

**Thrall Car**

Objective Excellence

August 6, 1997

RECORDATION NO. 20811 FILED

AUG 7 '97 1-39 PM

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RECEIVED  
SURFACE TRANSPORTATION  
BOARD

Secretary  
Surface Transportation Board  
12th and Constitution  
Room 2311  
Washington, D.C. 20423

Attn: Documents for Recordation

RE: Interim Use Agreement

Dear Secretary:

I am an attorney representing a party to the enclosed document. I have enclosed one original and two counterparts of the document described below to be recorded pursuant to Section 11301 of Title 49 of the United States Code and the regulations adopted thereto.

The document is:

Interim Use Agreement dated August 4, 1997 between Thrall Car Manufacturing Company and Alabama Power Company.

The names and addresses of the parties to the enclosed document are as follows:

Vendor/Lessor: Thrall Car Manufacturing Company  
2521 State Street  
Chicago Heights, IL 60411

Lessee: Alabama Power Company  
600 North 18th Street  
P.O. Box 2641  
Birmingham, AL 35291

*Counterparts - M*

Surface Transportation Board  
August 6, 1997  
Page Two

A description of the equipment covered by the foregoing document follows:

377 Avalanche® railcars bearing car numbers JHMX97001 through 97377, inclusive, and 62 Avalanche® railcars bearing car numbers JHMX97378 through 97625, inclusive.

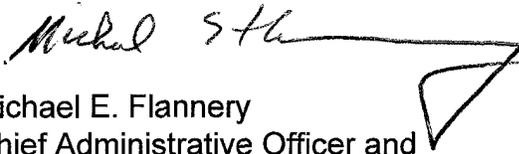
A fees of \$21.00 is enclosed. Please return any extra copies not needed by the Commission for recordation and the enclosed copy of this letter, each stamped with your recordation number, to Michael E. Flannery, 845 Larch Avenue, Elmhurst, IL 60126.

A short summary of the document to appear in the index follows:

Interim Use Agreement between Thrall Car Manufacturing Company, 2521 State Street, Chicago Heights, IL 60411, Vendor/Lessor, and Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291, Lessee, dated August 4, 1997 and covering 377 Avalanche® railcars bearing car numbers JHMX97001 through 97377, inclusive, and 62 Avalanche® railcars bearing car numbers JHMX97378 through 97625, inclusive.

Sincerely,

THRALL CAR MANUFACTURING COMPANY



By: Michael E. Flannery  
Chief Administrative Officer and  
General Counsel

MEF:ld

Encls.

INTERIM USE AGREEMENT AUG 7 '97 1-39 PM

Interim Use Agreement dated August 4th, 1997, between Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street, Chicago Heights, Illinois 60411 ("Thrall"), and Alabama Power Company, an Alabama corporation with its principal offices located at 600 North 18th Street, P. O. Box 2641, Birmingham, Alabama 35291 ("Customer").

**WHEREAS**, Thrall will manufacture 377 Avalanche® railcars bearing car numbers JHMX97001 through 97377, inclusive, and 62 Avalanche® railcars bearing car numbers JHMX97378 through 97625, inclusive (collectively, the "Cars"), as evidenced by the letter agreement dated March 5, 1997, as modified by the letter dated April 17, 1997 (the "Agreement"); and

**WHEREAS**, Thrall and Customer expect to enter into a transaction whereby, among other things, one or more banks or leasing companies ("Lessor") purchases the Cars and leases the same to Customer pursuant to a Lease Agreement (the "Lease"); and

**WHEREAS**, Customer intends to lease the Cars from Lessor pursuant to the Lease but the Lease will not be completed by the scheduled delivery date for the Cars; and

**WHEREAS**, Customer desires to utilize the Cars before the Lease is consummated, and Thrall is willing to grant temporary possession of the Cars to Customer on the terms and conditions hereinafter provided;

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Customer agrees to accept possession of the Cars, solely as bailee, when they are delivered by Thrall FOT Thrall's railcar plant in Cartersville, Georgia. Upon delivery of each Car, Customer or its representative shall execute a Certificate of Conformance in the form of **Exhibit A** attached hereto.

2. Customer's rights hereunder shall commence with respect to each Car on the date of delivery by Thrall and end the earlier of (a) the close of business on September 30, 1997 and (b) the date when the Lease is executed and payment of the purchase price is made to Thrall in connection therewith (the "Termination Date") without further action of the parties.

3. Until the Termination Date, title and ownership shall remain with Thrall and Customer's rights therein shall be solely that of possession, use and custody as bailee, and the sale of each Car to Lessor and the contemporaneous lease thereof to Customer under the Lease shall be deferred until the Lease is executed and payment of the purchase price is made to Thrall in connection therewith. The interests created by this Agreement shall automatically terminate with respect to each of the Cars upon execution and delivery of the Lease.

4. Customer intends to close on the Lease not later than September 30, 1997. If Customer takes possession of any Car(s) concurrent with, or subsequent to, the execution of this Agreement and prior to the closing of the Lease, Customer shall immediately pay to Thrall on the date of taking possession thereof a security deposit equal to the full purchase price (to be determined by Thrall and Customer) of the relevant Cars. Such security deposit shall be wire transferred to the following account:

Thrall Car Manufacturing Company  
Account No. 78-58167  
Bank of America Illinois  
ABA No. 0710-0003-9  
Chicago, Illinois 60693

The deposit will be refunded or applied as described below. If Lessor thereafter purchases the Cars (which Thrall agrees will be free of all liens) in connection with the Lease, then the applicable deposit shall be refunded to Customer, and, if Customer purchases and takes title to the Cars (which title Thrall agrees shall be free and clear of all liens), then the applicable deposit shall be credited to Customer.

5. Customer shall have risk of loss of all Cars delivered pursuant to this Agreement. Customer shall, at its expense, maintain in force public liability and property damage insurance with respect to the Cars in such amounts and with such terms as are comparable with those generally applicable to other railcars owned or leased by Customer.

6. Until the Termination Date, Customer shall keep and maintain the Cars in good order and running condition, normal wear and tear and manufacturers' defects and deficiencies excepted, and Customer shall at its option promptly repair, replace or purchase from Thrall any Car that is damaged or destroyed. Customer shall not modify any Cars without the prior written approval of Thrall, and Customer shall immediately replace or restore any markings which are removed, destroyed or defaced. Prior to delivery of each Car hereunder it shall be numbered with a road number and, in anticipation of the closing of the Lease, marked with the following legend in letters not less than one inch high:

POSSESSION SUBJECT TO A INTERIM USE AGREEMENT FILED WITH  
THE SURFACE TRANSPORTATION BOARD

Customer shall reimburse Thrall for all costs incurred by it as a result of removing such legend from the Cars if the Lease is not consummated.

7. Customer shall not permit any liens or encumbrances of any kind, other than the usual interchange of traffic rules, nondelinquent mechanics', tax, judgment, and similar statutory liens, and the lien of this Agreement, to attach to any of the Cars prior to the Termination Date.

8. Customer shall operate the Cars in accordance with all applicable laws, rules and regulations so long as Customer has possession pursuant to this Agreement.

9. If Thrall does not receive payment in full for the Cars from Lessor in connection with Lessor and Customer entering into the Lease by September 30, 1997, then (i) Customer shall have the option to purchase the Car(s) at the original full purchase price or (ii) if Customer does not exercise such option, the deposit for such Car(s) shall be returned to Customer and Customer's right of possession under this Agreement shall terminate and Thrall may enter upon the premises of Customer and take immediate possession of any Cars for which payment in full has not been received, in addition to exercising all other remedies available to it under law or in equity.

10. Prior to delivery of any of the Cars Thrall shall file a copy of this Agreement with the Surface Transportation Board of the Department of Transportation and take such other actions to protect Thrall's interest as Thrall shall reasonably request. Simultaneously with the execution of the Lease and Lessor's purchase of the Cars, Thrall shall deliver to Customer or Lessor for filing a Termination of Agreement in the form of **Exhibit B** attached hereto with respect to each of the Cars.

11. Customer shall indemnify and hold Thrall harmless from and against any and all claims, expenses, costs or liabilities, including but not limited to reasonable attorneys' fees, arising out of or in connection with Customer's possession, use or custody of the Cars pursuant to this Agreement or Customer's violation of any provisions of this Agreement. Customer shall pay all taxes (excluding any taxes measured by the net income of Thrall), fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or upon Thrall as owner of the Cars while Customer has possession, use or custody pursuant to this Agreement.

12. Customer acknowledges that the warranty period and any other time period set forth in the Agreement shall commence on the date of execution of a Certificate of Conformance.

13. Customer and Thrall each represent and warrant to the other that (i) the execution and delivery of this Agreement have been authorized by all necessary corporate action and do not and will not contravene or constitute a default under the provisions of any agreement or instrument binding upon it or any of its property, (ii) this Agreement constitutes a valid and binding

obligation of it enforceable in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general principles of equity and (iii) all governmental authorizations, approvals or exemptions required of it for the execution and delivery of this Agreement or for the validity and enforceability of this Agreement against it have been obtained. So long as Thrall has title to the Cars, Customer represents and warrants to Thrall that the title of Thrall to the Cars is and will be through the Termination Date, senior to the lien of any mortgage, security agreement or other instrument binding upon Customer or any of its property.

14. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law principles thereof.

15. This Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL CAR MANUFACTURING  
COMPANY

By: Michael S. H.  
Title: CHIEF ADMINISTRATIVE OFFICER  
& GENERAL COUNSEL

ALABAMA POWER COMPANY

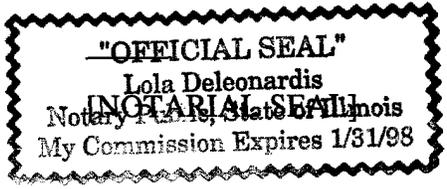
By: Carl P. Benton  
Title: Vice President, Secretary  
& Treasurer

STATE OF Illinois

COUNTY OF DuPage

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that MICHAEL E. FLANNERY, whose name as CHIEF ADMINISTRATIVE OFFICER + GENERAL COUNSEL of THRALL CAR MANUFACTURING COMPANY, an Illinois corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 6<sup>th</sup> day of AUGUST, 1997.



Notary Public Lola Deleonardis  
My Commission Expires: 11/31/98

STATE OF Alabama  
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Art P. Beattie, whose name as Vice Pres., Sec. & Treasurer of ALABAMA POWER COMPANY, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 4<sup>th</sup> day of August 1997.

[NOTARIAL SEAL]

Notary Public Cela H. Short  
My Commission Expires:  
06-06-2001

**EXHIBIT A**

**CERTIFICATE OF CONFORMANCE**

The undersigned, a duly authorized inspector for Alabama Power Company ("Customer"), hereby certifies that the units of railroad equipment described below have been inspected by the undersigned on behalf of Customer and have been found to be in conformance with the requirements and provisions of Customer.

Description of Car: \_\_\_\_\_

Manufacturer: Thrall Car Manufacturing Company

Quantity: \_\_\_\_\_

Car Numbers: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Authorized Representative

Date of Inspection \_\_\_\_\_, 199\_

**EXHIBIT B**

**TERMINATION OF AGREEMENT**

Termination of Agreement dated \_\_\_\_\_, 199\_\_ between Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street, Chicago Heights, Illinois 60411 ("Thrall"), and Alabama Power Company, an Alabama corporation with its principal offices located at 600 North 18th Street, P. O. Box 2641, Birmingham, Alabama 35291-2454 ("Customer").

WHEREAS, Thrall and Customer are parties to an Interim Use Agreement dated \_\_\_\_\_, 1997 (the "Agreement") with respect to \_\_\_\_\_ ( ) \_\_\_\_\_ railcars bearing car numbers \_\_\_\_\_ and \_\_\_\_\_ (the "Cars"); and

WHEREAS, the Agreement was duly filed for recordation with the Surface Transportation Board of the Department of Transportation (the "Board") on \_\_\_\_\_, 199\_\_ at \_\_\_\_:\_\_\_\_.m. and given Recordation Number \_\_\_\_\_; and

WHEREAS, Thrall and Customer desire to terminate the Agreement with respect to the Cars and to record such termination with the Board;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Thrall and Customer hereby terminate the Agreement, effective \_\_\_\_\_, 199\_\_ with respect to the Cars described above; provided, however, that nothing contained in this Termination of Agreement shall affect the rights and liabilities of the parties under the Agreement with respect to acts, events or omissions occurring on or prior to the date hereof.

2. Customer shall record this Termination of Agreement with the Board in order to release any lien created by or arising out of the Agreement with respect to the Cars described above.

3. This Termination of Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

**THRALL CAR MANUFACTURING  
COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ALABAMA POWER COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_