessee may reject such unit of equipment as not being subject to the Lease. To the extent that it is agreed that it is necessary to (1) re-mark and re-paint the equipment, and (2) perform repairs so that the equipment is in a condition which is acceptable for interchange service (hereinafter collectively referred to as "the Work"), Lessee shall promptly perform the Work and Lessor shall pay to Lessee its costs and expenses directly attributable thereto; provided however, in the event Lessee estimates that the Work with respect to any unit of equipment will exceed \$700.00, then Lessee shall notify Lessor of such fact, and Lessor shall promptly elect to have the Work performed by Lessee or elect to have such unit of equipment withdrawn from the Lease.

Each unit of equipment shall be subject to all of the terms and conditions of the Lease on June 6, 1980, and the Lease term for each unit of equipment shall be approximately 15 years and 7 months; provided, however, in no event shall the Lease term for any unit of equipment extend beyond June 30, 1996.

In the event that Lessee reasonably asserts that: (A) as a direct result of corrosion or abuse which exists at the time of the inspection, which corrosion or abuse cannot be repaired to Lessee's reasonable satisfaction is designated in writing by Lessee, the designated units of equipment will, during the Lease term (i) require "extraordinary maintenance" (as that term is hereinafter defined) or (ii) become a "bad order" railroad car, (B) such unit of equipment, as a result of such corrosion or abuse, actually requires extraordinary maintenance or becomes a "bad order" railroad car, and (C) subsequent to June 6, 1980, an officer of Lessee who is familiar with railroad maintenance certifies in writing that such unit of equipment has become a "bad order" railroad car or that extraordinary maintenance will be or has been performed as a

result of such designated corrosion or abuse, then Lessor, at its option shall, as applicable, (1) reimburse Lessee for such extraordinary maintenance, (2) pay all costs and expenses to cause any such "bad order" railroad car to be in a condition acceptable for interchange service, or (3) cancel the Lease with respect to such unit of equipment. The term "extraordinary maintenance" as used herein shall mean and include all repairs or maintenance which are attributable to such corrosion or abuse.

3. In the event that, as of June 30, 1981, any unit of equipment set forth on this IER is ^{not} under the control of Lessee, Lessor and Lessee shall amend this IER to delete the reference to any such unit of equipment and adjust rental installments in an equitable manner. In the event that, subsequent to acceptance of any unit of equipment Lessee is compelled to return any such unit of equipment to National Railway Utilization Corporation ("NRUC"), Lessee shall not be liable to Lessor for rent relating to any such unit of equipment after such return; provided, however, Lessee shall (1) inform Lessor of any demand, case or proceeding to compel Lessee to return any unit of equipment to NRUC, and (2) assign to Lessor all of its rights in any such unit of equipment. If any unit of equipment which has been returned by Lessee to NRUC is returned or made available to Lessee on or before June 1, 1981, Lessee shall again pay rent for any such unit of equipment at the time of such return or availability.

4. Lessor represents and warrants to Lessee that the equipment was new and unused prior to the commencement of the Lease between Lessor and NRUC, dated as of July 24, 1979, pertaining to the equipment. Lessee shall have no obligation to maintain any unit of equipment as set forth in the Lease until such time as (i) Lessee shall have had an opportunity to inspect such unit of equipment and reject it if it cannot economically be made acceptable for interchange service and (ii) Lessor shall have paid to Lessee the costs and expenses directly attributable to the Work with respect to such unit of equipment.

5. This IER may be executed in counterparts, each of which shall be considered to be an original; all of the counterparts, however, shall constitute but one of the same Agreement. Lessor and Lessee shall do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required or reasonably requested by the other party to carry out and affect the intents and purposes of this IER and the Lease.

6. This IER shall not become effective until it has been approved by the Board of Directors of Lessee.

The undersigned Lessor hereby leases to the undersigned Lessee, and the undersigned Lessee agrees to hire from Lessor the equipment described herein. The Lessee hereby acknowledges and agrees, respecting the equipment described herein:

- (1) That Lessee has inspected the equipment fully and completely as to size, model, function and conformity to the purchase order,
- (2) That the equipment is of a size, design, function and manufacturer selected by Lessee,
- (3) That Lessee is satisfied that the same is suitable for its intended purposes and any special purposes of Lessee,

(4) LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR BY VIRTUE OF HAVING LEASLD THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT TO THIS LEASE HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.

Lessor: American Fletcher Leasing Corporation LESSEE: Illinois Central Gulf Railroad Company

By E. Lowell Smith
Title Vice President & Secretary

By B. E. Gordon
Title Vice President

ATTEST:

By James F. Donaherty
SEAL Title Assistant Secretary

By W. H. Lander
SEAL Title ASSISTANT SECRETARY

A
10404

RECORDATION NO. 10404-A Filed 1425

INDIVIDUAL EQUIPMENT RECORD

JUN 10 1980 - 12 50 PM

INTERSTATE COMMERCE COMMISSION 4

Dated as of June 5, 1980 to that Equipment Lease Agreement dated as of May 21, 1979

LESSOR: American Fletcher Leasing Corporation
111 Monument Circle
Suite 510
Indianapolis, IN 46277

LESSEE: Illinois Central Gulf Railroad Company
233 N. Michigan Avenue
Chicago, IL 60601

LOCATION OF EQUIPMENT: 233 N. Michigan Avenue, Chicago, IL 60601

ACCEPTANCE DATE: June 6, 1980

New _____ Used <u>X</u>	Purchase Order No. <u>None</u>	Term: <u>15</u> year(s) <u>7</u> month(s) Commencing <u>June 6, 1980</u>	Security Deposit: \$ <u>None</u>
----------------------------	-----------------------------------	---	-------------------------------------

Tax Capitalized or Exempt Tax Based on Rentals Remit with each Payment	<input checked="" type="checkbox"/> <input type="checkbox"/>	INSURANCE REQUIREMENTS: ALL RISK: Stipulated loss value. LIABILITY: Bodily Injury \$500,000 per person/\$1,000,000 per accident; Property Damage \$100,000.
--	---	---

RENTAL: \$ None payable upon execution of this IER, to be applied to the None rental installment. Payment of the First through One Hundred Eightieth rental installments shall commence on January 31, 1980 and shall continue monthly thereafter on the last day of each month, with each such rental installment to be in the amount of \$ 33,000.00.

EQUIPMENT DESCRIPTION AND SERIAL NO.(s) (SEE ATTACHED INVOICES):		
Equipment Description	Serial No.	Equipment Cost
One Hundred (100) units of 50'6" - 70 Ton Type XM Railroad Boxcars manufactured by Berwick Forge and Fabrication Company.	NSL 150900 through NSL 150910 (inclusive) MISS 150911 NSL 150912 through NSL 150917 (inclusive) MISS 150918 NSL 150919 MISS 150920 NSL 150921 through NSL 150951 (inclusive) MISS 150952 NSL 150953 through NSL 150959 (inclusive) MISS 150960 NSL 150961 through NSL 150994 (inclusive) MISS 150995 NSL 150996 through 150999 (inclusive)	\$4,055,000.00

Interstate Commerce Commission
Washington, D.C. 20423

6/10/80

OFFICE OF THE SECRETARY

David H. Cox Atty.
Jackson, Campbell & Parkinson, P.C.
One Lafayette Centre
Suite 300 South, Wash. D.C. 20036
1120 20th St., N.W.

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/10/80 at 12:50pm and assigned re-
recording number(s). 10676-B & 10404-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)