

**DONELAN, CLEARY, WOOD & MASER, P.C.**

OCT 25 1996 05 PM

ATTORNEYS AND COUNSELORS AT LAW  
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1100 NEW YORK AVENUE, N.W.  
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October 25, 1996

New Recordation No.

OCT 25 4 04 PM '96

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

Dear Mr. Williams:

On behalf of Industrial Investment Corporation, I submit for filing and recording under 49 U.S.C. § 11301(a) and the regulations applicable thereunder, executed counterparts of a document not previously recorded, entitled Intercreditor Agreement ("Agreement") made as of October 25, 1996.

The parties to the enclosed Agreement are:

First Maryland Leasecorp. 25 South Charles Street Baltimore, MD 21201	-	SECURED PARTY
Harris Bank Naperville 503 North Washington Street Naperville, Illinois 60566	-	SECURED PARTY
Industrial Investment Corporation Unit 101-A 2401 Pennsylvania Avenue Wilmington, Delaware 19806	-	DEBTOR
Excel Rail Corporation 112 Water Street Naperville, Illinois 60540	-	DEBTOR

The said Agreement acts to modify the filings of record with the Surface Transportation Board under Recordation Nos. 19738, 19927, 19928, 20043 and 20176 and subparts, if any.

The equipment covered by the instant Agreement is as identified therein on Exhibit A.

A short summary of the Agreement to appear in the Surface Transportation Board Index is as follows:

"Covers 20 covered hopper cars:  
ERCX 5025-5044, and modifies filings under  
Recordation Nos. 19738, 19927, 19928, 20043 and 20176."

*Please*

*See page for cross-indexing*

*Amended to be kept in the file*

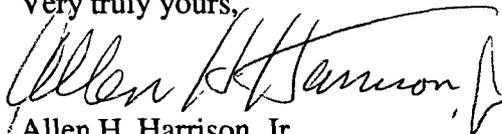
Please enter "See Recordation No. 20333" in the Index, on both white and yellow pages, under the following five (5) Recordation Numbers:

<b><u>RECORDATION NO.</u></b>	<b><u>INDEXED UNDER</u></b>
19738	Industrial Investment Corporation-Lessor Excel Railcar Corporation - Lessee
19927	Harris Bank Naperville - Secured Party Excel Railcar Corporation - Debtor
19928	Harris Bank Naperville - Secured Party Excel Railcar Corporation - Debtor
20043	Excel Railcar Corporation - Sublessor Blue Circle, Inc. - Sublessee
20176	First Maryland Leasecorp - Secured Party Industrial Investment Corporation - Debtor

Enclosed are checks in the total amount of one hundred thirty two dollars (\$132.00) of which twenty-two dollars (\$22.00) is the filing fee for the Agreement and one hundred ten dollars (\$110.00) is the "cross indexing" fee under the five Recordation Nos. indicated above (at \$22.00 each).

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the letter/fee receipt from the Surface Transportation Board acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,



Allen H. Harrison, Jr.  
Attorney for Industrial  
Investment Corporation  
for the purpose of this filing

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423

*Enclosures*

**BY HAND**

8376-020

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423-0001

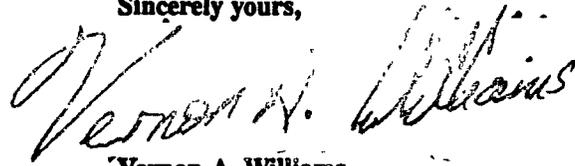
10-25-96

Allen H. Harrison, Jr.  
Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Ave., N. W. Suite 750  
Washington, D.C. 20005-3934

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 10-25-96 at 4:05 PM, and assigned recordation number(s) 20333.

Sincerely yours,



Vernon A. Williams  
Secretary

Enclosure(s)

~~\$132.00~~ The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



OCT 25 1996 05 PM

**INTERCREDITOR AGREEMENT**

AGREEMENT dated as of October <sup>25</sup> 1996, by and among First Maryland Leasecorp, a Maryland corporation ("Maryland"), Harris Bank Naperville, an Illinois corporation ("Harris"), Industrial Investment Corporation, an Ohio corporation ("Owner"), and EXCEL Railcar Corporation, an Illinois corporation ("EXCEL").

**RECITALS**

A. Harris has made certain loans to EXCEL, which is the lessee of certain railcars identified on Exhibit A hereto ("Cars"), pursuant to a certain Master Car Leasing Agreement dated as of May 12, 1995 between Owner and EXCEL and Rider No. 1 thereto (the "Lease").

B. EXCEL has subleased the Cars to Blue Circle, Inc. pursuant to that certain Master Car Leasing Agreement dated as of June 1, 1995 and Rider No. 1 thereto (the "Blue Circle Sublease").

C. EXCEL has granted to Harris a security interest in and to, among other things, all of EXCEL's right, title and interest in and to the Blue Circle Sublease.

D. EXCEL has granted to Owner a security interest in and to all of EXCEL's right, title and interest in and to the Blue Circle Sublease.

E. Maryland has or is making certain loans to Owner, secured or to be secured by a security interest in and to, among other things, the Cars and Owner's right, title and interest in the Lease and the Blue Circle Sublease.

F. The parties hereto wish to clarify their respective positions in the Cars, Lease, and Blue Circle Sublease, on the terms and conditions hereof

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Release.** Owner represents and warrants that the Pressure Differential Covered Hopper Railcar identified as ERCX 5025 ("Car 5025"), is and has at all times since November 11, 1994 been owned by Owner. Based on such representation and warranty, Harris hereby releases all of its right, title and interest in and to Car 5025, which may appear by reason of (a) an Assignment and Security Agreement dated as of November 11, 1994, and recorded in the offices of the Surface Transportation Board on February 12, 1996, under recordation number 19927, or (b) an Assignment and Security Agreement dated as of July 14, 1995, and recorded in the offices of the Surface Transportation Board on February 12, 1996, under recordation number 19928 (collectively, the "Harris Assignments"). Notwithstanding anything to the contrary, however, Harris does not release any right, title and interest in and to the Blue Circle Sublease as it relates to Car 5025, or in any other or subsequent sublease of such car.

2. **Acknowledgment.** Owner represents and warrants that the Pressure Differential Covered Hopper Railcars identified on Exhibit A hereto ("Other Cars") are and have at all times since November 11, 1994 been owned by Owner. Based on such representation and warranty, Harris hereby acknowledges and agrees that such Other Cars do not constitute "Owned Cars" under the Harris Assignments, and that Harris does not claim any security interest in such Other Cars themselves. Notwithstanding anything to the contrary, but subject to the provisions of Section 3.1 below, however, Harris retains and does not release any right, title and interest in and to the Blue Circle Sublease as it relates to the Other Cars, or in any other or subsequent sublease of such cars

3 **Intercreditor Terms.**

3.1 So long as any obligations owing from Owner to Maryland secured by the Lease and the Blue Circle Sublease are outstanding, Maryland shall be entitled to collect and receive all payments under the Blue Circle Sublease directly from Blue Circle, Inc., and upon notice from Harris that EXCEL is in default under its loan agreement with Harris, shall remit directly to Harris the amounts received from Blue Circle, Inc. under the Blue Circle Sublease which are in excess of the amount due by EXCEL under the Lease. If Maryland has not received a notice of default from Harris, Maryland shall remit the excess to EXCEL. Under the terms of the Lease, the monthly net lease rate per railcar subject to the Lease is \$440.00. Under the terms of the Blue Circle Sublease, the monthly net lease rate per railcar subject to the Blue Circle Sublease is \$525.00. Accordingly, if Blue Circle, Inc. makes the monthly rental payments due under the Blue Circle Sublease to Maryland pursuant to the foregoing provisions of this Section 3.1, Maryland would remit to Harris \$85.00 per month per railcar subject to the Blue Circle Sublease if Maryland has received notice from Harris that EXCEL is in default under its loan agreement with Harris. Maryland acknowledges Harris' security interest in the Blue Circle Sublease. In the event of a default under the Lease or the Blue Circle Sublease, Maryland shall be entitled to (i) an amount equal to its reasonable expenses of withdrawing the cars from the service of EXCEL and Blue Circle and collecting the amounts due under the Lease and the Blue Circle Sublease, and (ii) after Maryland has received all amounts due under the Lease (i.e., \$440.00 per railcar per month for 51 months), it shall remit to Harris any excess amount received from Blue Circle, Inc. under the Blue Circle Sublease.

3.2 Under the terms of the Harris Assignments, EXCEL is obligated to deliver to Harris the original of each Sublease (as defined therein), including but not limited to the Blue Circle Sublease. The parties acknowledge and agree that if Maryland comes into possession of such Blue Circle Sublease (and any amendments or substitutions therefor), (i) such possession shall be for the benefit of and on behalf of Maryland and Harris, and (ii) upon payment in full of the obligations secured by Maryland's security interest in Car 5025 and the Other Cars, Maryland shall deliver the original of the Blue Circle Sublease (and any amendments or substitutions therefor) to Harris.

4 **Option to Purchase.** Maryland, Harris and Owner confirm the provisions of Paragraph 34 of the Lease which provide for the option of Excel to purchase the Cars from

Owner at the end of the 8-year term of the Lease and a credit of \$90,000 against the purchase price therefor; provided, however, such option shall only be operative at the end of the full term of the Lease and not upon any earlier termination thereof upon a default thereunder.

5 Further Assurances. The parties each covenant to execute and deliver such further instruments and documents and take such further actions as the other may from time to time reasonably request for the purpose of carrying out the provisions and intent of this Agreement. Neither EXCEL nor Owner shall amend or modify the Lease or Sublease without the prior written consent of Harris and Maryland.

6 Successors, Etc This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Waiver of any default shall not be deemed a waiver of any other or subsequent default. All of Harris' rights are cumulative and not alternative. If any amount at any time paid to Maryland on account of the Blue Circle Sublease which is remitted by Maryland to Harris pursuant to Section 3.1 hereof shall thereafter be required to be restored or returned by Maryland in any bankruptcy or reorganization of EXCEL or Blue Circle, Inc. (including without limitation, any repayment made pursuant to any provision of Chapter 5 of Title 11, United States Code), Harris shall be required to remit such amount to Maryland or the appropriate person as required by such proceedings and, subject to the provisions of Section 3.1 hereof, the rights of Harris and the obligations of Maryland as set forth in Section 3.1 hereof with respect to such amount shall continue if Maryland should receive such amount in the future as though such amount had not been paid.

7 Continuing Agreement. This Agreement shall be a continuing agreement and shall be irrevocable and shall remain in full force and effect so long as there is indebtedness outstanding from EXCEL to Harris. Harris may continue, without notice to Maryland, to extend credit or other accommodation or benefit and loan moneys to or for the account of EXCEL on the faith hereof, and Maryland may continue, without notice to Harris, to extend credit or other accommodation or benefit and loan moneys to or for the account of Owner. Nothing herein contained shall obligate Harris or Maryland to grant credit to, or continue the financing arrangements with EXCEL and/or Owner.

8. Miscellaneous. This Agreement, which may be executed in any number of counterparts, shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and performed in said State. If Harris prevails in any action to enforce this Agreement as against Maryland, Maryland shall reimburse Harris upon demand for all reasonable costs and expenses (including reasonable attorney's fees and disbursements) paid or incurred by Harris in connection with any enforcement of this Agreement against Maryland.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

**HARRIS BANK NAPERVILLE**

By:   
Its: J.P. 10/22/96

**FIRST MARYLAND LEASECORP**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXCEL RAILCAR CORPORATION

INDUSTRIAL INVESTMENT CORP.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

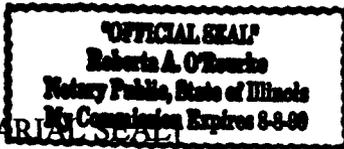
By: \_\_\_\_\_  
Its: \_\_\_\_\_

ACKNOWLEDGMENT

State of Illinois )  
 ) ss.  
County of DuPage )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jane Keith, the Vice President of Harris Bank Naperville, whose name 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 or she, as such officer and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this 22nd day of October, 1996.



Robert A. O'Rourke  
Notary Public

My Commission Expires:

ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of EXCEL Railcar Corporation, whose name 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 or she, as such officer and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

Owner at the end of the 8-year term of the Lease and a credit of \$90,000 against the purchase price therefor; provided, however, such option shall only be operative at the end of the full term of the Lease and not upon any earlier termination thereof upon a default thereunder.

5 Further Assurances. The parties each covenant to execute and deliver such further instruments and documents and take such further actions as the other may from time to time reasonably request for the purpose of carrying out the provisions and intent of this Agreement. Neither EXCEL nor Owner shall amend or modify the Lease or Sublease without the prior written consent of Harris and Maryland.

6 Successors, Etc. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Waiver of any default shall not be deemed a waiver of any other or subsequent default. All of Harris' rights are cumulative and not alternative. If any amount at any time paid to Maryland on account of the Blue Circle Sublease which is remitted by Maryland to Harris pursuant to Section 3.1 hereof shall thereafter be required to be restored or returned by Maryland in any bankruptcy or reorganization of EXCEL or Blue Circle, Inc. (including without limitation, any repayment made pursuant to any provision of Chapter 5 of Title 11, United States Code), Harris shall be required to remit such amount to Maryland or the appropriate person as required by such proceedings and, subject to the provisions of Section 3.1 hereof, the rights of Harris and the obligations of Maryland as set forth in Section 3.1 hereof with respect to such amount shall continue if Maryland should receive such amount in the future as though such amount had not been paid.

7 Continuing Agreement. This Agreement shall be a continuing agreement and shall be irrevocable and shall remain in full force and effect so long as there is indebtedness outstanding from EXCEL to Harris. Harris may continue, without notice to Maryland, to extend credit or other accommodation or benefit and loan moneys to or for the account of EXCEL on the faith hereof, and Maryland may continue, without notice to Harris, to extend credit or other accommodation or benefit and loan moneys to or for the account of Owner. Nothing herein contained shall obligate Harris or Maryland to grant credit to, or continue the financing arrangements with EXCEL and/or Owner.

8. Miscellaneous. This Agreement, which may be executed in any number of counterparts, shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and performed in said State. If Harris prevails in any action to enforce this Agreement as against Maryland, Maryland shall reimburse Harris upon demand for all reasonable costs and expenses (including reasonable attorney's fees and disbursements) paid or incurred by Harris in connection with any enforcement of this Agreement against Maryland.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

**HARRIS BANK NAPERVILLE**

**FIRST MARYLAND LEASECORP**

By \_\_\_\_\_  
Its \_\_\_\_\_

By *J. Mitchell Cook*  
Its *President*

ACKNOWLEDGMENT

State of Maryland )  
 ) ss.  
County of Howard )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J. Mitchell Crook the President of First Maryland Leasercorp, whose name 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 or she, as such officers and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this 22nd day of October, 1996

Roger Weaver  
Notary Public Roger Weaver, Notary Public  
State of Maryland  
Commission expires Jan. 10, 1999

[NOTARIAL SEAL]

My Commission Expires: Jan. 10, 1999

ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of Industrial Investment Corporation, whose name is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, as such officer and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:



**ACKNOWLEDGMENT**

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of First Maryland Leasecorp, whose name 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 or she, as such officers and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

**ACKNOWLEDGMENT**

State of Ohio )  
 ) ss.  
County of Crawford )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Philip S. Hesby, the President of Industrial Investment Corporation, whose name is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, as such officer and with full authority, executed the same voluntarily on the date first written above.

Given under my hand and official seal this 21st day of October, 1996.

Rebecca J. Kronenberger  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

**REBECCA J. KRONENBERGER**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 5/4/2000

**EXHIBIT A**

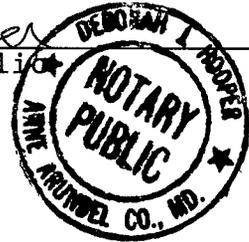
**20 PD Covered Hopper Railcars with reporting marks and numbers ERCX 5025 through ERCX-5044.**

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that the attached Intercreditor Agreement is a true and complete copy of said Intercreditor Agreement.

WITNESS my hand and seal this 24<sup>th</sup> day of October, 1996.

Deborah Hooper  
Notary Public



My Commission Expires: 7/27/98