

RECORDATION NO. 24765 FILED

JAN 12 2004 2-53 PM

SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

January 12, 2004

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are three (3) copies of a Memorandum of Equipment Lease, dated January 9, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

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

Lessor: Merrill Lynch Capital  
222 North LaSalle Street  
17<sup>th</sup> Floor  
Chicago, IL 60601

Lessee: Railtex, Inc.  
5300 Broken Sound Blvd, NW  
2<sup>nd</sup> Floor  
Boca Raton, FL 33487

A description of the railroad equipment covered by the enclosed document is:

14 locomotives bearing reporting marks and road numbers attached hereto

Mr. Vernon A. Williams  
January 12, 2004  
Page Two

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

Memorandum of Equipment Lease

Also enclosed is a check in the amount of \$30.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anr  
Enclosures

**SCHEDULE A To  
MEMORANDUM OF EQUIPMENT LEASE  
Between**

**MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services, Inc. and RAILTEX, INC.**

Schedule of Railroad Equipment

<u>Locomotive Type/ Road Numbers</u>	<u>Year Built</u>	<u>Railroad</u>
GP-9 Number 1463	1959	OTVR
GP-9 Number 1483	1959	OTVR
GP-9 Number 1484	1959	OTVR
GP-38 Number 3869	1969	NECR
GP-10 Number 1001	1962	CSCD
GP-10 Number 1002	1962	CSCD
GP-38-2 Number 3865	1977	HESR
GP-38-2 Number 3866	1976	HESR
GP-38-2 Number 3867	1977	HESR
GP-38-2 Number 3868	1977	HESR
GP-38 Number 3890	1969	CPDR
GP-38 Number 3891	1969	CPDR
GP-20 Number 2037	1962	SJVR
GP-20 Number 2036	1962	SJVR

MEMORANDUM OF EQUIPMENT LEASE JAN 12 2004 2-53 PM

SURFACE TRANSPORTATION BOARD

THIS MEMORANDUM OF EQUIPMENT LEASE dated as of January 9, 2004 by and between MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services Inc., a Delaware corporation, hereinafter called "Lessor", and RAILTEX, INC., a Texas corporation, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into that certain Equipment Lease effective as of January 9, 2004 (the "Agreement");

WHEREAS, the railroad equipment (the "Locomotives") leased under the Agreement is described on Schedule A attached hereto; and

WHEREAS, the parties desire to confirm the lease on the terms set forth in the Agreement;

NOW, THEREFORE, the parties hereto hereby agree as follows:

- 1. Lessor hereby leases the Locomotives to the Lessee, and Lessee leases the Locomotives from Lessor, on the terms set forth in the Agreement.
- 2. The term of the Agreement commenced effective on January 9, 2004 and expires January 31, 2011.
- 3. The terms of the Agreement are incorporated herein by reference.

LESSOR:

MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services Inc.

By [Signature]

Its VICE President

LESSEE:

RAILTEX, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

Filed Date: \_\_\_\_\_  
Recordation No: \_\_\_\_\_

**MEMORANDUM OF EQUIPMENT LEASE**

THIS MEMORANDUM OF EQUIPMENT LEASE dated as of January 9, 2004 by and between MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services Inc., a Delaware corporation, hereinafter called "Lessor", and RAILTEX, INC., a Texas corporation, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into that certain Equipment Lease effective as of January 9, 2004 (the "Agreement");

WHEREAS, the railroad equipment (the "Locomotives") leased under the Agreement is described on Schedule A attached hereto; and

WHEREAS, the parties desire to confirm the lease on the terms set forth in the Agreement;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Lessor hereby leases the Locomotives to the Lessee, and Lessee leases the Locomotives from Lessor, on the terms set forth in the Agreement.
2. The term of the Agreement commenced effective on January 9, 2004 and expires January 31, 2011.
3. The terms of the Agreement are incorporated herein by reference.

LESSOR:

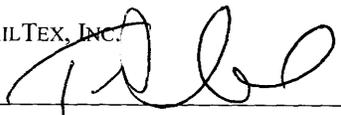
MERRILL LYNCH CAPITAL, a division of Merrill  
Lynch Business Financial Services Inc.

By \_\_\_\_\_

Its \_\_\_\_\_

LESSEE:

RAILTEX, INC.

By  \_\_\_\_\_

Its Vibe President \_\_\_\_\_

Filed Date: \_\_\_\_\_  
Recordation No: \_\_\_\_\_

STATE OF ILLINOIS)  
 )            SS  
COUNTY OF COOK )

On this 7<sup>th</sup> day of January, 2004, before me personally appeared Steve Coley, to me personally known who being duly sworn, did depose and say that such person is Vice President of MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services Inc. and that the foregoing document was signed on behalf of said corporation by authority of its board or directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[SEAL]

K Condon  
Notary Public



STATE OF \_\_\_\_\_ )  
 )            SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of January, 2004, before me personally appeared \_\_\_\_\_, to me personally known who being duly sworn, did depose and say that such person is \_\_\_\_\_ of RAILTEX, INC. and that the foregoing document was signed on behalf of said corporation by authority of its board or directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[SEAL]

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

STATE OF ILLINOIS)  
 )  
 ) SS  
COUNTY OF COOK )

On this \_\_\_\_\_ day of January, 2004, before me personally appeared \_\_\_\_\_, to me personally known who being duly sworn, did depose and say that such person is \_\_\_\_\_ President of MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services Inc. and that the foregoing document was signed on behalf of said corporation by authority of its board or directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[SEAL]

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

STATE OF Texas )  
 )  
 ) SS  
COUNTY OF Bexar )

On this 8th day of January, 2004, before me personally appeared Todd N. Ceci to me personally known who being duly sworn, did depose and say that such person is Vice President of RAILTEX, INC. and that the foregoing document was signed on behalf of said corporation by authority of its board or directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

[SEAL]



Kelly C. Houston  
Notary Public

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