

9060-C  
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NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

9060  
RECORDATION NO. .... Filed & Recorded

NOV 4 1977-12 45 PM

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

9060-A  
RECORDATION NO. .... Filed & Recorded

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

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

NOV 4 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

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

9060-B  
RECORDATION NO. .... 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;

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CC Washington, D. C.

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*Chas. J. ...*  
*Norman R. ...*

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 *of limited*  
860 Suburban Station  
1617 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103

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

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

RESIDUAL INTEREST AGREEMENT:

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

Oakington General Partnership *Vendor*  
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

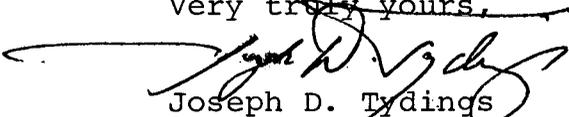
Sun Life Insurance Company of America *assigned*  
20 South Charles Street  
Baltimore, Maryland 21201

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

RECORDATION NO. 9060-4  
Filed & Recorded  
NOV 4 1977-12 45 PM  
INTERSTATE COMMERCE COMMISSION

*See E for changes in #5*

CONDITIONAL SALE AGREEMENT dated as of October 31, 1977 (the "Agreement"), among EVANS TRANSPORTATION COMPANY, an Illinois Corporation (the "Vendor" or "Builder" as more particularly set forth in Article 1 hereof), OAKINGTON GENERAL PARTNERSHIP (the "Vendee") and NATIONAL RAILWAY UTILIZATION CORPORATION ("NRUC").

WHEREAS, the Builder through its Southern Iron & Equipment Company Division desires to construct, sell and deliver to the Vendee, and the Vendee desires to purchase, the railroad equipment described in Exhibit A hereto (the "Equipment"); and

WHEREAS, NRUC has agreed to manage and maintain the Equipment pursuant to a Lease and Management Agreement dated October 31, 1977 by and between the Vendee and NRUC (the "Management Agreement"), and NRUC has joined in this Agreement in order to induce the Vendor to enter into this Agreement and to provide the financing provided for herein, and for the purpose of making certain representations, warranties and agreements to and with the Vendor as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, Evans Transportation Company, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any

assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means Evans Transportation Company, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Exhibit A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and NRUC (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee and NRUC at the place or places specified in Exhibit A hereto (or if Exhibit A does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Exhibit A hereto; provided, however, that no delivery of any unit of the Equipment shall be made until this Agreement has been filed pursuant to Section 20c of the Interstate Commerce Act; provided further, that Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (d) or (e) of Article 19 hereof or the occurrence of any event of default (as described in Article 19 hereof) or event which, with the lapse of time and/or demand, could constitute such an event of default.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this

Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, NRUC shall be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case NRUC shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as NRUC shall determine and as shall be reasonably acceptable to such Builder.

Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee and NRUC (it being understood that the Vendee may appoint NRUC as its representative and agent for purposes of acceptance of the Equipment) for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements

and standards applicable thereto, such inspector(s) or authorized representative(s) of the Vendee and NRUC shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Vendee and NRUC, and that such unit or units are marked in accordance with Article 13 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 17 hereof.

On acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 17 hereof.

ARTICLE 4. Purchase Price and Payment. The purchase price per unit (including all commissions and inspection and delivery fees, but excluding impositions required to be paid by Vendee pursuant to Article 8 hereof) is \$33,100 and is hereinafter referred to as the "Purchase Price." The Equipment shall be settled for in not more than four groups of units of the Equipment delivered to and accepted by the Vendee and NRUC (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean the date mutually agreed to by the Vendor, the Vendee and NRUC (not later than December 31, 1977, such date being herein called

the Cut-Off Date) occurring not more than ten business days following notice by the Builder that a Group is ready for delivery by presentation to the Vendee of an invoice for the Equipment to be delivered. The Closing Date shall be the date of a Closing Certificate in the form attached hereto as Exhibit B which shall be executed by the Vendor, the Vendee and NRUC for each closing. The Vendee and NRUC will deliver at each closing the Certificate or Certificates of Acceptance referred to in Article 3 hereof. The term "business days" as used in this paragraph means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Baltimore, Maryland, are authorized or obligated to remain closed.

At the final closing for the units of Equipment to be delivered hereunder, or if all units are not delivered, on the Cut-Off Date, the Vendor (but not the Builder) shall advance as a loan to the Vendee \$50,000 to be used by the Vendee for payment of any closing costs and administrative fees of the Vendee with respect to the purchase of the Equipment and all closings under this Agreement, and shall additionally advance to the Vendee as a loan \$75,000 to be placed in an escrow account at a national bank mutually agreed to the Vendee and Vendor (the "Reserve Account"), which account shall be maintained by the Vendee solely as a reserve and additional security for the payment of principal, interest and expenses which may be due hereunder. The terms and conditions of the Reserve Account are provided in the Reserve Account Agreement

executed of even date herewith by the Vendee and the Vendor. The Vendor hereby expressly agrees that all funds deposited in such Reserve Account shall be withdrawn only for the purpose of making principal interest or expense payments due under the terms of this Agreement.

The term "Conditional Sale Indebtedness" as used herein shall mean the sum of the Purchase Price for each unit of Equipment delivered hereunder (which shall be referred to as the "original amount"), plus the \$125,000 advanced as a loan to the Vendee as provided above, as reduced from time to time by principal payments made hereunder by the Vendee to the Vendor.

In consideration of the manufacture and delivery of the Equipment, the Vendee hereby promises to pay in cash to the Vendor at such place as the Vendor may designate from time to time, the following:

(a) Interest only at the rate provided below from the date of creation of the Conditional Sale Indebtedness at each Closing Date through and including February 15, 1978;

X (b) Sixty (60) consecutive quarterly installments as hereinafter provided, covering an amount equal to the aggregate Conditional Sale Indebtedness for the units of Equipment for which delivery and settlement has been made, together with interest as hereinafter provided. These installments with respect to the Conditional Sale Indebtedness shall be payable on each February 15, May 15, August 15, and November 15, commencing May 15, 1978 to and including February 15, 1993, (each such date being hereinafter called a Payment Date). The unpaid balance of the Conditional Sale Indebtedness shall bear

interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 10% per annum (computed on the basis of a 360-day year of 30-day months) and such interest shall be payable, to the extent accrued, on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the aggregate of principal and interest payable on each Payment Date shall be substantially equal and such installments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendor will furnish to the Vendee a schedule within five days subsequent to the final closing for the units of Equipment to be delivered hereunder, or if all units of Equipment are not delivered, within five days of the Cut-Off Date, in such number of counterparts as shall be requested by the Vendee, showing the respective amounts of principal and interest payable on each Payment Date pursuant to this clause.

The Vendee will pay interest, to the extent legally enforceable, at the rate of 12% per annum upon all matters remaining unpaid after the same shall have been due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 9 hereof, the

Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and NRUC as provided in this Agreement. Any and all additions to the Equipment and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 9 hereof, when and only when the Vendor shall have been paid the Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free

of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 26 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 9 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Additional Security. As additional security for the payment and performance of all obligations of the Vendee under this Agreement, Vendee hereby assigns and grants to the Vendor a security interest in the Equipment, the Reserve Account and in all of Vendee's right, title, and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connec-

tion with the use of the Equipment. The security interest granted in this Article 6 shall hereinafter be called collectively the "Additional Security".

ARTICLE 7. Vendee's Representations and Warranties.

The Vendee hereby warrants and represents to the Vendor as follows:

(a) The Vendee is a duly formed and validly existing general partnership under the laws of the State of Maryland, and has the full power and authority to enter into, execute and deliver this Agreement, the Management Agreement and related documents and to perform each and all the matters and things provided for therein.

(b) The execution and delivery of this Agreement, the Management Agreement and related documents is authorized under Vendee's general partnership agreement, and each constitute legal, valid and binding obligations of the Vendee, enforceable against the Vendee in accordance with their terms.

(c) The Vendee has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges required to be paid by it.

(d) There is no action, proceeding or investigation pending or threatened (or any basis therefor) against the Vendee which, either in any case or in the aggregate, will result in any material adverse change in the condition, business or prospects of the Vendee or in its properties or assets, or in any material liability on the part of the Vendee, or

which questions the validity of this Agreement or any action taken or to be taken in connection herewith.

(e) The Vendee is not in violation of any provision of its general partnership agreement, this Agreement, or the Management Agreement, or, in any material respect, any other document to which it is a party, and the execution, delivery and performance of this Agreement, the Management Agreement, and related documents will not result in the violation of any such provision.

(f) The Vendee is not in violation of any statute, ordinance, rule, regulation, judgment, decree, order, license or permit applicable to it or the activities proposed to be conducted by it which, either in any case, or in the aggregate, will result in any material adverse change in the condition, business or prospects of the Vendee or in its properties or assets, or in any material liability on the part of the Vendee, or which questions the validity of this Agreement or any action taken or to be taken in connection herewith, and no consent, approval or authorization by any governmental authority is required in connection with the execution, delivery and performance of this Agreement, the Management Agreement and related documents.

(g) The Vendee has only one place of business in the State of Maryland and that is located at Riggs Building, 7411 Riggs Road, Hyattsville, Prince George's County, Maryland 20783. Such place of business is the Vendee's principal place of business.

(h) Except for the security interest granted by this Agreement, and the rights of NRUC under the Management Agreement, there are no other liens, encumbrances or security interests which shall attach to the Equipment upon delivery of the same to the Vendee, and there are no other liens, encumbrances or security interests existing against the Additional Security.

(i) This Agreement, the Management Agreement and any assignments hereof or thereof have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's interest in and to the Equipment and the Management Agreement (including the rentals and other sums payable thereunder) and no filing, recording or deposit with any other federal, state or local government is necessary in order to protect the first lien ownership and first security interests of the Vendor in and to the Equipment and the Management Agreement in the United States of America; and the financing statements necessary to perfect the Vendor's first security interest in the Additional Security have each been duly recorded and filed with the State Department of Assessments and Taxation for the State of Maryland, the Clerk of the Court for Prince George's County, Maryland, and the Recorder of Deeds for Washington D.C., and no other filing or recording is necessary to perfect the Vendor's first security interest in the Additional Security.

(j) The Equipment is a type of boxcar which is qualified to receive incentive per diem payments as provided in Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Boxcars.

ARTICLE 8. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions

which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment or Additional Security; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or Additional Security or otherwise affect Vendors rights under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 9. Maintenance; Casualty Occurrences; and Insurance. The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Vendee irreparably damaged (which includes any unit of

Equipment damaged to such an extent that it can not be economically repaired to a state where it will earn ordinary revenues in the normal course of trade, giving consideration to equipment of like type and age), from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request, calculated as provided in Article 4 hereof (provided however that such recalculated schedule shall not give effect to any prepayment or prepayments theretofore made other than pursuant to a Casualty Occurrence as provided herein).

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee of such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness thereof remaining unpaid with respect to the unit of Equipment on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made other than pursuant to a Casualty Occurrence as provided herein), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Conditional Sale Indebtedness in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original price of such unit as set forth in Article 4 hereof bears to the aggregate original Conditional Sale Indebtedness.

Vendee will maintain at all times during the effective period of this Agreement with respect to the Equipment, fire and all risk physical damage insurance in an amount equal to the total Casualty Value of all the Equipment or the market value of the Equipment, whichever is greater, and public liability insurance for an amount of not less than \$3,000,000 for each person and \$3,000,000 for each occurrence, all such insurance containing such terms, and in such form, for such purposes and written by such companies as may be satisfactory to Vendor, payable to Vendor as its interest may appear or as additional insured, and Vendee will deliver to Vendor at its request evidence satisfactory to Vendor that such insurance has been so procured and made payable to Vendor. If Vendee fails to maintain satisfactory insurance, Vendor shall have the option to do so and Vendee agrees to repay with interest at the rate of 12% per annum, all amounts so expended by Vendor.

ARTICLE 10. NRUC's Representations and Warranties.

NRUC warrants and represents to the Vendor as follows:

(a) NRUC is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted and to enter into, execute and deliver this Agreement and the Management Agreement.

(b) This Agreement and the Management Agreement have been duly authorized by all necessary corporate action on the part of NRUC, and have been duly executed and delivered by the

duly authorized officers of NRUC and constitute legal, valid and binding obligations of NRUC enforceable against NRUC in accordance with their terms.

(c) NRUC has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges required to be paid by it.

(d) There is no action, proceeding or investigation pending or threatened (or any basis therefor), which either in any case or in the aggregate, will result in any material adverse change in the condition, business or prospects of NRUC or in its properties or assets, or in any material liability on the part of NRUC or which questions the validity of this Agreement or the Management Agreement or any action taken or to be taken in connection therewith.

(e) NRUC is not in violation of any provision of its Charter, by-laws, the Management Agreement, or this Agreement, or, in any material respect, any other document to which it is a party, and the execution, delivery and performance of the Management Agreement and this Agreement will not result in the violation of any such provision.

(f) NRUC is not in violation of any statute, ordinance, rule, regulation, judgment, decree, order, license or permit applicable to it or to the activities proposed to be conducted by it, and no consent, approval or authorization by any governmental authority is required in connection with the execution, delivery and performance of this Agreement and the Management Agreement.

(g) No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property, or interests therein of NRUC, now attaches or hereafter will attach to the Equipment delivered to NRUC pursuant to the Management Agreement, or in any manner affects or will affect adversely the Vendor's right, title and interest therein.

(h) The Equipment is a type of boxcar which is qualified to receive incentive per diem payments as provided in Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Boxcars.

ARTICLE 11. Obligation of NRUC. NRUC hereby acknowledges that the Vendor and Vendee are entering into this Agreement based partly upon NRUC's ability to manage and obtain car hire revenues for the Equipment through the operation of the Equipment by railroads affiliated with NRUC or qualified sublessees and the collection of mileage charges and car hire revenues (including both straight and incentive per diems) from other railroads. In addition to its other obligations as provided in this Agreement and the Management Agreement, NRUC hereby covenants and agrees as follows:

(a) The Equipment shall at all times be operated pursuant to the terms of the Management Agreement by NRUC and affiliated railroads of NRUC, or railroads who have entered into sublease agreements with NRUC; provided that in all

cases NRUC and such affiliated and sublessee railroads shall be qualified, and shall continue to be qualified, to collect incentive per diem charges as provided in Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Boxcars, and be entitled to apply all such incentive per diem payments to the payments to be made to Vendee under the Management Agreement or to the payments made to NRUC under any sublease agreement. NRUC and such affiliated and sublessee railroads shall be entitled to possession of the Equipment and shall also be entitled (a) to the use of the equipment upon lines of railroad owned or operated by NRUC or any such affiliated or sublessee railroads or upon lines of railroads over which NRUC or any such affiliated or sublessee railroads have trackage or other operating rights or over which railroad equipment of NRUC or any such affiliated or sublessee railroads are regularly operated pursuant to contract; and (b) to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements.

(b) The lease or sublease agreement entered into by NRUC shall provide that the rights of such lessee or sublessee are subordinate to the rights of the Vendor.

(c) NRUC shall provide a copy of such lease or sublease agreement to the Vendor.

(d) NRUC shall provide to Vendor (and/or the

Vendor's assignee) copies of all reports and notices supplied to the Vendee pursuant to the Management Agreement, provided however that other than the accounting and revenue reports required under Paragraph 5(d), notice of the defects required under Paragraph 5(f), the maintenance and escrow account report required under Paragraph 8, and the accounts receivable ageing required by Paragraph 16, NRUC shall only be obligated to provide copies of the reports upon written request of the Vendor and/or Vendor's assignee (it being understood, however, that one request can require the delivery of a report or record for the entire term of this Agreement).

ARTICLE 12. Reports and Inspection. On or before March 31 in each year, commencing with the calendar year 1978, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and number of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, including, but not limited to, the names, initials or other insignia at that time identifying each unit of Equipment and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 13 hereof have been preserved or replaced.

Within 90 days after the end of each of its fiscal years and within 60 days after the end of each of its first three fiscal quarters, the Vendee and NRUC shall each deliver to the Vendor balance sheets as of the end of such year or quarter and a statement of income and changes in financial position for the year or quarter then ended, separately in the case of the Vendee and consolidated in the case of NRUC. The annual statements shall be audited without exception as to scope and reported upon by independent certified public accountants reasonably satisfactory to the Vendor; the quarterly statements shall be unaudited but shall be certified by a general partner of the Vendee and the chief financial officer of NRUC, respectively. Each such statement shall be accompanied by a certificate of a general partner in the case of the Vendee and the chief financial officer in the case of NRUC stating that during the period from the beginning of the period covered by the statement of income through the date of the certificate no default or event of default existed under this Agreement or the Management Agreement or, if an event of default does exist describing in reasonable detail the nature and extent thereof stating whether or not the same has been cured. Each such audited statement shall be accompanied by a letter from the independent certified public accountants reporting thereon stating whether or not the normal course of their audit disclosed any such default or events of default and, if so, describing the nature and extent thereof and stating whether

or not the same has been cured.

The Vendor shall have the right, by its agents, to inspect the Equipment and the books and records of the Vendee, NRUC and any of their affiliates, as well as all records of any lessees or sublessees of the Equipment, which are pertinent to the Equipment, at such reasonable times as the Vendor may request in writing during the term of this Agreement and the Management Agreement.

ARTICLE 13. Marking of Equipment. The Vendee and NRUC will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Exhibit A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee and NRUC will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced

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 XM 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

EXHIBIT B

CLOSING CERTIFICATE

THIS CLOSING CERTIFICATE dated as of \_\_\_\_\_, 1977, by and among EVANS TRANSPORTATION COMPANY (the "Builder"), OAKINGTON GENERAL PARTNERSHIP (the "Vendee") and NATIONAL RAILWAY UTILIZATION CORPORATION ("NRUC") forms a part of that certain Conditional Sale Agreement dated October 31, 1977 by and among the Builder, the Vendee and NRUC.

1. Delivery of Equipment. The Builder hereby acknowledges delivery of the Equipment bearing the markings NSL 101 through and including NSL 101 in accordance with the terms and conditions of the Conditional Sale Agreement dated as of October 31, 1977 among the Builder, the Vendee and NRUC.

2. Receipt of Equipment. The Vendee and NRUC hereby acknowledge receipt of the Equipment bearing the markings NSL 100 through and including NSL 100 and hereby acknowledge that all the terms, conditions, representations, warranties, covenants and agreements contained in the Agreement with respect to, or made by, Vendee and NRUC, respectively, continue to be true and are in full force and effect as of the date of this Closing Certificate, and acknowledge that all such terms, conditions, representations, warranties, covenants and agreements apply with full force and effect to the Equipment delivered and acknowledged pursuant to this Closing Certificate. The Vendee agrees to make payment for such Equipment as pro-

vided in Article 4 of the Agreement.

IN WITNESS WHEREOF, parties hereto have executed or caused this instrument to be executed and sealed all as of the day and year first above written.

EVANS TRANSPORTATION COMPANY

[Corporate Seal]

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

OAKINGTON GENERAL PARTNERSHIP

By \_\_\_\_\_ (SEAL)

WITNESS:

\_\_\_\_\_

NATIONAL RAILWAY UTILIZATION CORPORATION

[Corporate Seal]

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_

EXHIBIT C

Builder's Patent Title Indemnities and Warranties  
of Material and Workmanship.

Except in cases of articles or materials specified by the Vendee or NRUC and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or NRUC and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and NRUC from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee and NRUC, their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right.

The Builder warrants that when delivered, the Equipment will incorporate all of the features set forth in the Specifications (provided, however, in the event that the Builder shall be unable to secure any specified materials for any reason beyond Builders control, the Specifications shall be deemed to be modified so as to permit substitutions not materially adversely affecting the Equipment), and (except as to items furnished or supplied by Vendee or NRUC, or items specified by Vendee or NRUC which are not manufactured, supplied or per-

formed by the Builder) will be free from defects in material and workmanship under normal use and service. The Builder's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such Equipment which shall, within one (1) year after the Builder shall have made delivery of such defective Equipment, be returned to such place as the Builder shall designate with transportation charges prepaid, and which the Builder's examination shall disclose to the Builder reasonable satisfaction to have been defective in normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXTENDING BEYOND THE DESCRIPTION CONTAINED IN EXHIBIT A TO THE CONDITIONAL SALE AGREEMENT, AND OF ALL OTHER OBLIGATIONS AND LIABILITIES OF THE BUILDER, AND THE BUILDER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY DEFECTS IN MATERIAL OR WORKMANSHIP.

promptly any such markings which may be removed, defaced or destroyed. The Vendee and NRUC will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor or filed, recorded or deposited by the Vendee and NRUC in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as provided in the immediately preceding paragraph, the Vendee and NRUC will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by NRUC or any of its affiliates or any other lessee or sublessee under any other lease permitted by Section 15.

ARTICLE 14. Compliance and Laws and Rules. During the term of this Agreement, the Vendee and NRUC will comply, and will cause every other lessee or user of the Equipment to comply (provided that NRUC shall have no greater obligation than it has under the Management Agreement), in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' or users' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transpor-

tation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, 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 Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 15. Possession and Use. So long as the Vendee shall not be in default under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Agreement, but, without the prior written consent of the Vendor, the Vendee shall not assign or transfer its interest under this Agreement in the Equipment or any unit thereof except as provided in this Article 15. Vendee and NRUC shall not, on a regular basis, operate or use any unit of the Equipment outside the United States of America, nor shall the Vendee and NRUC permit others to operate or use, on a regular basis, any unit of the Equipment outside the United States of America.

The Vendee may deliver the Equipment to NRUC as permitted by, and for use as provided in, the Management Agree-

ment, but the rights of NRUC and its permitted assigns (NRUC hereby so acknowledging) under the Management Agreement shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an event of default under and as defined in Paragraph 11 of the Management Agreement until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon NRUC or served by NRUC upon it in connection therewith. The Management Agreement shall not be amended or terminated without the prior written consent of the Vendor.

ARTICLE 16. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to part or all of the Equipment or the Additional Security, equal or superior to the Vendor's security interest herein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the

Vendor, adversely affect the security interest of the Vendor in or to the Equipment or Additional Security or otherwise affect Vendor's rights under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or Additional Security shall be secured by and under this Agreement and shall be repayable by Vendee upon demand.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due or delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 17. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expense in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to and a security interest in the Equipment and Additional Security, and the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, or any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment re-

sulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. The covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and the conveyance of security title to the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

NRUC will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Vendee or NRUC and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee or NRUC and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of

action hereinafter referred to, assign, set over and deliver to the Vendee and NRUC every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by Vendee or NRUC and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee and NRUC all and every such further assurance as may be reasonably requested by the Vendee or NRUC more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee and NRUC of any claim known to the Builder from which liability may be charged against the Vendee or NRUC hereunder and the Vendee and NRUC will give notice to the Builder of any claim known to the Vendee or NRUC (whichever is applicable) from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The agreement of the parties relating to the Builder's warranty and material and workmanship and the agreement of the

parties relating to patent indemnification are set forth in Exhibit C attached hereto and made a part hereof.

ARTICLE 18. Assignments. The Vendee will not (a) except as provided in Article 15 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and NRUC) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the assignee or transferee assuming any of the obligation of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of NRUC hereunder and under the Management Agreement, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties contained or referred

to in Article 17 hereof, or relieve the Vendee or NRUC of their respective obligations, in any, to the Builder contained in Articles 2, 3, 4, 8 and 17 hereof and this Article 18, or any other obligations which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and NRUC, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment, the Management Agreement and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and NRUC recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that this Agreement, or some of or all the rights of the Vendor hereunder, will be assigned to the Sun Life Insurance Company of America (the "Assignee") pursuant to an Agreement and Assignment of even date herewith. The Vendee and NRUC hereby acknowledge notice of such assignment and receipt of a copy of

the Agreement and Assignment intend to be executed by the Vendor and the Assignee. The Vendee and NRUC expressly represent, for the purpose of assurance to the Assignee or any other person, firm or corporation who may from time to time acquire this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee or any other future assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or NRUC by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or NRUC, as the case may be, against and only against the Builder.

The Vendee and NRUC will (a) in connection with the settlement for the Equipment, deliver to the Assignee, at the time of the delivery of the Equipment, all documents required by the terms of such Agreement and Assignment to be delivered to the Assignee in connection with such settlement, in such

number of counterparts or copies as may reasonably be requested, and (b) furnish to the Assignee such number of counterparts of any other certificate or paper required by the Vendor or the Assignee as may reasonably be requested. The Vendee and NRUC agree to provide the same information as may be reasonably requested for any subsequent assignee.

If this Agreement shall have been assigned by the Builder and if the first assignee under this Agreement shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Vendee and NRUC of such events and, if such amount shall not have been previously paid by such assignee, NRUC shall, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid purchase price of such units of Equipment, together with interest from the date such payment was due to the date of payment by NRUC at the prime rate of interest charged by Continental Illinois National Bank of Chicago in effect on the date such payment was due.

ARTICLE 19. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for 30 days; or

(b) The Vendee or NRUC shall, for more than 30 days after the Vendee and NRUC shall have received written demand for performance

thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provisions satisfactory to the Vendor for such compliance; or

(c) Any material representation or warranty of the Vendee or NRUC in this Agreement shall prove to be incorrect in any material respect on the date as of which made; or

(d) Any proceeding shall be commenced by or against the Vendee or NRUC for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the NRUC under this Agreement), and the earlier of the following shall occur (i) such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective within sixty (60) days after such proceedings shall have been commenced (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or (ii) all the obligations of the Vendee or NRUC, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or NRUC, as the case may be, or for their respective property in connection with any such proceedings, within 30 days after such appointments and in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment or if Vendee or NRUC, or the case may be, permits the dissolution of itself as an entity; or

(f) There shall be any event of default by NRUC under the Management Agreement;

then at any time after the occurrence of such an event of default the Vendor may declare (hereinafter called a Declaration of Default) the entire unpaid balance of the Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Conditional Sale Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness of the Equipment so payable, with interest as aforesaid, and all costs and expenses payable hereunder, together with all costs and expenses of collection (including reasonable attorney's fees) and all costs and expenses of repossessing and storing any Equipment as provided in Article 20, and the Vendor shall be entitled to collect such judgment out of assets of the Vendee represented by the Equipment and the Additional Security and any income or proceeds derived from the Equipment and the Additional Security (subject, however, to payment of the management fee and maintenance fees due and owing pursuant to the Management Agreement), and shall additionally be entitled to collect such judgment out of any and all assets of the Vendee in the same manner as any general obligation of the Vendee to the extent that any por-

tion of such judgment represents (i) principal amounts of the Conditional Sale Indebtedness in excess of 86.7% of its original amount (as defined in Article 4 hereof), (ii) any accrued interest, and (iii) any reasonable out of pocket collection, repossession and storage costs and expenses as described above (other than accrued interest) up to an amount equal to the greater of \$25,000 or 10% of the principal amount of the Conditional Sale Indebtedness at the time of the Declaration of Default leading to such judgment. The Vendor agrees that it shall only be entitled to a judgment against the general partners of the Vendee with respect to the items specified in (i), (ii) and (iii) above. The Vendee or NRUC, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee

that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 20. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 20 expressly provided, and may remove the same from possession and use of the Vendee, NRUC any other lessee, sublessee or any other person and for such purpose may enter upon the premises of the Vendee or NRUC or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or NRUC.

At any time during the Declaration of a Default, the Vendor may also demand possession of the Equipment, and in the event of any such demand pursuant to this Agreement, Vendor shall designate a reasonable point or points on the lines or premises of any lines of railroad or other premises

approved by the Vendor for the delivery of the Equipment to the Vendor, and the Vendee, shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises which, or the use of which, are owned or controlled by the Vendee (directly or indirectly) or on any lines of railroad or other premises approved by the Vendor and reasonably convenient to the Vendee for a period not exceeding six months. The Vendee 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 Vendor. If the Declaration of Default was partially or totally caused by a default by NRUC as provided in paragraph (b), (c) and (f) of Article 19 hereof, or a default partially or totally caused by proceeding commenced by or against NRUC under paragraph (d) of Article 19 hereof, NRUC and the Vendee shall have a joint and several obligation to retake, deliver and store the Equipment as aforesaid, provided however, that the Vendor's right to storage on the lines of railroad owned or controlled by NRUC is qualified to the extent that NRUC (but at NRUC's cost and expense) may require that such storage be made on other railroads or premises approved by the Vendor if storage on the railroad lines owned or controlled by NRUC would interfere

with the operation of the railroads owned or controlled by NRUC. This agreement to deliver the Equipment 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 Vendor shall be entitled to a decree against the Vendee and/or NRUC requiring specific performance hereof. The Vendee and NRUC hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner. Any liability of the Vendee hereunder is limited with respect to documented out of pocket expenses with respect to the repossession and storage of the Equipment as provided in Article 19 hereof.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 20 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in full satisfaction of the Conditional Sale Indebtedness and any interest due thereon and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 26 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to

retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sales Indebtedness of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, including reasonable attorney's fees and all expenses of the Vendor on retaking possession of, removing, storing and holding the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee, provided further, that if the Vendee objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 20.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, NRUC or any other party claiming from, through or under the Vendee or NRUC at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 26 hereof. If such sale shall be a private sale, it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or NRUC may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 20), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor 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 Vendor. 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 Vendor 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 to the Vendee or NRUC shall not otherwise alter or affect the Vendor's rights or the Vendee's or NRUC's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or NRUC'S obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency, provided however that the Vendee's liability with respect to such deficiency shall be limited to (i) the amount by which the principal amount of the Conditional Sale Indebtedness upon the occurrence of the Declaration of Default leading to such retaking and sale of the Equipment exceeds 86.7% of the original amount of the Conditional Sale Indebtedness, (ii) any unpaid accrued

interest, and (iii) all other unpaid expenses, costs of repossession and collection (including reasonable attorney's fees), storage fees and other sums due under the provisions of this Agreement up to an amount equal to the greater of \$25,000 or 10% of the unpaid principal balance of the Conditional Sale Indebtedness at the time of the occurrence of the Declaration of Default leading to such retaking and sale, and if the Vendee shall fail to pay such amount, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, and collect upon said judgment from any and all assets of the Vendee in the same manner as any other general obligation of the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee to the extent of its interest therein. It is agreed that solely for the purpose of this Article 19 and 20 of this Agreement the proceeds of all sums of money received under the remedies herein provided shall be applied first to the principal amount of the Conditional Sale Indebtedness up to an amount equal to 86.7% of the original amount of the Conditional Sale Indebtedness, then to all expenses (other than accrued interest) as herein described, then to the principal amount of the Conditional Sale Indebtedness in excess of 86.7% of the original amount, and then to accrued interest.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that

the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment, and shall be collectible from all assets of the Vendee, subject to the limitations contained in this Article 19. If the Declaration of Default was partially or totally caused by a default by NRUC as provided in paragraph (b), (c) and (f) of Article 19 hereof, or a default partially or totally caused by proceeding commenced by or against NRUC under paragraph (d) of Article 19 hereof, NRUC and the Vendee shall have a joint and several obligation with respect to the expenses provided in this paragraph.

The foregoing provisions of this Article 20 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 21. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and NRUC to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and NRUC, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 22. Recording. The Vendee will cause this Agreement, the Management Agreement, any assignments hereof and thereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; the Vendee will also cause any financing statement with respect to this Agreement and the Management Agreement to be filed and recorded in the form and manner required by law in all offices and places necessary to perfect the lien on and security interest in the Equipment and Additional Security; and the Vendee and NRUC will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further information required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to and security interest in the Equipment, its security interest in the Additional Security and its rights under this Agreement or for the

purpose of carrying out the intention of this Agreement. The Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 23. Payment of Expenses. The Vendee will pay all reasonable costs and expenses of Sun Life Insurance Company of America (the assignee of the Vendor under this Agreement) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all filing fees and fees and expenses of counsel for Sun Life Insurance Company of America.

ARTICLE 24. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Exhibits hereto, the Management Agreement, and any assignment of either of the documents exclusively and completely states the rights of the Vendor, the Vendee and NRUC with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and NRUC.

ARTICLE 25. Termination of NRUC's Obligations. All references to and obligations of NRUC hereunder, except for the

obligations inuring to the benefit of the Builder or the obligations to provide or assist in the repossession and storage of the Equipment as provided in Article 20, shall terminate (i) upon the election of the Vendee, with the written consent of the Vendor, to terminate the Management Agreement as provided in Paragraph 14 thereof, and (ii) upon the failure of the Vendee to renew the Management Agreement as provided in Paragraph 3 thereof.

ARTICLE 26. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed in the United States by certified or registered mail to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at Tenth Floor, 1120 Connecticut Avenue, N.W. Washington, D.C.  
Attention: Joseph D. Tydings

(b) to NRUC, at 860 Suburban Station, 1617 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103,

(c) to the Builder, at 5522 New Peach Tree Road, Chamblee, Georgia, Attention Jean Ebert, with a copy to Evans Transportation Company, 2200 East Devon Avenue, Des Plaines, Illinois 60018, Attention Paul R. Leak.

(d) to the Vendor, or any assignee of the Vendor upon assignment, at such address as may have been

furnished in writing to the Vendee, by the Vendor or such assignee (Sun Life Insurance Company of America as an assignee of the Vendor, hereby giving notice of its address as Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201. Attention: Investment Securities Department).

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 27. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement, the Management Agreement or any assignment hereof or thereof shall be filed, recorded or deposited.

ARTICLE 28. Execution. This Agreement may be executed in any number of counterparts numbered consecutively in ascending order, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart, but only the counterpart that is labeled "Counterpart No. 1" shall be deemed to be the original for purposes of perfection of a security interest

and shall be the only counterpart which may be transferred and given to transfer the rights of the Vendor hereunder. Although this Agreement is dated as of the date first above written, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF the parties hereto have executed or caused this instrument to be executed all as of the date

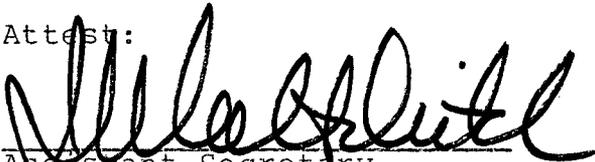
first above written.

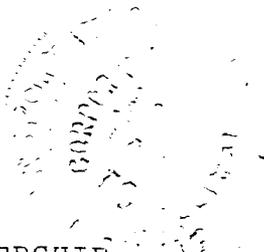
EVANS TRANSPORTATION COMPANY

[Corporate Seal]

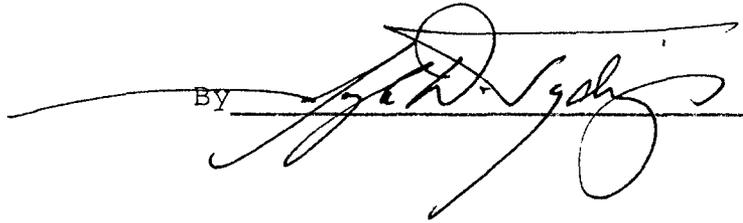
By   
Vice President

Attest:

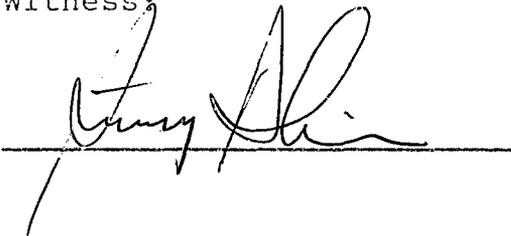
  
Assistant Secretary



OAKINGTON GENERAL PARTNERSHIP

By  (SEAL)

Witness:



NATIONAL RAILWAY UTILIZATION CORPORATION

[Corporate Seal]

By   
Vice President

Attest:

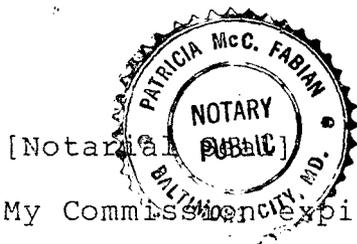
  
Asst. Secretary



State of Maryland )  
City of Baltimore ) SS:

I HEREBY CERTIFY, that on this <sup>1<sup>st</sup></sup> day of *November* 1977, before the subscriber, a Notary Public in and for said City and State personally appeared *James J. Leak*, who, being by me duly sworn, says that he is a Vice President of Evans Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this <sup>1<sup>st</sup></sup> day of *November*, 1977.



*Patricia McC. Fabian*  
Notary Public

My Commission expires: *July 1, 1978*

State of Maryland )  
City of Baltimore ) SS:

I HEREBY CERTIFY, that on this <sup>1<sup>st</sup></sup> day of *November* 1977, before the subscriber, a Notary Public in and for said City and State personally appeared *John H. Truscatti*, who, being by me duly sworn, says that he is a Vice President

of National Railway Utilization Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this *1<sup>st</sup>* day of *November*, 1977.



[Notarial Seal]

*Patricia McC. Fabian*  
Notary Public

My Commission expires:

*July 1, 1978*

*State of Maryland* }  
*City of Baltimore* } SS:

On this *1<sup>st</sup>* day of *November*, 1977, before me personally appeared Joseph D. Tydings, Managing Partner, Oakington General Partnership, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that the execution of the foregoing instrument was his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this *1<sup>st</sup>* day of *November*, 1977.



[Notarial Seal]

*Patricia McC. Fabian*  
Notary Public

My Commission expires:

*July 1, 1978*