

RECORDATION NO. 9060-C Filed & Recorded

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9060 Filed & Recorded

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION
Oakington General Partnership
7411 Riggs Road
Hyattsville, Maryland

RECORDATION NO. 9060-A Filed & Recorded

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9060-A Filed & Recorded October 4, 1977

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

H. Gordon Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 9060-B Filed & Recorded

NOV 4 1977-12 45 PM

Dear Mr. Homme:

INTERSTATE COMMERCE COMMISSION

Pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended, and the regulations of the Interstate Commerce Commission promulgated thereunder, we are transmitting for filing or recording executed counterparts or originals and true and correct copies of the following documents:

1. Lease and Management Agreement dated as of October 31, 1977, between National Railway Utilization Corporation, as lessee, and Oakington General Partnership, as lessor;
2. Conditional Sale Agreement dated as of October 31, 1977, between Evans Transportation Company, as vendor, and Oakington General Partnership, as vendee, and additionally executed by National Railway Utilization Corporation;
Agreement and Assignment of Conditional Sale Agreement dated as of October 31, 1977, between Evans Transportation Company, as assignor, and Sun Life Insurance Company of America, as assignee, together with an Acknowledgment by Oakington General Partnership;
4. Assignment of Lease and Management Agreement dated as of October 31, 1977, between Oakington General Partnership, as assignor, and Sun Life Insurance Company of America, as assignee, together with the Acknowledgment and Consent of National Railway Utilization Corporation;

7-3291274

NOV 4 1977
See \$ 170
CC Washington, D. C.

Charles R. Matthews
Matthews R. Matthews

NOV 4 1977
FREE COPY

H. Gordon Homme, Jr.
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November 4, 1977

5. Residual Interest Agreement dated as of October 31, 1977, between Oakington General Partnership, Sun Life Insurance Company of America and National Railway Utilization Corporation.

The names and addresses of the parties to the transaction are listed below under the title of the document to which they are parties.

LEASE AND MANAGEMENT AGREEMENT:

National Railway Utilization Corporation *Lessee*
860 Suburban Station
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Oakington General Partnership *Lessee*
7411 Riggs Road
Hyattsville, Maryland

CONDITIONAL SALE AGREEMENT:

National Railway Utilization Corporation *if listed*
860 Suburban Station
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Oakington General Partnership *Lessee*
7411 Riggs Road
Hyattsville, Maryland

Evans Transportation Company *Vendor*
2200 E. Devon Avenue
Des Plaines, Illinois 60018

RESIDUAL INTEREST AGREEMENT:

National Railway Utilization Corporation *Lessee*
860 Suburban Station
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Oakington General Partnership *Lessee*
7411 Riggs Road
Hyattsville, Maryland

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Sun Life Insurance Company of America *assigned*
20 South Charles Street
Baltimore, Maryland 21201

AGREEMENT AND ASSIGNMENT:

Evans Transportation Company *assigned*
2200 E. Devon Avenue
Des Plaines, Illinois 60018

Sun Life Insurance Company of America *assigned*
20 South Charles Street
Baltimore, Maryland 21201

ASSIGNMENT OF LEASE AND MANAGEMENT AGREEMENT:

Oakington General Partnership *assigned*
7411 Riggs Road
Hyattsville, Maryland

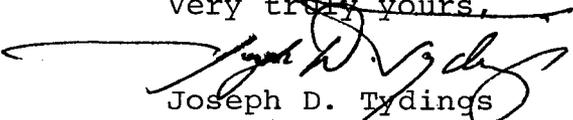
Sun Life Insurance Company of America *assigned*
20 South Charles Street
Baltimore, Maryland 21201

A general description of the Equipment covered by the Lease and Management Agreement and the Conditional Sale Agreement is contained in Exhibit A to this letter.

The above identified documents have not been previously recorded with the Interstate Commerce Commission. Please accept for recordation two counterparts of each document, stamp the remaining counterparts with the appropriate recordation number and return them with your confirmed receipt by my delivering messenger. Please cross index document number two above under the name of National Railway Utilization Corporation.

The filing and recordation fees in the amount of \$170.00 are submitted herewith.

Very truly yours,


Joseph D. Tydings
Managing Partner

Oakington General Partnership

mm
Enclosure

Exhibit A

to

Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Railroad Marking Numbers (Both Inclusive)</u>	<u>Unit Purchase Price (See Article 4)</u>	<u>Total Purchase Price</u>	<u>Total Conditional Sale Indebtedness</u>	<u>Estimated Time and Place of Delivery</u>
77 ton, 50' 6" Class X1 boxcars	77 ton, 50' 6" rigid underframe, single sheaved boxcars, as further described in Builder's Specifications 77-70 (WO 1416), dated June 13, 1977, as revised October 4, 1977	100	NSL 101000-101099	\$33,100	\$3,310,000	\$3,435,000	October 31, 1977 through December 31, 1977. FOT Decatur, Georgia

11/4/77

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Joseph D. Tydings
Managing Partner
Oakington General Partnership
7411 Riggs Road
Hyattsville, Maryland

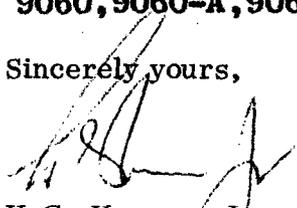
Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **11/4/77** at **12:45pm**,

and assigned recordation number(s) **9060, 9060-A, 9060-B, 9060-C & 9060-D**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

See F
for changes in
Nov

9050
RECORDATION NO. Filed & Recorded

NOV 4 1977-12 45 PM

LEASE AND MANAGEMENT AGREEMENT
INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made this 31st day of October, 1977,
between NATIONAL RAILWAY UTILIZATION CORPORATION, a South
Carolina corporation, ("NRUC") and OAKINGTON GENERAL PARTNERSHIP,
a Maryland general partnership (the "Lessor").

W I T N E S S E T H:

WHEREAS, the Lessor is entering into a conditional
sale agreement (the "Conditional Sale Agreement") with Evans
Transportation Company (the "Vendor"), wherein the Vendor has
agreed to manufacture, sell and deliver to the Lessor and
Lessee the 100 boxcars described in the schedule attached here-
to and made a part hereof as Exhibit A (the "Boxcars"); and

WHEREAS, Lessor desires to lease to and place under
the management of NRUC the Boxcars and NRUC agrees to make a
good faith effort to utilize said Boxcars on an equal priority
basis with other boxcars owned and/or managed by NRUC; and

WHEREAS, NRUC is willing to lease the Boxcars from
Lessor and assume and perform the management duties described
herein, subject to the terms hereof, and to pay the rent pro-
vided herein.

NOW, THEREFORE, in consideration of the premises
and the mutual covenants herein contained, the parties agree
as follows:

1. Scope of Agreement. Lessor agrees to deliver and

lease the Boxcars to NRUC to be leased and managed by NRUC and placed in the service of a railroad controlled by NRUC or with which NRUC has executed a per diem lease subject to the terms of this Agreement.

2. Description of Boxcars. The Boxcars which are subject to this Agreement shall be the 100 Boxcars of the type and description set forth in Exhibit A. The parties agree that Lessor shall at all times be and remain the owner of the Boxcars subject to the rights of NRUC hereunder and of the railroad whose markings are placed upon the Boxcars to utilize the Boxcars in its service until this Agreement is terminated, subject to the provisions of this Agreement and the rights of the Vendor under the Conditional Sale Agreement.

3. Term. This Agreement shall remain in force until it shall have been terminated as to all of the Boxcars. The term of this Agreement with respect to each Boxcar shall commence upon the date of delivery of such Boxcar as provided in Paragraph 4 and shall continue for ten (10) years from the date of May 15, 1978, unless sooner terminated as hereinafter provided. Lessor shall have the option upon the conclusion of the ten (10) year term to extend this Agreement for an additional term of five (5) years. Notice of the exercise of this option shall be given to NRUC in writing not later than six (6) months prior to the expiration of the ten (10) year term.

4. Delivery and Inspection of Cars. The Lessor hereby appoints NRUC its agent for inspection and acceptance of the Boxcars pursuant to Article 3 of the Conditional Sale Agreement. The Lessor shall cooperate with NRUC in the delivery of cars in accordance with NRUC's instructions. NRUC shall have the right to approve the manufacturer for all Boxcars hereafter made subject to this Agreement and may specify that with respect to those Boxcars which are not yet manufactured, some or all of the Boxcars be manufactured by the Golden Tye shops, provided that the price of the Boxcars shall be at the then current price for comparable boxcars manufactured by Golden Tye, which price shall not exceed by more than ten percent (10%) the cost of comparable boxcars manufactured by other boxcar manufacturers.

5. Management Duties. The management functions to be performed by NRUC shall include those set forth in this Paragraph 5 and such other functions and duties as shall be agreed upon by the parties:

(a) NRUC shall manage and arrange for the utilization of the Boxcars at NRUC's complete discretion (subject to provisions of Paragraph 5(g) hereof) and shall perform all necessary administrative acts to ensure the proper utilization of said Boxcars and the protection of the Lessor's interest therein.

(b) NRUC shall make available for the Boxcars the markings of a railroad controlled by NRUC or with which NRUC has executed a per diem lease. Lessor agrees that on or before

delivery of the Boxcars to NRUC, the Boxcars shall be lettered with such railroad markings and the name and/or other insignia used by such railroad. Such name or insignia shall comply with all applicable regulations. The NRUC logotype insignia shall be affixed to each side of the cars in standard size.

(c) NRUC shall prepare all documents for filing relating to the registration, maintenance and record keeping functions related to the use of the Boxcars in accordance with American Association of Railroads ("AAR") railroad interchange agreements. Such matters shall include, but are not limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars; (ii) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register directing, inter alia, that all correspondence from railroads using such Boxcars shall be addressed to NRUC; and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or other regulatory agencies with respect to the Boxcars. Any record keeping performed by NRUC and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by NRUC in a form suitable for reasonable inspection by Lessor from time to time during regular business hours of NRUC. NRUC shall supply Lessor with such reports containing information usually available to NRUC regarding the use of the Boxcars as Lessor may reasonably request.

(d) NRUC shall perform all car accounting services for the Boxcars and send to Lessor on each Payment Date (as defined in Paragraph 6) a report itemizing all revenues with respect to the Boxcars.

(e) NRUC will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during the term of this Agreement, including but not limited to all liability and property damage insurance, government fees (except for local or state property taxes), repairs, maintenance and servicing. Lessor hereby transfers and assigns to NRUC for and during the term of this Agreement all of its right, title and interest in any warranty in respect to the Boxcars. Any recovery under such warranty shall be made payable to NRUC, deposited in the escrow account provided by Paragraph 8 hereof, and be used to repair or replace the Boxcars as provided in Paragraph 8.

(f) NRUC shall make or cause to be made such inspections of and maintenance and repairs to the Boxcars as may be required, including an inspection, which shall take place during the period from the ninth to the twelfth month subsequent to the date of this Agreement, of a representative sample of not less than fifteen percent of the Boxcars to determine whether there are any defects in the Boxcars which may be the subject of a possible claim under the Vendor's warranty granted under the Conditional Sale Agreement and shall notify the Lessor

with respect to any such defects. NRUC shall also make or cause to be made at its expense, all alterations, modifications, or replacements of parts as shall be necessary to maintain the Boxcars in good operating condition (ordinary wear and tear excepted), including any alterations or modifications required by Paragraph 10 hereof, throughout the term of this Agreement. NRUC shall be responsible for arranging repairs and maintenance at its expense.

(g) NRUC agrees to use its good faith efforts to provide the same rate of utilization for the Boxcars that it achieves for all other boxcars which it either owns or manages. It is understood and agreed that NRUC is managing boxcars for its own account and that NRUC may have conflicts of interest between the management of Lessor's Boxcars and other boxcars owned, controlled or managed by NRUC. Although there can be no assurance that the Lessor's Boxcars will earn revenues equal to those of other boxcars owned, controlled or managed by NRUC, NRUC agrees to use its good faith efforts to integrate the Boxcars into the fleet of boxcars controlled by NRUC and to manage the Boxcars in the same manner as all other boxcars managed or owned by NRUC. NRUC shall on a good faith basis give the same treatment to the Boxcars as is given to any other boxcars in NRUC's fleet, including those boxcars owned by NRUC, and shall not show preference to any boxcars in the assignment of routes or in the assignment of boxcars to

particular railroads or shippers.

6. Rental Charges.

(a) In consideration of the use of the leased Boxcars, NRUC agrees to pay the rental charges described below to Lessor for the use of the Boxcars, said rental charges to commence on February 15, 1978 and to be payable thereafter on each February 15, May 15, August 15, and November 15 of each year during the term of this Agreement (the "Payment Date"). The rental charges shall be an amount equal to all mileage charges and car hire revenues (including both straight and incentive per diem) collected with respect to the use and operation of the Boxcars for the three month period ending with the last day in the month immediately preceding each Payment Date (the "measurement quarter").

(b) NRUC shall have no liability for any reclaims by any railroad of any car hire charges at any time (provided, however, that NRUC shall monitor any such reclaims as provided in Paragraph 16 of this Agreement).

(c) NRUC may withhold from such rental charges the management and maintenance fees provided in Paragraphs 7 and 8.

7. Management Fees. As total payment for the management services to be performed by NRUC under the terms of this Agreement, Lessor agrees to pay Two Dollars Seventy Cents (\$2.70)

per Boxcar for each day during the term of this Agreement, provided, however, that in the event the utilization rate (which is defined as a fraction, the numerator of which is the total car hire revenues collected during the four (4) most recent consecutive measurement quarters (as defined in Paragraph 6) and the total car hire revenues which are uncollected (but for which there are outstanding valid claims of NRUC) on the last day of the most recent measurement quarter, provided, however, that after the eighth (8th) measurement quarter such uncollected car hire revenues shall not be included in any future measurement quarter in determining such numerator, and the denominator of which is the maximum total amount of car hire revenues which could have been earned during such corresponding four (4) measurement quarters if the Boxcars had been utilized at all times) at the end of any four (4) consecutive measurement quarters is less than eighty-six percent (86%), the management fee shall be reduced by Four Cents (\$0.04) per day per Boxcar for each percent or portion thereof by which the utilization rate shall be less than eighty-six percent (86%) to a minimum daily charge per Boxcar per day of One Dollar Fifty Cents (\$1.50). The management fee shall under no circumstances be less than One Dollar Fifty Cents (\$1.50) per Boxcar per day. In the event that the ICC during the term of this Agreement shall increase the boxcar hire rates (including incentive per diem) and mileage rates over the rates which are currently in effect, NRUC shall be entitled to additional daily management fees equal to twenty-five percent (25%) of the increase in such boxcar hire and mileage

rates (including incentive per diem) to the extent the increase in such boxcar hire rates and mileage rates are collected.

8. Maintenance Fee. Lessor shall pay to NRUC a maintenance fee of One Dollar Eighty-One Cents (\$1.81) per Boxcar per day during the term of this Agreement. The maintenance fees shall be held in escrow by NRUC in an account completely segre-

gated from all other funds of NRUC (the "escrow account"), and the funds in the escrow account shall only be distributed for the purpose of maintenance of the Boxcars. The escrow account shall be established at a national bank with a capital and undivided surplus of at least \$25 million to be chosen by NRUC and approved by the Lessor (which approval shall not be unreasonably withheld). The funds contained in the escrow account shall provide additional security to Lessor for NRUC's obligations under this Agreement (NRUC hereby granting Lessor a security interest in such account), and shall be subject to payment to the Lessor in the event of a default by NRUC under this Agreement, and applied towards the satisfaction of NRUC's obligations hereunder. Such payment shall not in itself satisfy or terminate NRUC's obligations to maintain the Boxcars. Upon termination of this Agreement otherwise than pursuant to an event of default by NRUC, any funds contained in the escrow account and not expended for maintenance shall be retained by NRUC, provided, however, Lessor shall have the right to inspect the Boxcars at the termination of this Agreement to determine that the Boxcars are in good working order and repair (normal wear and tear excepted), and if in the opinion of Lessor such Boxcars are not in good working order or repair, NRUC shall cause to be made at its expense (using first the funds from the escrow account, and secondly its own funds) such repairs as are necessary to restore the Boxcars to such condition. The maintenance fee shall be subject to increases (but not decrease) to conform to AAR billing procedure increases as set forth in the

office manual of Interchange Rules adopted by the Association of American Railroads Mechanical Division, Operations and Maintenance Department; provided, however, that such maintenance fee shall not be increased in an amount greater than seventy-five percent (75%) of any increase in the daily boxcars hire rate (including incentive per diem). NRUC shall provide to Lessor not less than once a year a report listing all funds collected and dispersed from the escrow account, together with a balance of the account. Lessor shall at all reasonable times have the right to inspect and audit NRUC's books and records with respect to the escrow account.

9. Insurance. NRUC will at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained with respect to all Boxcars subject hereto public liability insurance in amounts of not less than \$3,000,000 for each person and \$3,000,000 for each occurrence, and physical loss and damage insurance in an amount equal to the Casualty Value of the Boxcars (as defined in Article 9 of the Conditional Sale Agreement), all such insurance containing such terms, and in such form, for such purposes and written by such companies as may be satisfactory to the Lessor. NRUC will furnish Lessor concurrently with the execution thereof and thereafter at intervals of not more than twelve (12) calendar months proof of insurance coverage for the ensuing year. NRUC shall advise Lessor promptly of any lapse of any such insurance or of any default of payment of any premium

and of any other act or omission of NRUC of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Boxcars. All insurance shall be taken out in the name of, and be payable to, NRUC and Lessor (or its assignee) as their interests may appear. The policies or certificates shall provide that there shall be no recourse against Lessor for the payment of premiums and shall provide for at least twenty (20) business days' prior written notice to be given to Lessor (or its assignee) by the underwriters in the event of cancellation. If NRUC shall default in the payment of any premium in respect of any such insurance policies, Lessor may, but shall not be obligated to, pay such premium, and if Lessor does so, NRUC shall repay the amount thereof to Lessor on demand (plus interest at the rate of 12% per annum).

10. Possession and Use. NRUC shall be entitled to the possession of the Boxcars and shall also be entitled (a) to the use of the Boxcars by it or any affiliate upon lines of railroad owned or operated by it or any affiliate or upon lines of railroad over which NRUC or any such affiliate has trackage or other operating rights or over which railroad equipment of NRUC or any such affiliate is regularly operated pursuant to contract; (b) to permit the use of the Boxcars upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; and (c) to sublease any Boxcar

or Boxcars to other companies incorporated under the laws of any state of the United States or the District of Columbia for use in connection with their operations, but only upon delivery of a copy of such sublease to Lessor, which sublease shall be subject to all the terms and conditions of this Agreement and the Conditional Sale Agreement; provided, however, that NRUC shall not in any case assign or permit the assignment of any Boxcar to service involving the regular operation and maintenance thereof outside the United States of America, and provided further, that in all such cases the railroad whose markings appear on the Boxcars shall have complied with all provisions of Part 1036, Sub-Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Boxcars, and shall be eligible and entitled as provided therein, to collect incentive per diem charges on the Boxcars in possession of other railroads, and to apply the incentive per diem charges to the payment of all rentals due under this Agreement and any sublease agreement.

NRUC will comply, and will cause every sublessee to comply, and to the extent that it has physical possession of the Boxcars and/or can control the use of the Boxcars will cause each user of the Boxcars to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Boxcars) with all laws of the jurisdictions in which operation of the Boxcars may extend, with the interchange rules of the Association of American Railroads and with all

lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Boxcars, to the extent that such laws and rules affect the title, operation or use of the Boxcars, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Boxcars, NRUC will conform therewith at its own expense (using first the funds from the escrow account by Paragraph 8 hereof, and secondly its own funds); provided, however, that either the Lessor or NRUC may, in good faith, contest the validity or application of any such law or rule in any reasonable manner at the expense of the contesting party, provided further that in the opinion of the party not contesting such law or rule (the "opposite party"), such contest does not adversely affect the property or rights of the opposite party under this Agreement. NRUC will not directly or indirectly create, incur, assume or suffer to exist, any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or other interest granted in this Agreement or in any Exhibit thereto. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time by persons claiming through or under NRUC.

11. Default. The occurrence of any of the following events shall be events of default:

(a) The nonpayment by either party of any sum required hereunder to be paid to the other party, and such failure to pay shall continue for ten (10) days after written notice thereof.

(b) Any material representation of either party under this Agreement shall prove to be incorrect in any material respect on the date on which it was made.

(c) The default by either party under any other term, covenant or condition of this Agreement which is not cured within ninety (90) days after written notice thereof from the other party.

(d) Any affirmative act of insolvency by NRUC, or the filing by NRUC of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(e) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against NRUC that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of NRUC, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(f) The subjection of any of the property of

NRUC to any levy, seizure, assignment, or application for sale for or by any creditor or governmental agency which substantially impairs the capacity of NRUC to fulfill its performance under this Agreement.

(g) The occurrence of an event of default as provided in Article 19 of the Conditional Sale Agreement.

12. Remedies Upon Default. Upon the occurrence of any event of default which is caused by any action or inaction by NRUC, Lessor may, at its option, terminate this Agreement and/or:

(a) Proceed by appropriate court action to enforce performance by NRUC of this Agreement or to recover financial damages which result from a breach hereof (and NRUC agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcements);

(b) By notice in writing to NRUC, terminate the right of possession of NRUC to the Boxcars, whereupon all right and interest of NRUC in the Boxcars shall terminate; and thereupon Lessor may demand delivery of the Boxcars by NRUC pursuant to the terms of Paragraph 13 hereof and may by its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same, free from any right of NRUC.

(c) Demand that an escrow account be established

to receive all car hire revenues and mileage charges and any other sums accruing and payable to NRUC with respect to the Boxcars, and NRUC shall take all necessary action to set up the escrow account and to provide for the direct payment of all such car hire revenues, mileage charges and other sums directly to the escrow account for payment to the Lessor, or the Lessor's assignee, as provided in this Agreement (subject to the payment by the escrow agent the management and maintenance fees earned and payable to NRUC under the Management Agreement). Such escrow account will be established at a national bank with a capital and undivided surplus of at least \$25,000,000 to be chosen by NRUC and approved by the Lessor (which approval shall not be reasonably withheld).

• Upon the occurrence of an event of default which is caused by action or inaction by the Lessor, NRUC may at its option terminate this Agreement and/or proceed by appropriate court action to enforce performance by Lessor of this Agreement or recover financial damages which result from a breach thereof (and Lessor agrees to bear the costs and expenses of NRUC, including reasonable attorney's fees, in securing such enforcement).

Each and every power and remedy hereby specifically given to the Lessor or NRUC shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the

Lessor or NRUC. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Lessor or NRUC in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted by either the Lessor to NRUC or NRUC to Lessor shall not otherwise alter or affect the respective rights and obligations of the Lessor and NRUC. The acceptance of any payment of the Lessor or NRUC after it shall have become due hereunder shall not be deemed to alter or affect the respective rights and obligations of the Lessor and NRUC with respect to any subsequent payments or defaults therein.

13. Termination, Delivery of Boxcars. Upon the termination of this Agreement pursuant to the occurrence of an event of default as defined by Paragraph 11 hereof caused by action or inaction by NRUC, Lessor may demand delivery of the Boxcars by NRUC to the Lessor, in which case, the Lessor shall designate a reasonable point or points on the lines or premises of NRUC or on any lines of railroad or other premises approved by the Lessor for the delivery of the Boxcars to the Lessor, and NRUC shall, at its own expense, forthwith and in the usual manner,

cause the Boxcars to be moved to such point or points and shall there deliver the Boxcars or cause them to be delivered to the Lessor. At the option of the Lessor, the Lessor may keep the Boxcars on any of the railroad lines or premises which, or the use of which, are owned or controlled by NRUC, (directly or indirectly) or on any lines of railroad or other premises approved by the Lessor and reasonably convenient to NRUC for a period not exceeding six months, provided, however, that such storage shall be on the lines of other railroads or other premises approved by Lessor if the storage on NRUC's line would interfere with the operation of the railroads of NRUC or its affiliates. NRUC agrees either to provide the facilities necessary for such storage or to pay all costs and expenses of such storage, and that such storage shall be at no cost or expense to the Lessor. If the termination of this Agreement and demand for possession by the Lessor occurs for any reason other than as stated above, NRUC shall, if requested by the Lessor, take all reasonable action to assist the Lessor in securing the return of the Boxcars, and shall take all reasonable steps to cause the Boxcars to be delivered to points designated by the Lessor, and to the extent available, shall provide storage for the Boxcars on its own or affiliated railroad lines, provided, however that the Lessor shall pay to NRUC the reasonable cost usually charged for any such retaking, delivery or storage of the Boxcars. This agreement

to deliver the Boxcars and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against NRUC requiring specific performance hereof.

A Boxcar shall be deemed terminated and no longer subject to this Agreement upon the removal of the railroad markings from the Boxcar placed thereon by NRUC and the placing thereon of such markings as may be designated by Lessor. Notwithstanding anything provided above, if the Boxcars are on the railroad line of NRUC or its affiliates upon any expiration or termination of this Agreement, or are subsequently returned to NRUC's railroad line, NRUC shall grant immediate access to Lessor or Lessor's agents to remove the railroad markings from the Boxcars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, if so requested by Lessor, NRUC shall use its best efforts to load such Boxcars with freight and deliver them to a connection carrier for shipment. NRUC hereby expressly waives any and all claims against the Lessor and its agents or agents for damages of whatever nature in connection with any retaking of any of the Boxcars in any reasonable manner.

From and after termination of this Agreement with respect to any Boxcar and until its return to Lessor, all revenues earned by such Boxcar shall be paid to Lessor as additional rental for use of the Boxcar during the term thereof.

14. Additional Termination Provisions.

(a) In the event the utilization rate (as defined in Paragraph 7 hereof) falls below eighty-six percent (86%) and the said rate continues to be below eighty-six percent (86%) for a period of more than four consecutive measurement quarters during the term of this Agreement, Lessor shall have the right to cancel and terminate this Agreement by giving written notice to that effect to NRUC.

(b) NRUC represents that the principal officers of its company are John H. Rees and John A. Mariscotti. In the event that both of the foregoing individuals cease to be affiliated with the company within any consecutive eighteen (18) month period, Lessor shall have the right at any time during two (2) years after the said eighteen (18) month period to cancel and terminate this Agreement by giving written notice to that effect to NRUC.

15. Indemnities. NRUC will defend, indemnify and hold harmless Lessor from and against:

(a) Any and all loss or damage of or to the Boxcars, usual wear and tear excepted;

(b) Any claim, cause of action, damage, liability, cost or expense (including legal fees and costs), to which the Lessor or the Boxcars may be subject or which may be incurred in any manner by or for the account of the Lessor or any such Boxcar as a result of the use, maintenance, repair, replacement, operation or the condition thereof, except personal property taxes.

NRUC shall have no liability under Paragraph 5(g) except for misfeasance, bad faith or gross mismanagement. The indemnity contained in this Paragraph 15 shall survive termination of this Agreement.

16. Accounts Receivable. NRUC agrees that it shall at all times follow normal, reasonable and prudent collection procedures in the collection of accounts receivable arising from the car hire revenues (including both straight and incentive per diem), mileage charges and other sums accruing from the operation and use of the Boxcars. Such procedures will provide the same monitoring and collection efforts which NRUC expends on accounts receivable arising with respect to other boxcars owned and managed by NRUC, and shall provide the same efforts and procedures used by NRUC on other boxcars owned and managed by it to monitor and settle any claims by railroads operating the Boxcars for credits or repayments with respect to any such car hire revenues, mileage charges and other sums. NRUC shall

within 30 days of the end of each calendar quarter provide to Lessor an aging of the accounts receivable arising with respect to the Boxcars.

17. Warranties and Covenants. NRUC represents, warrants and covenants that:

(a) NRUC is a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(b) The entering into the performance of this Agreement will not violate any judgment, order, law or regulation applicable to NRUC, or result in any breach of or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NRUC or on the Boxcars pursuant to any instrument to which NRUC is a party or by which it or its assets may be bound.

(c) There is no action or proceeding pending or threatened against NRUC before any court or administrative agency or other governmental body which might result in any material adverse effect on the business properties and assets, or conditions, financial or otherwise, of NRUC.

(d) There is no fact which NRUC has not disclosed to Lessor in writing, nor is NRUC a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as NRUC can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of NRUC or the ability of NRUC to perform its obligations under this Agreement.

(e) Neither NRUC, its affiliated railroad or any sublessee, during the years 1964-1969, has purchased any Boxcars. NRUC, its affiliated railroad or any sublessee, shall be eligible and entitled to collect incentive per diem charges on the Boxcars in the possession of other railroads and to apply the incentive per diem charges to the payment of all rentals due under this Agreement and any sublease agreement.

(f) Neither NRUC or its counsel know of any requirements for recording, filing or depositing this Agreement, other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Lessor or its assignee or mortgagee, in the United States of America.

Upon request of Lessor or its assignee or mortgagee at any time or times, NRUC shall deliver to Lessor an opinion of

its counsel addressed to Lessor or its assignee or mortgagee, in form and substance satisfactory to Lessor or its assignee or mortgagee, which opinion shall confirm and be to the effect of the matters set forth in this Paragraph 17(a) through (f).

18. Sublease and Assignment.

(a) NRUC shall not have the right to assign this Agreement.

(b) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to NRUC. This Agreement and NRUC's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the Boxcars heretofore or hereafter created by Lessor (including the Conditional Sale Agreement). If Lessor shall have given written notice to NRUC stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable to NRUC hereunder, NRUC shall thereafter make such payments to the designated assignee. NRUC hereby agrees that any assignee of the Lessor shall be entitled to receive such rentals and other sums as are provided herein to be paid by NRUC free from all defenses, setoffs and counterclaims or recoupments of any kind that NRUC may be able to assert against Lessor or any other

person. It is expressly agreed that whether or not specifically stated herein any such assignee shall be entitled to all rights of inspection, assistance by NRUC, and approval with respect to any action to be taken by NRUC, which are granted to the Lessor under this Agreement and shall be entitled to any reports produced by NRUC for the Lessor.

The making of an assignment, if authorized, or sublease by NRUC or an assignment by Lessor shall not serve to relieve Lessor or NRUC of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee or unless expressly assumed in writing by such sublessee or assignee.

19. Arbitration. Any dispute arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

20. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Lessor at: c/o Joseph D. Tydings
Tenth Floor
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

NRUC at: 860 Suburban Station
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

or such other address as either party may from time to time designate by such notice in writing to the other.

(c) NRUC shall keep the Boxcars free from any encumbrances or liens, which may be a cloud upon or otherwise affect the title of Lessor, which arise out of any suit involving NRUC or any act or omission or failure of NRUC or NRUC's failure to comply with the provisions of this Agreement and shall promptly discharge any such lien, encumbrance or legal process. NRUC shall take all action requested by Lessor to confirm the interest of Lessor in the Boxcars as Lessor and that NRUC has no interest in the Boxcars other than as lessee hereunder.

(d) During the continuance of this Agreement, Lessor shall have the right, at its own cost and expense, to inspect the Boxcars at any reasonable time or times wherever the Boxcars may be.

(e) NRUC and its subsidiaries shall maintain their capability to monitor the location of the Boxcars and shall at any reasonable time make available this monitoring information to the Lessor and shall assist the Lessor in ascertaining the location of the Boxcars.

(f) No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of any right, power, or remedy preclude any other or future exercise thereof or the exercise of any other right, power, or remedy.

(g) This Agreement shall be governed by and construed according to the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed

this Agreement as of the date above written.

NATIONAL RAILWAY UTILIZATION CORPORATION

Date: 11-1-77

By: *John A. Hancock*
President

ATTEST:

L. W. Storzepel
Asst. Secretary

OAKINGTON GENERAL PARTNERSHIP

Date: 11-1-77

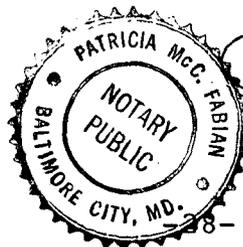
By: *Joseph D. Ryder* (SEAL)
Partner

WITNESS:

Eugene J. Stanton

(State of Maryland
(City of Baltimore

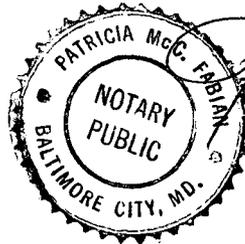
On this 1st day of November, 1977, before me personally appeared *Joseph D. Ryder* to me personally known, who, being by me duly sworn, says that he is a Partner of Oakington General Partnership; that said instrument was signed and sealed on behalf of said Partnership by authority of its Partners, and they acknowledge that the execution of the foregoing instrument was the free act and deed of said Partnership.



Patricia McC. Fabian
Notary Public
My Commission Expires: 7/1/78

(State of Maryland
(City of Baltimore

On this 1st day of November, 1977, before me personally appeared John A. Traversetti to me personally known, who, being by me duly sworn, says that he is the ^{vice} President of National Railway Utilization Corporation, and P. St. Streysek, to be personally known to be the Asst. Secretary of said 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 they acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation. •



Patricia McG. Fabian
Notary Public

My Commission Expires: 7/1/78

EXHIBIT A

LEASE SCHEDULE NO. 1

Lease Schedule, dated this 31st day of October, 1977, by and between National Railway Utilization Corporation (NRUC) and Oakington General Partnership (Lessor).

The Boxcars described herein are leased by NRUC subject to the terms and conditions of that certain Lease and Management Agreement of which this Schedule is a part between NRUC and Lessor, dated October 31, 1977.

DESCRIPTION OF CAR: 77 ton 50'6" rigid underframe single sheaved class XM boxcars

NUMBER OF CARS: 100

REPORTING NUMBERS AND MARKS: NSL 101000 - 101099 (both inclusive)

SPECIFICATION DESIGNATED BY LESSEE: Evans Transportation Company
(Southern Iron & Equipment
Company Division) Specifications
77-70 (WO 1416), dated June
13, 1977, as revised October
4, 1977

PLACE OF DELIVERY: Decatur, Georgia