



NRUC
CORPORATION

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

RECORDATION NO. 5895
OCT 28 1988-2 20 PM
INTERSTATE COMMERCE COMMISSION

October 28, 1988

Interstate Commerce Commission
12th and Constitution Avenues, N.W.
Washington, D.C.
20423

ATTN: Ms. M. Lee
Room 2303

Dear Ms. Lee:

Enclosed herewith is the original and three (3) copies of a fully executed Management Agreement, described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Management Agreement between NRUC Corporation (Lessor) existing under the laws of the State of South Carolina, and INTERAIL, Inc. (Lessee), existing under the laws of the State of Kansas, with corporate offices at:

Lessor: NRUC Corporation
100 North Twentieth Street
Second Floor
Philadelphia, Pennsylvania
19103

and

Lessee: INTERAIL, INC.
One Foxfield Square
St. Charles, Illinois
60174

A fee of thirteen dollars (\$13.00) is enclosed. Please return, fully executed, the original and two (2) copies of these documents to NRUC Corporation, at the address listed above, Attn: Mr. Roland A. McKee.

Sincerely,

Roland A. McKee
Roland A. McKee
Director of Marketing
NRUC Transportation Division

RAM/rfg

Ronald F. Harrison, Jr.

10/28/88
13

Interstate Commerce Commission
Washington, D.C. 20423

10/28/88

OFFICE OF THE SECRETARY

Robert L. Shiner
Vice President
NRUC Corporation
100 North 20th St. 2nd Fl.
Phila. PA. 19103

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 10/28/88 at 2:20pm, and assigned recordation number(s). 15894 & 15895

Sincerely yours,

Narta L. McLee
Secretary

Enclosure(s)

1 5895

007 23 1988-09 29 PM

INTERSTATE COMMERCE COMMISSION

LEASE

AGREEMENT made and entered into this 12th day of September, 1988 between NRUC CORPORATION, A SOUTH CAROLINA CORPORATION (hereinafter "Lessor") and INTERAIL, INC. a Kansas Corporation (hereinafter "Lessee").

RECITALS

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

AGREEMENT

It is Agreed:

1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor that number of railroad cars, of the type, construction and such other description (hereinafter "Cars") as set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The Lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3 hereof.

2. Delivery of Cars. Lessor shall deliver the Cars as promptly as is reasonably possible from time to time in groups of not less than two (2). Lessor shall not be responsible for failure to deliver or delay in delivering Cars due to casualties and contingencies beyond its direct control, such as, but not limited to, labor difficulties, fire, delays and defaults of

carriers; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after October 31, 1988.

Initial delivery shall be to

St.

Lawrence Repair Facility, Norfolk, NY. Thereafter, Lessee shall be liable for, and shall pay or reimburse Lessor for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of Cars.

3. Condition of Cars-Acceptance. All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic, but Lessee shall be solely responsible for determining that the Cars are in proper condition for loading and shipment. Within ten (10) working days after Lessor shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as to condition. Cars so inspected and approved, and any Cars which Lessee does not elect to inspect, shall be conclusively deemed to meet all requirements of this Lease and any differences or discrepancies from specified condition, construction, type, equipment, or otherwise, shall be deemed to have been waived by Lessee without further act on its part. Lessee shall issue and deliver to Lessor with respect to all Cars accepted or deemed hereunder to meet the requirements of this Lease, a Certificate of Inspection and Acceptance in the form and

text attached hereto as Exhibit "B" and by this reference made a part hereof.

4. Use and Possession. Throughout the continuance of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to each Car and may use such Car,

- (a) on its own property or lines; and
- (b) upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic for such compensation as Lessee may determine or as may be required by the then current Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the Interchange of traffic adopted by the Association of American Railroads (hereinafter "Interchange Rules) but at all time subject to the terms and conditions of this Lease,

provided, however, that at all times the Cars shall be used only in the United States of America or in Canada solely for the uses for which they were designed.

5. Term. Subject to the renewal and purchase options contained in Paragraph 26, this Lease shall be for a term of _____ years which shall commence on the earlier of (i) the date on which the last car is accepted pursuant to Paragraph 3 or (ii) October 31, 1988, the "Commencement Date", and which shall terminate on the _____ anniversary of the Commencement Date. All of the terms and provisions of this Lease shall apply and be in

full force and effect with respect to cars accepted by Lessee prior to the Commencement Date.

6. Termination Date. After delivery of the last Car, Lessor shall confirm to Lessee the Commencement Date and the date of expiration or the original term set forth in Paragraph 5 hereof.

7. Rental. Lessee shall pay to Lessor as rental the sum of _____ per month for each Car. Rental shall be payable monthly in advance on the first of each month. If the first month of the Lease Term is less than a full calendar month, or if any Car is received after the Commencement Date, the rental shall be prorated to the first day of the month following the Commencement Date.

7.1 Interim Rental. Lessee shall pay to Lessor interim rental at the rate of _____ per Car per day during that period between the date of delivery of each Car and the Commencement Date; such interim rental shall be payable on the Commencement Date.

8. Payment. Lessee shall make payment of all sums due hereunder to Lessor at:

NRUC CORPORATION
Pickens Railroad
402 Cedar Rock Street
Pickens, SC 29671

8.1 All amounts payable under Paragraphs 7 and 7.1 shall be remitted by (a) wire transfer in immediately available funds to the Lessor on the date due, or (b) regular U.S. Mail service if received by Lessor at least five banking days after the date due.

Late payment charges will be assessed by Lessor at a rate of 1.5% interest per month, pro rata on a daily basis.

9. Title. The Lessee shall not by reason of this Lease, or any action taken hereunder, acquire or have any right or title in the cars except the rights herein expressly granted to it as Lessee.

10. Maintenance. Lessee shall, during the continuance of this Lease, promptly and with due diligence, keep and maintain the Cars in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes or additions to the Cars or their equipment and appliances to the extent necessary or required from time to time,

(a) by the Interchange Rules; or

(b) by applicable laws and regulations of any state or governmental body, including specifically but not exclusively, the Interstate Commerce Commission.

11. Taxes and Other Levies. Lessee shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes levied or assessed during the continuance of this Lease upon the Cars or the interest of the Lessee therein, or upon the use or operation thereof or the earnings arising therefrom, and if any levy or assessment is made against Lessor on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of Lessor therefrom (except any such tax on rentals which is in substitution for, or relieves the Lessee from the payment of taxes which

it would otherwise be obligated to pay or reimburse Lessor for same); but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof; provided, that such proceedings do not materially endanger the rights or interests of Lessor in and to the Cars.

12. Liens. Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect the title to the Cars, arising by reason of any obligation which is the responsibility of the Lessee, or 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, except such as are permitted by Lessor under Paragraph 11 hereof.

13. Indemnity. Lessee hereby agrees to indemnify Lessor and save Lessor harmless from any charge, loss, claim, suit, expense or liability which Lessor may suffer or incur as a result of the use or operation of a Car or Cars while subject to this Lease, except for such charge, loss, claim, suit, expense or liability which arises as the result of the negligence of Lessor.

14. Warranty - Representations. Except for a warranty that Lessor has good title to and right to lease the Cars, and except as otherwise provided in paragraph 3, Lessor makes no warranty or representation of any kind whatsoever, either express or implied as to any matter whatsoever, including specifically but not exclusively, fitness, design, workmanship, condition or quality

of the Cars or parts thereof which have been accepted by Lessee hereunder, and Lessor shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential on account of any matter which would otherwise constitute a breach of warranty or representation.

14.1 Representations and Warranties of Lessee. Lessee represents and warrants as follows:

- (a) Lessee is a corporation duly incorporated and validly existing under the laws of the State of KANSAS with full corporate power and authority to own its properties and to carry on its business as presently conducted and to enter into and perform its obligations under this Lease;
- (b) This Lease has been duly authorized, executed and delivered by Lessee and constitutes a legal and valid agreement binding upon Lessee and enforceable in accordance with its terms;
- (c) No approval is required from any public regulatory body with respect to the entering into or performance of this Lease by Lessee, or if any such approval is required, it has been properly obtained;
- (d) The entering into and performance of this Lease will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, loan or credit or other agreement or instru-

ment to which Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or any judgment, decree, franchise, order or permit applicable to Lessee.

- (e) There are no actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against Lessee or its properties or affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transactions.

15. Car Marking. Each Car upon delivery will be distinctly, permanently and conspicuously marked in stencil with the respective reporting numbers and marks specified in Exhibit "A" and with a legend on each side in letters not less than three-quarter inches (3/4") in height:

Title to this Car subject to documents recorded under Section 11303 of Title 49 of the United States Code.

16. Inspection - Inventory. During the continuance of this Lease, Lessor shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. Lessee shall, upon request of Lessor, but no more than once every year, furnish to Lessor two (2) copies of an accurate inventory of all Cars in service.

17. Loss, Theft or Destruction of Cars. In the event any Car is lost or stolen or is destroyed or damaged beyond economical repair, Lessee shall promptly and fully inform Lessor of such

occurrence. If, upon the occurrence of such event, Lessor does not receive payment for such Car pursuant to the Interchange Rules, because they are not applicable or otherwise, Lessee shall upon demand by Lessor promptly make payment to Lessor in the same amount as provided in such Interchange Rules where applicable to the occurrence of such event for like Cars. Lessee shall cooperate with Lessor and take any and all action required to assist and enable Lessor to receive such payment directly from any handling line or other person, firm or corporation bound to make payment under Interchange Rules. This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars; provided, however, that this Lease shall terminate with respect to any Car which is lost, stolen or destroyed or damaged beyond repair on the date Lessor shall receive all amounts and things required on account of such Car under this Paragraph 17, and on such date Lessee shall receive a credit or refund of rental actually paid with respect to any such Car from the date the Car is lost or damaged.

18. Return of Cars. Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 17 thereof), Lessee shall at its own cost and expense,

- (a) forthwith surrender possession of such Car to Lessor in the condition required by Paragraph 10 hereof by delivering same to Lessor at such point

as Lessor may direct within the continental United States; and

- (b) if Lessor shall so request by written notice delivered prior to surrender of possession of such Car as above provided, Lessee will provide suitable storage for such Car for a period of ninety (90) days at no cost to Lessor from the date of expiration or termination and inform Lessor of the places of storage and the reporting number of the Cars there stored.

Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 18 and such storage shall be at the risk of Lessor. Upon termination of the storage period or upon request of Lessor prior thereto, Lessee shall cause the Car to be transported to Lessor at the place and in the manner provided in Paragraph 18(a), except that all transportation costs after storage shall be paid by Lessor. Until the delivery of possession to Lessor pursuant to Paragraph 18(a) or (b), Lessee shall continue to pay rental at the rate being paid immediately prior to termination of expiration, and Lessee shall, in addition, make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred.

19. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) non-payment by Lessee, within five (5) business days after the same becomes due, of any

installment of rental or any other sum required to be paid hereunder by Lessee.

- (b) the Lessee shall default or fail for a period of thirty (30) days, after written notice of such default or failure, in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder.
- (c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization; arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Code or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) days;
- (d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in Paragraph

19(c), or the making by Lessee of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

20. Remedies. Upon the happening of an event of default, Lessor, at its option, may:

- (a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this Lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessor's enforcement of its remedies hereunder;
- (b) elect only to terminate the Lessee's right of possession (but not to terminate the Lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder, or hereafter to accrue for the remaining term of the Lease, and thereupon require Lessee to deliver all such Cars to Lessor at any of its railroads/ fleet facilities or to take possession itself, of any or all of the Cars wherever same may be found. Lessor may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event

the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others at terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease.

21. Recording of Lease. Prior to the delivery and acceptance of the First Car, Lessor intends, without expense to Lessee, to cause this Lease and any assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of Title 49 of the United States Code. Lessee will from time to time, at its expense, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, register or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of proper protection, to the satisfaction of counsel for Lessor, of its title to the Cars, or for the purpose of carrying out the intention of this Lease. Except as hereinbefore provided, Lessee will pay all costs, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such further instrument or incident to the taking of any such other action; and will furnish to Lessor certificates or other evidence of any such action.

22. Governing Law-Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of South Carolina. 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.

23. 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 shall be evidenced by any such signed counterpart.

24. 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.

25. 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.

26. Extension of Lease - Purchase Option. Lessee shall have the following options, if not in default hereunder, to extend the Lease or to purchase the Cars upon giving Lessor written notice thereof not less than one hundred and eighty (180) days prior to the expiration of the then current lease term:

(a) Lessee shall have the option to purchase the Cars at a price of

_____ per car at the expiration of

_____ of this Lease or;

(b) Lessee shall have the option to renew and extend this Lease _____ additional years at the rental price of

_____ per car per month;

(c) In the event the Lessee extends this Lease pursuant to Paragraph 26(b) above, the Lessee then shall have the option to purchase the Cars at a price of

_____ per Car at the expiration of
_____ this Lease.

27. Sublease and Assignment. Lessee will not sell, sublease, assign, transfer, or otherwise dispose of its rights under this Lease without first obtaining the written consent of Lessor. Lessor consents to subleases, assignments or other operating agreements for the Cars in the ordinary course of Lessee's business. Lessee shall record this Lease with the

Interstate Commerce Commission pursuant to Title 49, Section 11303 of the United States Code. Lessee shall also so record any permitted sublease, assignment or operating agreement which changes the markings of the Cars.

All or any of the rights, benefits and advantages of Lessor under this Lease, including the right to receive the payments herein provided to be made by Lessee, may be assigned by Lessor and reassigned by any assignee at any time or from time to time. No such assignment shall relieve Lessee of any of its obligations hereunder.

In the event of any such transfer or assignment, or successive transfers or assignments by Lessor, of title to the Cars and of Lessor's rights hereunder in respect thereof, Lessee will, at Lessor's expense, whenever requested by such transferee or assignee, change or cause the change of the markings to be maintained on each side of each Car so as to indicate the title of such transferee or assignee to the Cars, such markings to bear words or legend as shall be specified by such transferee or assignee.

28. Notices. Any notice or demand required or permitted to be given by Lessor or Lessee to the other party shall be deemed to have been given when in writing duly addressed as hereinafter provided and deposited as Certified or Registered Mail, return receipt requested, in the official governmental mail with adequate postage prepaid:

If to the Lessor:

NRUC CORPORATION
Pickens Railroad
402 Cedar Rock Street
Pickens, SC 29671

If to the Lessee INTERAIL, INC.
One Foxfield Square, Suite 200
St. Charles, IL 60174

IN WITNESS WHEREOF, Lessor and Lessee have duly executed
this Lease as of the day and year first above written.

NRUC CORPORATION

By: *Ch. W. Hancock*
President

ATTEST:

Arthur Ann Kasteler
Secretary

INTERAIL, INC.

By: *John N. Cowles*
President

ATTEST:

Lita K. Jimenez
Secretary

EXHIBIT "A"

Serial Number of Railroad Boxcars to be leased to INTERAIL, INC. (Lessee) by NRUC Corporation (Lessor). Lease Dated: September , 1988.

LEASE CAR NUMBERS

FORMER NRUC NUMBERS

NOKL 88270
NOKL 88271
NOKL 88272
NOKL 88273
NOKL 88274
NOKL 88275
NOKL 88276
NOKL 88277
NOKL 88278
NOKL 88279
NOKL 88280
NOKL 88281
NOKL 88282
NOKL 88283
NOKL 88284
NOKL 88285
NOKL 88286
NOKL 88287
NOKL 88288
NOKL 88289

MISS 120739
NSL 120743
NSL 120745
MISS 120746
MISS 120752
NSL 120759
MISS 120764
NSL 120767
MISS 120770
MISS 120766
NSL 120744
NSL 120777
NSL 120779
MISS 120784
MISS 120791
NSL 120792
MISS 120793
MISS 120798
NSL 120800
NSL 120801

SPECIAL TERMS

1. Cars will be in "exempt" status Re: Ex Parte 346, Sub. 6 Grandfather Clause.

STATE OF)
COUNTY OF)

On this 13th day of September, 1988 before me personally appeared John A. Mariscotti, to me personally known, who being by me duly sworn, says that he is PRESIDENT of NRUC 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara Ann Rastetter
Notary Public for BARBARA ANN RASTETTER
My Commission Expires: Notary Public, Phila. Phila. Co.
My Commission Expires April 14, 1990

STATE OF)
COUNTY OF)

On this 14th day of September, 1988 before me personally appeared John Cowles, to me personally known, who being by me duly sworn, says that he is PRESIDENT of INTERRAIL, INC. tion, 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Geraldine De Bartolo
Notary Public for Interail
My Commission Expires: _____



EXHIBIT "B"

CERTIFICATE OF INSPECTION AND ACCEPTANCE

To: NRUC CORPORATION
PICKENS RAILROAD
402 CEDAR ROCK STREET
PICKENS, SC 29671

From: INTERAIL, INC.
One Foxfield Square
St. Charles, IL 60174

The undersigned, a duly authorized inspector of Lessee does hereby certify that:

Under authority of Lessee, I have inspected and accepted delivery of the units of railroad equipment specified in the listing below as conforming in all respects to the terms and provisions of the Lease Agreement:

DESCRIPTION

MARK

SERIAL NUMBERS ;

Under authority of Lessee, I further certify that by virtue of my acceptance of said cars the same have, on the dates stated above, come under lease to Lessee pursuant to the terms and provisions of said Lease Agreement.

Signature: _____
Authorized Inspector

Date: _____