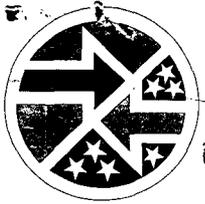


JOHN MARISCOTTI  
EXECUTIVE VICE PRESIDENT



# NATIONAL RAILWAY UTILIZATION CORP.

860 Suburban Station / 1617 John F. Kennedy Blvd., Phila., Pa. 19103 / (215) 569-2220

RECORDATION NO. ~~9149~~ Filed & Recorded

December 29, 1977  
DEC 30 1977-9 5 AM

RECORDATION NO. 9149 Filed & Recorded

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9149 Filed & Recorded

DEC 30 1977-9 5 AM

Interstate Commerce Commission  
12th and Constitutional Avenue, N.W.  
Washington, D. C. 20423

DEC 30 1977-9 5 AM

INTERSTATE COMMERCE COMMISSION

Attention: Secretary

INTERSTATE COMMERCE COMMISSION  
RECORDATION NO. 9149-A Filed & Recorded

DEC 30 1977-9 5 AM

Dear Sir:

INTERSTATE COMMERCE COMMISSION

It is hereby respectfully requested that the following documents be recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act:

1. Conditional Sale Agreement, dated as of December 17, 1977:

Vendor: Citicorp Leasing, Inc.  
399 Park Avenue  
New York, N. Y. 10022

Vendee (Purchaser): The Citizens and Southern National Bank  
of South Carolina, as Trustee  
47 East Camperdown Way  
Greenville, South Carolina 29601

2. Management Agreement dated as of December 17, 1977:

Manager: National Railway Utilization Corporation  
860 Suburban Station  
1617 John F. Kennedy Blvd.  
Philadelphia, Pennsylvania 19103

Trustee: The Citizens and Southern National Bank  
of South Carolina  
(Address as stated above)

3. Bill of Sale:

Builder: National Railway Utilization Corporation  
(Address as stated above)

Buyer: The Citizens and Southern National Bank  
of South Carolina, as Trustee  
(Address as stated above)

*Checked by Paul M. Thomas  
Signifying your agreement*

7-364A025

DEC 30 1977  
Date  
No. 100

1200 Washington, D. C.



Interstate Commerce Commission  
December 29, 1977  
Page Two

General Description of the Equipment:

28 Boxcars, Type XM (50", 6" 70-ton), bearing  
Road Numbers NSL 102270 through NSL 102297  
(both inclusive), and each being marked:

"CITICORP LEASING, INC. - OWNER AND VENDOR"

Very truly yours,

NATIONAL RAILWAY UTILIZATION CORPORATION

A handwritten signature in cursive script, appearing to read "John Mariscotti".

John Mariscotti  
Executive Vice President

JAM:ebw

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Dear

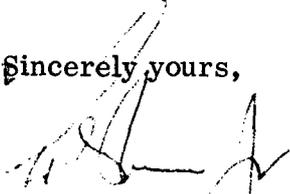
The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on at

9149-  
9149-A, 9149-B,  
and assigned recordation number(s)

9:55am

12/30/77 Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Sir:

Enclosure(s)

John Mariscotti  
Natl RYW. Utilization Corp.  
860 Suburban Station  
Phila. Pa. 19103

12/30/77

SE-30-T  
(6/77)

9149  
RECORDATION NO. .... Filed & Recorded

DEC 30 1977-9 15 AM

INTERSTATE COMMERCE COMMISSION

---

---

**CONDITIONAL SALE AGREEMENT**

Dated as of December 17, 1977

\_\_\_\_\_  
BETWEEN

CITICORP LEASING, INC.

AND

THE CITIZENS AND SOUTHERN NATIONAL BANK  
OF SOUTH CAROLINA,  
as Trustee under a Trust Agreement dated as of  
December 17, 1977

\_\_\_\_\_

FOR PURCHASE OF 28 70-ton 50' 6" BOXCARS

---

---

**THIS CONDITIONAL SALE AGREEMENT**, dated as of December 17, 1977, between **CITICORP LEASING, INC.**, a Delaware corporation with an office at 399 Park Avenue, New York, New York 10022 (hereinafter called the **Vendor**), and **THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA**, as Trustee (the **Trustee**) under a Trust Agreement dated as of December 17, 1977 substantially in the form set forth as Exhibit A hereto (the **Trust Agreement** and the trust created thereby being herein referred to as the **Trust**) among the Trustee and the persons named therein, with an office at 47 East Camperdown Way, Greenville, South Carolina 29602,

**WITNESSETH:**

**WHEREAS**, the Trustee has executed Purchase Order dated as of December 17, 1977 (the **NRUC Purchase Order**) pursuant to which National Railway Utilization Corporation (**NRUC**), as builder, is to manufacture or assemble 28 70-ton 50'6" Boxcars which are to bear railroad numbers NSL 102270-102297, inclusive (each such boxcar being herein referred to as a **Unit**, and all such Units being herein referred to as the **Units of Equipment** or the **Equipment**), for delivery and sale to the Trustee on or before December 30, 1977;

**WHEREAS**, the Trustee has requested the Vendor, as the designee of the Trustee, to take title to the Equipment, to pay the Purchase Price therefor, as such term is hereinafter defined, pursuant to the **NRUC Purchase Order**, and, thereupon, to sell the Equipment to the Trustee pursuant to the terms hereof; and

**WHEREAS**, to facilitate the foregoing request and in consideration of the execution of this Agreement by the Vendor, the Trustee hereby assigns, transfers and sets over to the Vendor all of the Trustee's right, title and interest in and to the **NRUC Purchase Order provided, however**, that the Trustee is relieved of, and discharged from, its obligations to **NRUC** under the **NRUC Purchase Order** only to the extent that such obligations are fulfilled by the Trustee pursuant to this assignment and the provisions of this Agreement;

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

**ARTICLE 1. Acquisition of the Equipment.** The Vendor agrees to accept a transfer of title to the Units of Equipment from **NRUC** and to pay the Purchase Price therefor under the terms and

conditions set forth in the NRUC Purchase Order; **provided, however,** that the Vendor shall not be obligated to pay, perform or discharge any obligation under the NRUC Purchase Order other than the obligation to pay the Purchase Price provided herein; and **provided, further,** that the Vendor shall not be obligated to accept delivery of, or title to, any Units delivered after December 30, 1977. The Vendor's obligations hereunder shall be subject to the further condition that the Vendor shall have received, on or prior to the Closing Date:

(a) a bill of sale (the **NRUC Bill of Sale**), dated the Closing Date, in the form annexed hereto as Exhibit B;

(b) an opinion of Messrs. Wyche, Burgess, Freeman & Parham, counsel for NRUC, dated the Closing Date and addressed to the Vendor, substantially in the form annexed hereto as Exhibit C;

(c) a copy of the Trust Agreement duly executed by the Trustee and each of the persons named as Trustors therein (the **Trustors**);

(d) an opinion of Messrs. Wyche, Burgess, Freeman & Parham, counsel for the Trustee, dated the Closing Date and addressed to the Vendor, substantially in the form annexed hereto as Exhibit D;

(e) an invoice or invoices of NRUC stating a purchase price (herein referred to as the **Purchase Price**) of \$982,800 per Unit, or an aggregate amount of \$35,100 for all Units of Equipment;

(f) a certified or official bank check (or wire transfer) in immediately available funds payable to the Vendor, or, if so directed by the Vendor, to NRUC, in an amount equal to 20% of the Purchase Price, which amount shall constitute the first installment of the Conditional Sale Indebtedness, as such term is hereinafter defined;

(g) a Certificate of Acceptance, dated the Closing Date and substantially in the form annexed hereto as Exhibit E (the **Certificate of Acceptance**), duly executed by an authorized representative of the Trustee, stating that each of the Units described therein has been inspected by

the Trustee, that each such Unit has been delivered and fully and finally accepted on the Trustee's behalf by such representative and that each such Unit is marked in accordance with Article 5 hereof;

(h) a copy of a Management Agreement dated as of December 17, 1977 (the **Management Agreement**), substantially in the form annexed hereto as Exhibit F, duly executed and delivered by NRUC and the Trustee;

(i) an opinion of Messrs. Wyche, Burgess, Freeman & Parham, counsel for NRUC, dated the Closing Date and addressed to the Vendor, substantially in the form annexed hereto as Exhibit G; and

(j) evidence, satisfactory to the Vendor and its special counsel, that this Agreement, the NRUC Bill of Sale and the Management Agreement have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

In the event that all of the Units shall not have been delivered and paid for pursuant to the terms and conditions of this Agreement on or prior to December 30, 1977, the Trustee agrees to accept from the Vendor a reassignment of the NRUC Purchase Order, to the extent that the NRUC Purchase Order relates to any such undelivered Units, and, thereafter, to indemnify the Vendor and hold the Vendor harmless from and against any and all claims of NRUC under and with respect to the NRUC.

**ARTICLE 2. Payment of Purchase Price; Conditional Sale by the Vendor to the Trustee.** Settlement for the Units set forth and described in the Certificate of Acceptance shall be made on December 30, 1977 (the **Closing Date**). Payment made in respect of the Purchase Price of the Units shall be made by a certified or official bank check or checks (or wire transfer) in immediately available funds.

Upon completion of the transfer of title to the Vendor and payment of the Purchase Price to NRUC contemplated in Article 1 hereof, the Vendor will sell to the Trustee, and the Trustee will purchase from the Vendor, the Equipment, subject to the terms and conditions of this Agreement. Sale by the Vendor shall be without warranties or representations of any kind, except that the Vendor

warrants to the Trustee that on or before the Closing Date it will not have done or committed, or willingly suffered to be done or committed, any act or thing whatsoever whereby the Equipment is or shall be subject to any lien, charge, encumbrance or security interest (hereinafter referred to as a Lien or Liens). The Vendor shall retain full legal title to and property in all of the Equipment until the Trustee shall have made all the payments and shall have performed all of the covenants in this Agreement provided to be made, kept or performed by the Trustee, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee as herein provided. Any and all replacement parts or additional equipment or facilities installed on or in any Unit shall constitute accessions to such Unit and title to each such replacement part or accession shall be immediately vested in the Vendor and each such replacement part or accession shall be subject to all the terms, reservations and conditions of this Agreement.

The Trustee hereby acknowledges itself to be indebted to the Vendor, and hereby promises to pay to the Vendor, at such place as the Vendor may designate, an amount (the **Conditional Sale Indebtedness**) equal to the Purchase Price.

The Conditional Sale Indebtedness shall be paid by the Trustee to the Vendor in New York Clearing House funds at the office of the Vendor at 399 Park Avenue, New York, New York, in forty-one installments, as follows:

(a) one installment, payable on the Closing Date, in an amount equal to 20% of the Purchase Price;

(b) 39 consecutive level quarterly payments of combined principal and interest, payable on March 30, June 30, September 30 and December 30 of each year, commencing March 30, 1978 (or, if any such date shall not be a business day, on the next succeeding business day), each in an amount equal to 2.8832% of the Purchase Price; and

(c) one quarterly payment of combined principal and interest, payable on December 30, 1987, in an amount equal to 25.966% of the Purchase Price or such amount as shall be required to discharge all unpaid principal of, and accrued interest on, the Conditional Sale Indebtedness in full.

The date on which each such installment is due and payable hereunder is herein referred to as a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 10 1/4% per annum, and such interest shall be payable, to the extent accrued, on each Payment Date. Promptly following the Closing Date the Trustee will furnish to the Vendor a payment schedule substantially in the form of Schedule I annexed hereto showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Trustee will pay interest at the rate of 11.25% per annum, to the extent legally enforceable, on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

The term business day, as used herein, means calendar days, except Saturdays, Sundays, holidays and any other day on which banking institutions in Greenville, South Carolina or New York, New York are authorized to remain closed.

The Conditional Sale Indebtedness shall be prepaid without penalty or premium:

(d) as provided in Article 8 hereof upon a Casualty Occurrence, as such term is defined in such Article; and

(e) on September 30 of each year, commencing September 30, 1978, in an amount equal to the amount by which the net income of the Trust (before depreciation and amortization) for the period from the date hereof to September 30, 1978, in the case of the first such payment, or for the preceding 12 months, in the case of subsequent payments, exceeds the amount of the regular installments of the Conditional Sale Indebtedness paid during each such period.

In consequence of prepayment pursuant to clause (d) above the Purchase Price of the Equipment shall be reduced by an amount equal to the Purchase Price of the Unit or Units suffering such Casualty Occurrence and all remaining installments of the Conditional Sale Indebtedness shall be recomputed on the basis of such adjusted Purchase Price. Prepayments pursuant to clause (e) above shall be applied to the remaining installments of the Conditional Sale Indebtedness in the inverse order of the maturity of such

installments. On or before October 31 of each year the Vendor will deliver to the Trustee a payment schedule substantially in the form of Schedule I annexed hereto showing the respective amounts of principal and interest paid or prepaid through the preceding September 30 and the respective amounts of principal and interest payable on each Payment Date thereafter.

The Conditional Sale Indebtedness may be prepaid in whole, but not in part, on any Payment Date occurring after the twentieth Payment Date by the payment of an amount equal to the sum of (i) the unpaid amount of the Conditional Sale Indebtedness (after giving effect to the regular installment of principal and interest due on such Payment Date), and (ii) the amount of the regular installment of principal and interest due on such Payment Date.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for payment of public and private debts.

When the Trustee shall have paid in full the entire Conditional Sale Indebtedness, with interest thereon, and all other payments herein provided to be made by the Trustee with respect thereto, title to and property in the Equipment shall pass to the Trustee without further transfer or act on the part of the Vendor, but the Vendor will, if requested by the Trustee to do so, execute and deliver to the Trustee a bill of sale or other instruments of conveyance of the Equipment, and warranty of title to the Equipment in such bill of sale or other instruments of conveyance thereof shall be only against the acts and deeds of the Vendor. To the extent permitted by applicable law, the Trustee hereby waives any and all rights to the payment of any fines or penalties for failure of the Vendor to comply with any applicable statute with respect to evidencing satisfaction of this Agreement, except for failure to do so within a reasonable time after written demand by the Trustee.

**ARTICLE 3. Representations and Warranties.** The Vendor represents and warrants that the execution of this Agreement is within its corporate authority and has been authorized by proper corporate action.

The Trustee represents and warrants, as to clauses (a) through (f) below, in its own behalf and capacity and not as Trustee

and, as to clauses (g) and (h) below, solely as Trustee under the Trust Agreement and not in its individual capacity, that:

(a) It is a national banking association duly organized and validly existing in good standing under the laws of the United States of America, and has the corporate power and authority to enter into and perform its obligations under the Trust Agreement and, acting pursuant thereto, this Agreement and the Management Agreement.

(b) The execution, delivery and performance by it of the Trust Agreement have been duly authorized by all necessary corporate action on its part and do not require any stockholder approval.

(c) The Trust Agreement has been duly executed and delivery by one of its authorized officers and one of its Assistant Trust Officers who are duly authorized to execute and deliver the Trust Agreement in its behalf, and constitutes the legal, valid and binding obligation of the Trustee enforceable against it in accordance with its terms.

(d) The execution and delivery by the Trustee of this Agreement, the Trust Agreement and the Management Agreement are not, and the performance by the Trustee of its obligations under each will not be, inconsistent with the articles of association or by-laws of the Trustee, do not and will not contravene any law, governmental rule or regulation of the United States of America or the State of South Carolina or any judgment or order applicable to the Trustee, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Trustee is a party or by which it is bound or require action in respect of or by, any governmental authority of the United States of America or the State of South Carolina or other organization or person, except such as have been obtained, given or accomplished.

(e) This Agreement and the Management Agreement have been duly authorized by the Trustee acting pursuant to the Trust Agreement, have been duly executed and delivered by the Trustee acting pursuant to the Trust Agreement and

constitute legal, valid and binding obligations of the Trustee enforceable in accordance with their respective terms.

(f) No litigation or administrative proceedings are pending or, to the knowledge of the Trustee, threatened against the Trustee, the adverse determination of which would affect the validity of this Agreement, the ability of the Trustee to fulfill its obligations hereunder, or the rights of the Vendor hereunder.

(g) Upon delivery by NRUC of the NRUC Bill of Sale, the Vendor shall thereby acquire full legal title to the Units described in the NRUC Bill of Sale and good lawful right to sell such Units and title to such Units shall be vested in Vendor free of all Liens subject only to the rights of the Trustee under this Agreement.

(h) The Units conform to all Interstate Commerce Commission and Department of Transportation (Federal Railroad Administration) requirements and specifications interpreted as being applicable to railroad equipment of the character of such Units and, upon delivery thereof, such Units will be free from defects in material and workmanship and will be in good and serviceable condition.

The Trustee covenants and agrees that:

(i) In accordance with the terms and provisions of the Trust Agreement, the Trustee will make no distribution of cash paid to the Trustee, whether by NRUC under the Management Agreement, by any other agent of the Trust charged with the management or operation of the Units, or any of such Units, or by the Trustors, to the Trustors so long as the Conditional Sale Indebtedness shall be outstanding and unpaid.

(j) The Trustee will, from time to time upon the written request of the Vendor, provide to the Vendor a report or statement setting forth, for the period from the date hereof to the date of such statement (i) the gross income paid to the Trustee, NRUC (as agent of the Trustee under the Management Agreement) or to any other person or agent of the Trustee, to or for the account of the Trust,

(ii) the amount of any fees and expenses paid to NRUC under the Management Agreement or to any other agent of the Trust, (iii) the amount of all expenses paid by the Trustee directly, (iv) the aggregate amount of all payments or pre-payments theretofore made in respect of the Conditional Sale Indebtedness, and (v) the net cash held by the trustee and available to the Trust on the date of such report or statement.

(k) So long as the Conditional Sale Indebtedness shall be outstanding and unpaid, the Trustee will cause the Equipment to be maintained and operated by NRUC or another agent acceptable to the Vendor pursuant to the Management Agreement or, if the Management Agreement should expire or be terminated in accordance with the terms thereof, pursuant to any other agency agreement executed by the Trustee with the prior written approval of the Vendor.

(l) So long as the Conditional Sale Indebtedness shall be outstanding and unpaid, the Trustee will not create or incur any indebtedness for borrowed money or purchase or commit the Trust to purchase any asset other than the Equipment.

(m) So long as the Conditional Sale Indebtedness shall be outstanding and unpaid, the Trustee will not release or discharge or consent to the release or discharge of any obligations of the respective Trustors under the Trust Agreement or of any evidence of indebtedness of the Trustors executed by such Trustors and payable to the Trustee.

**ARTICLE 4. Taxes.** All payments to be made by the Trustee hereunder will be free of expense to the Vendor in respect of the amount of any local, state or Federal taxes (other than income, gross receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties of any kind (herein collectively called **Taxes or Assessments**) hereafter levied or imposed upon or measured by this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Taxes or Assessments the Trustee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Trustee will also pay promptly all Taxes or Assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by

the Trustee or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times each Unit of the Equipment free and clear of all Taxes or Assessments which might in any way affect the title of the Vendor or result in a Lien upon any Unit of the Equipment, except the Lien of Taxes or Assessments not due and payable; **provided, however,** that the Trustee shall be under no obligation to pay any Taxes or Assessments so long as it is contesting such Taxes or Assessments in good faith and by appropriate legal proceedings and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such Taxes or Assessments shall have been charged or levied against the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor on presentation of an invoice therefor and any sums of money so paid by the Vendor shall be secured by and under this Agreement as a Lien on the Equipment; and **provided, further,** that the Trustee shall be under no obligation to reimburse the Vendor for any sums of money so paid, nor shall any such sums of money so paid be secured by and under this Agreement as a Lien on the Equipment, unless the Vendor shall, by at least thirty (30) days' written notice given to the Trustee of its intention to make such payment, afford a reasonable opportunity to the Trustee to contest in good faith any such Taxes or Assessments which may have been so charged or levied against the Vendor.

**ARTICLE 5. Marking of Equipment.** So long as title to and property in the Equipment is retained by the Vendor, the Trustee will cause each Unit of the Equipment to be kept plainly, distinctly, permanently and conspicuously marked on each side thereof in letters not less than one inch in height the words "CITICORP LEASING, INC. - OWNER AND VENDOR", to indicate the limited interest of the Trustee, NRUC or any other person therein, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Trustee will cause each Unit of the Equipment to be kept numbered with the identifying number thereof as set out in the NRUC Bill of Sale and will not change or permit the change of numbers of any such Units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Trustee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

The Trustee will not allow the name of any person, association or corporation to be placed on, or to remain on, any of the Equipment as a designation which might be interpreted as a claim of ownership by the Trustee or anyone other than the Vendor; **provided, however,** that the Trustee may cause or permit any Unit of the Equipment to bear (i) the railroad markings and the name and/or other insignia used by any railroad controlled by NRUC or any other agent retained by the Trust from time to time for purposes of the maintenance and operation of the Units, or any of them, or any other railroad with which NRUC or any such agent shall have executed a per diem lease in respect of the Units, or any of them, and (ii) the NRUC logo type insignia in standard size.

**ARTICLE 6. Maintenance and Repair.** The Trustee will at all times maintain the Equipment or cause it to be maintained in good order and repair without expense to the Vendor.

**ARTICLE 7. Insurance.** At all times while this Agreement is in effect, the Trustee, at its own expense, shall keep the Equipment adequately insured against all risks, physical loss and damage and, if such insurance is available to "short line railroads", public liability insurance in an insurance company or companies approved by the Vendor. The policies shall specify that all payments of loss on the Equipment shall be made to the Vendor and that such policies cannot be cancelled or modified except on at least thirty (30) days prior written notice to the Vendor. The policies of insurance, certified copies thereof or certificates of coverage satisfactory to the Vendor, shall be deposited with the Vendor. In case the Trustee shall fail to keep such Equipment so insured and to deposit policies, certified copies thereof or certificates of coverage as aforesaid, the Vendor may itself insure such Equipment, and in this event the Trustee shall be obligated to repay to the Vendor the amounts of premiums paid therefor with interest thereon at the rate of 10-1/4% per annum from the time of notice to the Trustee of such premium payment until repaid, which notice to the Trustee shall be made by delivering to the Trustee a certified copy of such policy or policies of insurance, or certificates of coverage giving the terms of coverage of such policies in reasonable detail. All insurance moneys shall be paid to the Vendor and shall be applied by the Vendor on the next ensuing Payment Date in accordance with the provisions of Article 8 hereof.

**ARTICLE 8. Lost or Destroyed Equipment.** In the event that any Unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, requisitioned for use or otherwise taken or

rendered unfit for use from any cause whatsoever, including such Units which have been in Bad Order (as such term is understood by the railroad industry in the United States) for a continuous period in excess of six months, during the continuance of this Agreement (such occurrences being hereinafter referred to as a **Casualty Occurrence**), the Trustee shall promptly and fully inform the Vendor in regard thereto. On the Payment Date occurring not less than 60 days following the date of such information, the Trustee shall at its election, either (A) pay to the Vendor an amount equal to the sum of (i) the amount of the regular installment of principal and interest due with respect to the Conditional Sale Indebtedness allocable to such Unit or Units, and (ii) an amount which bears the same relation to the then unpaid principal amount of the Conditional sale Indebtedness (after giving effect to the payment pursuant to clause (i) above, the payment of the regular installment of principal and interest due on such Payment Date with respect to the Conditional Sale Indebtedness allocable to all other Units, and the prepayment of the Conditional Sale Indebtedness due on such date pursuant to the terms of Article 2 hereof) as the original Purchase Price of the Unit or Units suffering such Casualty Occurrence bears to the aggregate original Purchase Price of all Units of the Equipment subject to this Agreement immediately prior to such Casualty Occurrence, or (B) replace each such Unit with another new and unused unit of like equipment.

In the event the Trustee elects to replace a Unit or Units of Equipment suffering a Casualty Occurrence, title to such replacement unit or units shall be taken and vested in the name of the Vendor, by proper bill of sale, free from all liens, and such unit shall thereupon immediately come under and be subject to all of the terms and conditions of this Agreement as though one of the original Units of Equipment accepted hereunder, and the Trustee will cause each such replacement unit to be marked and numbered in the same manner as hereinabove provided with respect to the Unit replaced thereby. The Trustee agrees to furnish the Vendor four executed counterparts of

(1) a certificate of an authorized officer of the Trustee certifying that such replacing unit or units is a new and unused unit of like equipment and has been marked and numbered as required by the provisions of Article 5 and certifying the value thereof; and

(2) an opinion of counsel for the Trustee that title to such replacing unit or units is vested in the Vendor

free and clear of all liens and encumbrances; that such unit or units has come under and become subject to this Agreement; and that a supplement to this Agreement providing for inclusion of such replacing unit or units under the terms of this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

**ARTICLE 9. Compliance with Laws and Rules.** During the term of this Agreement the Trustee will comply, or cause NRUC or any other agent of the Trust to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend and with all lawful rules of the Interstate Commerce Commission, Department of Transportation (Federal Trustee Administration) 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 the alteration of the Equipment, the Trustee will conform, or cause NRUC or any such agent to conform, therewith, at the expense of the Trust, and will maintain the same, or cause the same to be maintained, in proper condition for operation under such laws and rules; **provided, however,** that the Trustee 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 hereunder.

**ARTICLE 10. Reports and Inspections.** On or before March 31 in each year, the Trustee will furnish, or cause NRUC or any other agent of the Trustee to furnish, to the Vendor an accurate statement showing as at the preceding December 31, (i) the amount, description and railroad numbers of the Equipment then covered hereby, (ii) the amount, description and numbers of all Units of the Equipment that may have been worn out, lost, destroyed or irreparably damaged, whether by accident or otherwise, during the preceding calendar year, (iii) the numbers of the Units then undergoing repairs and awaiting repairs, and (iv) such additional information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's records with respect thereto, whether kept by the Trustee or by NRUC or any agent of the Trustee on behalf of the Trust, from time to time and as such times as may be reasonably requested by Vendor.

The Trustee will furnish to Vendor seven days written notice prior to instituting any action to contest (i) taxes, assessments, license fees, charges, fines or penalties as provided in Article 4 hereof, (ii) the validity or application of laws or rules as provided in Article 9 hereof, or (iii) claims upon the Equipment as provided in Article 12 hereof.

**ARTICLE 11. Possession and Use.** The Trustee, so long as it shall not be in default under this Agreement, shall be entitled, directly or through its agent, to the possession and control of the Equipment and the use thereof under and pursuant to the terms and conditions of the Management Agreement or any other agency agreement executed by the Trustee in accordance with the terms hereof, **provided, however,** that the rights of NRUC or any such agent, the rights of any railroad controlled by NRUC or any such agent and the rights of any other railroad which shall have executed a per diem lease in respect of any of the Units shall be subject and subordinate to the rights of the Vendor hereunder.

**ARTICLE 12. Prohibition Against Liens.** The Trustee will pay or satisfy or discharge any and all sums claimed by any party by, through or under the Trustee which, if unpaid, might become a Lien upon the Equipment, or any Unit thereof; **provided, however,** that the Trustee shall not be required to pay or discharge any such Lien so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of Liens for Taxes or Assessments not due and delinquent or being contested in accordance with Article 4 hereof, or undetermined or inchoate materialmen's, mechanics', workmen's or other like Liens arising in the ordinary course of business and in each case not delinquent.

**ARTICLE 13. Indemnities and Assumption of Liability.** The Trustee agrees to indemnify and save harmless the Vendor from and against all loss, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof by the Trustee during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional

Sale Indebtedness, the transfer of title to the Equipment as provided in Article 2 hereof, or the termination of this Agreement in any manner whatsoever.

The Trustee will bear the 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 or all Units of the Equipment.

**ARTICLE 14. Patent Indemnities.** The Trustee agrees to indemnify, protect and hold harmless the Vendor from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the construction, use or operation of the Equipment, or any Unit thereof, of any design which infringes or is claimed to infringe on any patent or other right. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, the transfer of title to the Equipment as provided in Article 2 hereof, or the termination of this Agreement in any manner.

**ARTICLE 15. Assignments.** Except as provided in Article 11 hereof, the Trustee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, nor transfer possession of any Unit of the Equipment to any other firm, person or corporation without first obtaining the written consent of the Vendor (which consent shall not be unreasonably withheld) to such sale, assignment or transfer.

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 Trustee may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall relieve the Vendor from any of the obligations of the Vendor to purchase and deliver the Equipment in accordance herewith or to respond to its agreements contained in this Agreement, or relieve the Trustee of its obligations to the Vendor hereunder or any other obligation 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 Trustee, 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 or a portion, as the case may be, of the

assignor's rights, benefits and advantages under this Agreement including all of the Vendor's right, title and interest in and to the Equipment, 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 the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

**ARTICLE 16. Defaults.** In the event that one or more of the following events of default shall occur and be continuing, to-wit:

(a) The Trustee shall fail to pay in full any sum payable by the Trustee as herein provided in respect of the Conditional Sale Indebtedness or interest thereon; or

(b) The Trustee shall, for more than 10 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed (other than the failure to make payments as provided in subparagraph (a) hereinabove or the unauthorized transfer or assignment of the Equipment as provided in subparagraph (e) hereinbelow) or to make provision satisfactory to the Vendor for such compliance; or

(c) Any material representation or warranty made by the Trustee in this Agreement or in any document or certificate furnished pursuant hereto shall prove to have been incorrect in any material respect when such representation or warranty was made or given; or

(d) The Trustee shall make an assignment for the benefit of creditors or admit in writing its inability to pay its debts generally as they become due; or an order, judgment or decree shall be entered adjudicating the Trust bankrupt or insolvent; or the Trustee shall petition or apply to any tribunal for the appointment of a trustee or receiver of the Trust, or of any substantial part of the assets of the Trust, or commence any proceedings relating to the Trust under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceeding shall be commenced, against the Trustee or the Trust and the Trustee by any act shall indicate its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree shall be

entered appointing any such trustee, receiver or liquidator, or approving the petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or

(e) The Trustee 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

(f) Any Trustor shall default in the payment of any obligations of such Trustor to the Trust, or any Trustor shall file a voluntary petition in bankruptcy or suffer an involuntary petition in bankruptcy to be filed against him and such petition shall not have been dismissed within 60 days of the filing thereof; or

(g) The Management Agreement or any subsequent agency agreement executed by the Trustee pursuant to and in accordance with the terms hereof shall have been terminated pursuant to the terms thereof and the Trustee, within 30 days after the date of any such termination, shall not have executed another agency agreement, in form and substance satisfactory to the Vendor, with respect to the maintenance and operation of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare the entire amount of the unpaid 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 the Conditional Sale Indebtedness and such interest shall bear interest from the date of such declaration at the rate of 11.25% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgement out of any property of the Trustee wherever situated.

**ARTICLE 17. Remedies.** If the Trustee shall have defaulted as hereinbefore provided, then at any time after the entire unpaid portion of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided and, during the continuance of such default, the Vendor, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory

requirements of law 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 any Unit thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee or any agent of the Trustee and for such purpose may enter upon the Trustee's or any such agent's 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 Trustee, any such agent or any affiliate thereof, with or without process of law.

In case the Vendor shall rightfully demand possession the Equipment in accordance with this Agreement and shall reasonably designate a point or points upon the lines of any affiliate of NRUC or of any successor agent or any affiliate thereof for the delivery of the Equipment, or any Unit thereof to the Vendor, the Trustee shall, at its own expense forthwith and in the usual manner, cause the Equipment, or any such Unit, to be moved to such point or points on such lines as shall be designated by the Vendor and shall there deliver the Equipment, or any such Unit, or cause it or them to be delivered to the Vendor, and, at the option of the Vendor, the Vendor may keep the Equipment, or any such Unit, on any of the lines of any affiliate of NRUC or of any successor agent or any affiliate thereof or premises of any such affiliate or agent until the Vendor shall have leased, sold or otherwise disposed of the same, provided that such storage does not interfere with the railroad operations of NRUC or its affiliate or any successor agent or any affiliate thereof, and for such purpose the Trustee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Trustee or any such affiliate or agent. This agreement to deliver the Equipment, or any such Unit, and to furnish facilities for its storage 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 Trustee or any such affiliate or agent requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Units of the Equipment in any reasonable manner.

If the Trustee shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire unpaid portion of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment, or any Unit thereof, as hereinbefore in this Article 17 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, (i) retake possession of the Equipment, or any Unit thereof, and retain the Equipment, or any such Unit, as its own and make such disposition thereof as the Vendor shall deem fit (including, if the Vendor so elects, the leasing of the Equipment, or any Unit thereof, on such terms as it shall deem fit), and in such event all the Trustee's rights in the Equipment, or any such Unit, will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments theretofore made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment, or any such Unit, by the Trustee; **provided, however,** that if the Trustee, within 30 days of receipt of notice of the Vendor's election to retain the Equipment, or any such Unit, for its own use, as hereinbefore provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness which the Trustee has agreed to pay hereunder, together with interest thereon accrued and unpaid and all other payments due by the Trustee under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment, or any such Unit, shall pass to and vest in the Trustee, or (ii) with or without retaking possession of the Equipment, or any Unit thereof, sell the Equipment, or any such Unit, free from any and all claims of the Trustee or of any other party claiming by, through or under the Trustee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale, and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, or any such Unit, shall be credited first to interest, and then to principal due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment, or any Unit thereof, for its own use may be given to the Trustee by telegram or registered mail addressed to the Trustee as provided in Article 22 hereof, at any time during a period of 30 days after the entire unpaid portion of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided, and if no such

notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and 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 Equipment to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law, **provided, however,** that the Trustee shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Trustee as provided in Article 22 hereof. To the extent not prohibited by any such requirements of law, the Vendor may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale without accountability to the Trustee (except to the extent of surplus money received as provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Trustee 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.

The Trustee 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 attorneys' fees, and the amount thereof shall be included in such judgment.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to the Vendor under the provisions of this Agreement, the Trustee

shall pay the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover judgment therefor against the Trustee. 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 Trustee.

In the event of the assignment of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Vendor hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

The Trustee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of the Units of Equipment and to sell them and any other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Vendor's rights hereunder, except such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

**ARTICLE 18. Applicable State Laws.** Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

**ARTICLE 19. Extension Not a Waiver.** No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the obligations of the Trustee hereunder. The acceptance by the Vendor of any payment after it shall have become due hereunder shall not be deemed to alter or impair the obligations of the Trustee or the Vendor's rights hereunder with respect to any subsequent payments or default herein.

**ARTICLE 20. Recording.** The Trustee will cause this Agreement and any assignments hereof or of any interests herein, and any amendments or supplements hereto or thereto, the NRUC Bill of Sale and the Management Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record and deposit any and all further instruments 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 the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Trustee will promptly furnish to the Vendor certificates or other evidences of such filing and recording and depositing satisfactory to the Vendor.

**ARTICLE 21. Payment of Expenses.** The Trustee will pay all reasonable costs and expenses (including, without limitation, counsel fees of the Vendor) of the Vendor and all costs of the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of any instrument supplemental to or amendatory of this Agreement, of the NRUC Bill of Sale and the Management Agreement, and of any certificate of the payment in full of the Conditional Sale Indebtedness due hereunder.

**ARTICLE 22. Notices.** Any notice hereunder to the Trustee shall be deemed to be properly served if delivered or mailed to the Trustee at 47 East Camperdown Way, Greenville, South Carolina 29602, Attention: Trust Officer, or at such other address as may have been furnished in writing to the Vendor by the Trustee. Any notice hereunder to the Vendor shall be deemed to be properly served if delivered or mailed to the Vendor at 399 Park Avenue, New York, New York 10022, Attention: Manager, Contract Administration, or at such other address as may have been furnished in writing to the Trustee by the Vendor. Any notice hereunder to any assignee of the Vendor shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Trustee by such assignee.

**ARTICLE 23. Article Headings.** All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

**ARTICLE 24. Effect and Modification of Agreement.** Except as herein otherwise provided, this Agreement exclusively and completely states the rights of the Vendor and the Trustee 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 on behalf of the Vendor and the Trustee.

**ARTICLE 25. Law Governing.** This Agreement shall be governed by the laws of the State of South Carolina; **provided, however,** that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

**ARTICLE 26. Execution.** This Agreement may be simultaneously executed in any number of counterparts, 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. Although this Agreement is dated as of December 17, 1977 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 acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Vendor, pursuant to due corporate authority, and the Trustee, pursuant to the Trust Agreement, have caused this instrument to be executed in their respective names by their respective duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

CITICORP LEASING, INC.

[Corporate Seal]

By *Markew Colasanti* .....  
Vice President

ATTEST:

*Theodore Bayo* .....  
Assistant Secretary

THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, as Trustee under a Trust Agreement dated as of December 17, 1977

By *Walter D. ...* .....  
Vice President and Trust Officer



[Corporate Seal]

ATTEST:

*Dylan M. Foris* .....  
Secretary  
Assistant Trust Officer

STATE OF NEW YORK )  
 )  
 :ss.:  
COUNTY OF NEW YORK )

On this 28th day of December, 1977, before me personally appeared Matthew Colasanti, to me personally known, who being by me duly sworn, says that he is a Vice President of Citicorp Leasing, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and 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.

.....Denelia A. Valentin.....  
Notary Public  
New York County, New York

[NOTARIAL SEAL]

**DENELIA VALENTIN**  
Notary Public, State of New York  
No. 31-4650739  
Qualified in New York County  
Commission Expires March 30, 1979

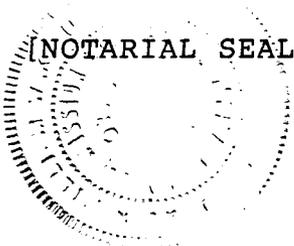
STATE OF SOUTH CAROLINA )  
 )  
 :ss.:  
COUNTY OF Greenville )

On this 29th day of December, 1977, before me personally appeared to me personally known, who being by me duly sworn, says that he is vice president of The Citizens and Southern National Bank of South Carolina, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and 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.

.....C. E. C. Hill.....  
Notary Public  
Greenville County, South Carolina

[NOTARIAL SEAL]

Commission Expires: 11/19/79



SCHEDULE I  
TO  
CONDITIONAL SALE AGREEMENTSCHEDULE OF PAYMENTS  
OF  
CONDITIONAL SALE INDEBTEDNESS

<u>Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Payment</u>
<u>Number</u>	<u>Principal</u>	<u>Interest</u>	<u>Recovery</u>	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				

<u>Payment</u>			<u>Principal</u>	
<u>Number</u>	<u>Principal</u>	<u>Interest</u>	<u>Recovery</u>	<u>Payment</u>
33				
34				
35				
36				
37				
39				
40				
41				

**EXHIBIT A  
TO  
CONDITIONAL SALE AGREEMENT**

**TRUST AGREEMENT**

THIS TRUST AGREEMENT dated as of December 17, 1977 among THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, as trustee hereunder (the **Trustee**), and the Persons named in Schedule 1 hereto (collectively, the **Trustors**).

**W I T N E S S E T H :**

WHEREAS, the Trustors desire to create a trust (the **Trust** or this **Trust**) for the purpose of acquiring certain railroad equipment (the **Equipment**) from the Golden Tye Division of National Railway Utilization Corporation (the **Manufacturer**);

WHEREAS, the Trustors desire to finance an amount equal to 80% of the purchase price of the Equipment under and pursuant to the terms of a Conditional Sale Agreement (the **Conditional Sale Agreement**) substantially in the form of Exhibit A to this Trust Agreement;

WHEREAS, the Trustors further desire to place the Equipment under the management of National Railway Utilization Corporation (the **Manager**) pursuant to a Management Agreement (the **Management Agreement**) substantially in the form of Exhibit B to this Trust Agreement;

WHEREAS, the Trustors desire and expect to receive certain benefits which will accrue to the Trustors as provided for herein and therefore request The Citizens and Southern National Bank of South Carolina to serve as Trustee hereunder; and

WHEREAS, the Trustee is willing to accept the duties and obligations imposed hereunder.

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

**SECTION 1. Direction to Execute Documents.**

The Trustors hereby authorize and direct the Trustee, solely on behalf of the Trust, to:

1.1 . execute and deliver to the Manufacturer a Purchase Order (the **Purchase Order**) with respect to the purchase from the Manufacturer of 28 70-ton 50'6" Boxcars bearing railroad numbers NSL 102270-102297 inclusive (the **Equipment**, and each unit hereof being herein referred to as a **Unit**) for a purchase price of \$35,100 per Unit, or an aggregate of \$982,800 for all Units;

1.2 . execute and deliver to Citicorp Leasing, Inc. (the **Vendor**) the Conditional Sale Agreement pursuant to which, among other things, the Trustee will assign the Purchase Order to the Vendor and, after delivery of the Equipment to the Vendor, purchase the Equipment from the Vendor;

1.3 . execute and deliver the Management Agreement; and

1.4 . do all such other things and take all such action as may be necessary or convenient to consummate the transactions and to perform the terms and conditions of this Trust, all as contemplated herein or in the documents referred to herein.

The documents referred to in this Section 1 are hereinafter sometimes referred to as the **Operative Agreements**.

## **SECTION 2. Declaration of Trust; Participation Certificates.**

2.1 . The Trustee hereby declares and agrees to execute and hold all its right, title and interest in and to the Equipment and all rights, powers and privileges and other benefits of the Trustee in respect thereof, including, without limitation, all receipts in respect of the use and operation of the Equipment, payments of insurance proceeds and other sums received in respect of Casualty Occurrences and other payments and proceeds received under the Management Agreement as a result of the use or operation thereof or as the result of a sale, lease or other disposition thereof or otherwise and all other monies, proceeds or property at any time received by the Trustee from the Manager or from the Trustors (collectively the **Trust Estate**), in and subject to this Trust for the use and benefit of the Trustors.

2.2 . The Trustee hereby agrees to issue to each Trustor, on the Closing Date, as such term is defined in the Conditional Sale Agreement, a participation certificate substantially in the form of Annex A hereto, evidencing such Trustor's beneficial interest in this Trust. Such participation certificate shall set forth the percentage of beneficial interest of such Trustor, as shown opposite the name of such Trustor in Schedule 1 hereto.

## **SECTION 3. Limitations on Authority of Trustee With Respect to the Trust Estate.**

Except to execute and deliver the Operative Agreements and to exercise and carry out or cause to be exercised and carried out

the rights, duties and obligations of the Trustee thereunder, the Trustee shall have no power, right, duty or authority to manage, control, possess, sell, lease, dispose of or in any other manner deal in or with the Equipment or any part thereof at anytime conveyed to or vested in or registered or otherwise standing in the name of the Trustee. Except to receive, collect and distribute and deal with the proceeds of the Management Agreement and with the Equipment and the proceeds thereof as in the Operative Agreements and in this Trust Agreement set forth, the Trustee shall have no power, right, duty or authority to deal with any other property at any time constituting part of the Trust Estate. It is understood and agreed, however, that nothing in this Section 3 contained shall be deemed to limit or restrict the power and authority of the Trustee (a) as Trustee under said Management Agreement, to enforce the terms and provisions of the Management Agreement, to collect and receive revenue and other sums payable thereunder and otherwise to exercise the rights, powers and privileges of the Trustee as provided for by the Management Agreement to the fullest extent permitted by applicable law, or (b) to comply with the terms and provisions of the Conditional Sale Agreement, and to otherwise perform the obligations of the Trustee thereunder to the fullest extent permitted by applicable law, or (c) to make demand under the Trustor's Demand Notes, as such term is hereinafter defined, delivered to the Trustee as evidence of the obligations of the Trustors under Section 4.2 of this Trust Agreement.

#### **SECTION 4. Advances by the Trustors.**

**4.1 Obligation to Provide Funds for Closing.** On the Closing Date each Trustor hereby agrees to provide to the Trustee for purposes of payment of the first installment of the Conditional Sale Indebtedness, as such term is defined in the Conditional Sale Agreement, funds in an amount equal to the percentage of such first installment which appears opposite the name of such Trustor in Schedule 1 hereto.

**4.2 Obligation to Provide Funds; Trustor's Notes.** If on any date on which obligations of the Trust are due and payable the Trustee shall not have immediately available funds in amounts sufficient to pay and discharge such obligations, the Trustors, severally, agree to contribute to the Trust amounts sufficient to pay and discharge such obligations; **provided, however,** that the maximum amount which each Trustor shall be required to contribute pursuant hereto shall not exceed, in the aggregate, the amount (herein referred to as the **Trustor's Deferred Obligation**) set forth opposite the name of such Trustor in Schedule I hereto. As evidence of each Trustor's Deferred Obligation hereunder, each Trustor agrees to execute and deliver to the Trustee a non-interest bearing demand note (herein referred to as a **Trustor's Demand Note**) in a principal amount equal to such Trustor's Deferred Obligation. Until payment in full of the purchase price of the Equipment and discharge by the Trustee of all of its obligations under and with respect to the Conditional Sale Agreement, the Trustee shall be authorized to hold all Trustor's

Demand Notes and, at any time or from time to time, to make demand thereunder when required pursuant to the terms of this Section 4.2; **provided, however,** that each such demand with respect to any Trustor and any Trustor's Demand Note shall bear the same relation to the original principal amount of such Trustor's Demand Note as the total amount of the Trustee's obligations payable at such time hereunder bears to the aggregate original principal amount of all Trustor's Demand Notes. The Trustor's Demand Notes shall be in the form annexed as Exhibit C hereto. When, in accordance with Article 2 of the Conditional Sale Agreement, title to and property in the Equipment shall pass to the Trustee, the Trustee shall cancel all outstanding Trustor's Demand Notes and return the same to the respective Trustors. As used herein "obligations of the Trust" shall include, without limitation, all amounts required to be paid by the Trustee to pay, perform and discharge all obligations of the Trustee under the Conditional Sale Agreement.

## **SECTION 5. Distributions.**

**5.1 Collections and Remittances by the Trustee.** The Trustee agrees that, subject to the provisions of this Trust Agreement, it will during the term of this Trust administer the Trust Estate and take steps to collect all revenues and other sums payable to the Trustee in respect of the Equipment, including, without limitation, all amounts payable by the Manager under the Management Agreement. So long as the Conditional Sale Agreement shall be in effect, the Trustee shall, and the Trustee is hereby instructed to, retain such revenues and other sums and apply the same to the payment or prepayment of all obligations of the Trust under the Conditional Sale Agreement. When, in accordance with Article 2 of the Conditional Sale Agreement, title to and property in the Equipment shall pass to the Trustee, the Trustee shall distribute to the Trustors all proceeds received from the Trust Estate after payment of all sums payable to the Manager under the terms of the Management Agreement and the Trustee shall make such distributions from time to time as such proceeds are received by the Trustee and are available for distribution, it being understood and agreed that the Trustee shall not be obligated to make such distribution until the funds for such distribution have been received by the Trustee in cash or solvent credits acceptable to it. All distributions to each Trustor shall be made to such Trustor as such Trustor from time to time shall have directed the Trustee in writing, and if no direction shall have been given, such distribution shall be paid by check of the Trustee payable to the order of such Trustor and mailed to such Trustor at its address then provided for notices under Section 9.2 hereof.

**5.2 Distribution After Sale of the Equipment.** Subject to the terms of the Conditional Sale Agreement and of Section 6.4 hereof, the proceeds received by the Trustee from the sale or other disposition of the Equipment shall, after the deduction of all expenses and disbursements of or made by the Trustee in connection with the exercise of such remedy, including fees and expenses of the

Trustee and its counsel, be disbursed to the Trustors. When all obligations of the Trust shall have been paid and discharged and all of the Trust Estate has been disposed of by the Trustee and all of the net proceeds thereof have been distributed as aforesaid, then this Trust shall cease and terminate.

**5.3 All Distributions Pro Rata.** Distributions made to the Trustors pursuant to this Section 5 shall be made to the Trustors pro rata, and each Trustor shall be entitled to receive, and the Trustee shall distribute to each Trustor, that percentage of each amount distributed as is set forth opposite the name of such Trustor in Schedule 1 hereto.

**5.4 Effect of Operative Agreements.** All duties, rights, obligations and liabilities of the Trustee provided for in this Section 5 are subject to the terms and condition of the Operative Agreements and the rights and interests of the other parties to the Operative Agreements under the Operative Agreements.

## **SECTION 6. Certain Provisions Respecting the Trustee.**

**6.1 Acceptance of Trusts and Duties.** The Trustee accepts the trusts hereby created and agrees to perform the same as herein expressed and to receive and disburse all monies constituting part of the Trust Estate in accordance with the terms hereof.

**6.2 Notice of Events of Default.** In the event the Trustee shall have actual knowledge of an Event of Default (as defined in the Management Agreement), the Trustee shall give prompt written notice of such Event of Default to the Vendor and to each Trustor by certified mail, postage prepaid. Subject to the terms of Section 6.4 and the rights of the other parties under the Operative Agreements, the Trustee shall take such action with respect to such Event of Default as shall be specified in written instructions from the Trustors. If the Trustee shall not have received instructions as above provided within 20 days after mailing notice of such Event of Default, the Trustee shall, subject to the terms and provisions of the Conditional Sale Agreement, take such action, or refrain from taking such action with respect to such Event of Default as it shall deem advisable in the best interests of the Trustors, and, without limiting the foregoing, in such event the Trustee may declare the Management Agreement in default as provided for therein and retake possession of the Equipment and sell or otherwise dispose of the same in accordance with the terms of the Management Agreement or the Conditional Sale Agreement. For all purposes of this Trust Agreement and the Management Agreement, in the absence of actual knowledge, the Trustee shall not be deemed to have knowledge of an Event of Default unless notified in writing by a Trustor.

**6.3 Actions Upon Instructions.** Subject to the terms of Section 6.2 and 6.4 hereof and the rights of the other parties to the Operative Agreements under the Operative Agreements, upon the written

instructions at any time and from time to time of the Trustors, the Trustee will, upon receipt of prior written consent of the Vendor, take such of the following action as may be specified in such instructions:

(a) Give such notice or direction or exercise such right or power under the Management Agreement as shall be specified in such instructions;

(b) After the expiration or termination of the Management Agreement in accordance with the terms thereof, appoint such successor agent for the maintenance and operation of the Equipment as the Trustors shall designate in such instructions; and

(c) After the obligations of the Trustee under the Conditional Sale Agreement shall have been paid in full, and after the expiration of the term of the Management Agreement or any subsequent agency agreement executed by the Trustee pursuant to paragraph (b) above, convey all of the Trustee's right, title and interest in and to the Equipment or any Unit thereof to such purchaser or purchasers as shall be designated in such instructions, or otherwise dispose of such Item on such terms as shall be designated in such instructions, **provided, however,** that if instructions for the sale or other disposition of the Equipment or such unit shall not have been delivered to the Trustee prior to the expiration of the term of the Management Agreement or any subsequent agency agreement executed by the Trustee pursuant to paragraph (b) above, the Trustee shall transfer title to the Equipment to the Trustors, each Trustor receiving a percentage interest in the Equipment equal to that percentage which it would be entitled to receive with respect to any distribution made pursuant to Section 5 hereof.

#### 6.4 Certain Duties and Responsibilities of Trustee.

(a) Except during the continuance of an Event of Default (as defined in the Conditional Sale Agreement or in the Management Agreement or any subsequent agency agreement executed by the Trustee pursuant to paragraph (b) above):

(i) The Trustee undertakes to perform only such duties as are specifically set forth herein, in the Management Agreement (if any remain to be performed), and in the Conditional Sale Agreement and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee and the Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Equipment or any other part of the Trust Estate except as

required by the terms of the Operative Agreements and as otherwise provided herein; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions furnished to the Trustee which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement.

(b) The Trustee shall exercise such of the rights and powers vested in the Trustee by this Trust Agreement, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provisions hereof shall be construed to relieve the Trustee of liability for the grossly negligent action, the grossly negligent failure to act or the willful misconduct of the Trustee, except that:

(i) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction of the Trustors given pursuant to the express provisions hereof; and

(ii) No provision hereof shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that payment of such funds or adequate indemnity against risk of liability is not reasonably assured to it.

(d) Whether or not herein expressly so provided, every provision of this Trust Agreement relating to the conduct of, or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 6.4.

**6.5 Certain Rights of the Trustee.** Except as otherwise provided in this Section 6 hereof:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be

genuine and to have been signed or presented by the proper party or parties;

(b) The Trustee may exercise its powers and perform its duties by or through such attorneys, agents and servants as it shall appoint; and it shall be entitled to the advice of counsel (who may, in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel for the Manager); and shall be protected by the advice of such counsel in anything done or omitted to be done in accordance with such advice;

(c) The Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any Trustor, unless in making such request or direction such Trustor or Trustors shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(d) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may deem appropriate, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Manager to reasonably determine whether the Manager is in compliance with the terms and conditions of the Management Agreement and to examine the Equipment, personally or by agent or attorney; and

(e) Without limiting the generality of Section 6.4 hereof and except as provided in the Conditional Sale Agreement, the Trustee shall not have any duty (i) to see to any recording or filing of the Management Agreement or of this Trust Agreement; (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, whether or not the Manager shall be in default with respect thereto; (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien owing with respect to, assessed or levied against any part of the Trust Estate; (iv) to confirm or verify any financial statements of the Manager; or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Manager's covenants under the Management Agreement with respect to the Equipment, unless, in any case, requested so to do by any Trustor or unless, in any case, required so to do by the Operative Agreements.

**6.6 No Representation as to the Equipment.** The Trustee does not make any representation or warranty as to the value, condition, or fitness for use of the Equipment.

6.7 **Status of Monies Received.** All monies received by the Trustee under or pursuant to any provision of this Agreement shall constitute trust funds for the purpose for which they were paid or are held but need not be segregated in any manner from any other monies and may be deposited by the Trustee under such conditions as may be prescribed or permitted by law for trust funds, or may be invested in direct obligations of the United States of America.

6.8 **Resignation or Removal of Trustee.** The Trustee or any successor thereto may resign at any time without cause by giving at least 60 days prior written notice to each Trustor, the Vendor and the Manager, such resignation to be effective on the date specified in such notice. In addition, so long as no Event of Default under either of the Operative Agreements shall have occurred or be continuing, the Trustors may at any time remove the Trustee without cause by an instrument in writing, executed by the Trustors, copies of which shall be delivered to the Manager and the Vendor. Any instrument of removal shall name a successor trustee.

**SECTION 7. Representations by Trustors; Transfer of Trustors' Interests.**

7.1 **Representations.** Each Trustor represents that (a) it is acquiring its beneficial interest hereunder and its participation certificate for its own account for investment and not with a view to distribution or resale thereof; (b) it has full right, power and authority to enter into and perform this Trust Agreement; and (c) no approval, consent or withholding of objections on the part of any regulatory body, state, federal or local, is necessary in connection with its acquisition of its beneficial interest hereunder or its participation certificate, or its execution or performance of this Trust Agreement or to the extent such approval, consent or such other action is necessary, the same has been obtained and is in full force and effect.

**SECTION 8. Termination of and Amendments to Trust.**

8.1 **Termination.** The trusts created and provided for hereby shall cease and be terminated in any one of the following events, whichever shall first occur:

(a) If the Trustors shall by notice in writing to the Trustee, the Vendor and the Manager revoke and terminate the Trust on and as of a date stated in such notice, which date shall be not less than 10 nor more than 30 days from the date of mailing such notice, then on the date specified in such notice the Trust created and provided for hereby shall cease and terminate; **provided, however,** that this Trust shall not be subject to revocation or termination by the Trustors prior to the payment in full of, and the discharge of, all obligations of the Trustee under the Conditional Sale Agreement; or

(b) The sale or other final disposition of the Trustee of all property constituting the Trust Estate and the final disposition of all monies or other property or proceeds constituting part of the Trust Estate in accordance with the terms hereof.

**8.2 Distribution of Trust Estate Upon Termination.** Upon any termination of this Trust pursuant to the provisions of Section 8.1(a) or Section 8.1(b) hereof, the Trustee shall convey the Trust Estate to such purchaser or purchasers and for such amount and on such terms as shall be specified in written instructions from all of the Trustors delivered to the Trustee prior to the date of termination. Upon making such transfer or sale and accounting for all funds which have come into its hands, the Trustee shall be entitled to immediate receipt of any sums due and owing to the Trustee for expenses incurred pursuant hereto or as compensation for services rendered hereunder and not theretofore paid and the Trustee shall be discharged and free of any further liability hereunder.

**8.3 Amendments to This Trust Agreement and Other Documents.** This Trust Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments in writing executed by the Trustee and each and every Trustor; **provided, however,** that so long as the Conditional Sale Agreement shall be in effect no such amendment or supplement shall be or become effective until the Trustee shall have received the prior written consent of the Vendor.

## **SECTION 9. Miscellaneous.**

**9.1 Indemnification.** Each Trustor agrees to reimburse the Trustee and save the Trustee harmless against any and all losses, damages, liabilities, claims, demands, disbursements and expenses, including taxes and counsel fees, which may be incurred by reason of the Trustee being Trustee or acting hereunder or under the Operative Agreements, but solely by reason thereof and arising out of or relating solely to this Trust Agreement or the Operative Agreements or the Equipment or the revenues, receipts and other sums payable therefor, or by reason of any occurrence while so acting, and to secure the payment thereof, the Trustee shall have a lien on the Trust Estate and the proceeds thereof, including income, prior to any interest therein of the Trustors (but subject and subordinate to the rights of the Vendor under the Conditional Sale Agreement) provided that no Trustor shall be so obligated in respect of any such loss, damage, liability, claim, demand, disbursement or expense arising from or as a result of the willful misconduct or gross negligence of the Trustee. Each Trustor further agrees to indemnify and save harmless the Trustee from any costs and expenses (including legal fees and expenses) incurred as a result of the imposition of any lien, charge or encumbrance arising as a result of claims against such Trustor not related to the transactions contemplated by the Operative Agreements or the Trust Agreement. The provisions of this Section 9.1 shall

continue in full force and effect notwithstanding the termination of this Trust or the resignation or removal of the Trustee.

**9.2 Notices.** All notices and communications provided for herein shall be given in writing and shall be deemed to have been given when delivered personally or otherwise actually received and for purposes hereof any such notice shall be deemed to have been received on the fifth business day following the deposit thereof in the United States mail, registered, postage prepaid, addressed as follows:

- If to the Trustee: At its address shown in Schedule 1 hereto.
- If to any Trustor: At its address shown in Schedule 1 hereto.
- If to the Vendor: At 399 Park Avenue, New York, New York 10022, Attention: Manager, Contract Administration.
- If to the Manager: At 860 Suburban Station, 1617 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103.

or as to any of the foregoing parties or persons at such other address as such party or person may designate by notice duly given in accordance with this Section to each other party or person.

**9.3 Administration of Trust; Applicable Law.** This Trust has been accepted by the Trustee and will be administered in the State of South Carolina and the validity, construction and all rights under this Trust shall be governed by and construed and enforced in accordance with, the laws of that state. If any provision of this Trust be deemed invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligation or liabilities of the Trustee.

**9.4 Identification of Trust.** This Trust may for convenience be referred to as "St. Lawrence Railroad No. 77-A".

IN WITNESS WHEREOF, the Trustors and the Trustee have caused this instrument to be duly executed all as of the date and year first above written.

THE CITIZENS AND SOUTHERN  
NATIONAL BANK OF SOUTH  
CAROLINA, as Trustee

BY: \_\_\_\_\_  
Its Vice President and  
Senior Trust Officer

BY: \_\_\_\_\_  
Its Assistant Trust Officer

\_\_\_\_\_  
John H. Rees

\_\_\_\_\_  
John A. Mariscotti

\_\_\_\_\_  
Charles P. Turnburke

\_\_\_\_\_  
John M. Sterling, Jr.

\_\_\_\_\_  
William W. Kehl

\_\_\_\_\_  
R. Hunter Park

\_\_\_\_\_  
Ronald K. Gooding

\_\_\_\_\_  
C. T. Wyche

---

Buck Alston Mickel

---

Charles Clark Mickel

---

Harold Shaw

---

Minor Mickel Shaw

---

D. F. King

---

Francis M. Hipp

---

Greg W. Rothe

---

Charles W. Wofford

---

David L. Freeman

---

Nathan A Einstein

STATE OF )  
COUNTY OF )

On this \_\_\_\_\_ day of December, 1977, before me personally appeared John H. Rees, John A. Mariscotti, Charles P. Turnburke, John M. Sterling, Jr., William W. Kehl, R. Hunter Park, Ronald K. Gooding, C. T. Wyche, Buck Alston Mickel, Charles Clark Mickel, Harold Shaw, Minor Mickel Shaw, D. F. King, Francis M. Hipp, Greg W. Rothe, Charles W. Wofford, David L. Freeman, and Nathan A. Einstein to me personally known, who being by me duly sworn, say that they are Trustors under the foregoing Trust Agreement; that said instrument was signed and sealed by them, and they acknowledged that the execution of the foregoing instrument was their free act and deed.

(Seal)

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

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF )

On this \_\_\_\_\_ day of December, 1977, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is Vice President of The Citizens and Southern National Bank of South Carolina; 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

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

My Commission Expires: \_\_\_\_\_

SCHEDULE 1  
to Trust Agreement

Name and Address of Trustor	Num- ber of Units Owned	Percent- age of Bene- ficial Interest	Obliga- tion with respect to the First In- stallment	Trus- tor's Deferred Obliga- tion
National Railway Utilization Corporation 860 Suburban Station 1617 John F. Kennedy Boulevard Philadelphia, Pa. 19103	5	17.857%	\$ 35,100	\$140,400
National Railway Utilization Corporation 860 Suburban Station 1617 John F. Kennedy Boulevard Philadelphia, Pa. 19103	3	10.714	21,060	84,240
Charles P. Turnburke National Railway Utilization Corporation 860 Suburban Station 1617 John F. Kennedy Boulevard Philadelphia, Pa. 19103	2	7.143	14,040	56,160
John M. Sterling, Jr. 419 Belmont Avenue Greenville, South Carolina 29605	1	3.571	7,020	28,080
William W. Kehl 7 Seven Oaks Drive Greenville, South Carolina 29605	1	3.571	7,020	28,080
R. Hunter Park 41 Stone Haven Drive Greenville, South Carolina 29607	2	7.143	14,040	56,160
Ronald K. Gooding 110 Stonehedge Drive Greenville, South Carolina 29615	1	3.571	7,020	28,080

C. T. Wyche 1140 Parkins Mill Road Greenville, South Carolina 29607	2	7.143	14,040	56,160
Buck Alston Mickel 415 Crescent Avenue Greenville, South Carolina 29605	1	3.571	7,020	28,080
Charles Clark Mickel 415 Crescent Avenue Greenville, South Carolina 29605	1	3.571	7,020	28,080
Harold Shaw and Minor Mickel Shaw 415 Crescent Avenue Greenville, South Carolina 29605	1	3.571	7,020	28,080
D. F. King 44 Fenwick Lane Greenville, South Carolina 29611	1	3.571	7,020	28,080
Francis M. Hipp 33 West Avondale Drive Greenville, South Carolina 29609	2	7.143	14,040	56,160
Greg W. Rothe Green Valley Drive Greenville, South Carolina 29609	1	3.571	7,020	28,080
Charles W. Wofford 214 Trails End Greenville, South Carolina 29607	1	3.571	7,020	28,080
David L. Freeman 118 Crescent Avenue Greenville, South Carolina 29605	2	7.143	14,040	56,160
Nathan A. Einstein 312 Chantilly Drive Greenville, South Carolina 29615	1	3.571	7,020	28,080

Name and Address  
of Trustee

---

The Citizens and Southern  
National Bank of South  
Carolina,  
47 East Camperdown Way  
Greenville, South Carolina  
29602

Attn: Trust Officer

Form of Participation Certificate

THE CITIZENS AND SOUTHERN NATIONAL BANK  
OF SOUTH CAROLINA,  
AS TRUSTEE UNDER  
TRUST AGREEMENT DATED AS OF DECEMBER 17, 1977

Participation Certificate

(St. Lawrence Railroad No. 77-A)

\_\_\_\_\_ %

December \_\_, 1977

Issued to: \_\_\_\_\_ (the **Trustor**)

THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, as Trustee (the **Trustee**) under that certain Trust Agreement dated as of December 17, 1977 (the **Trust Agreement**; the defined terms therein not otherwise defined herein being used with the respective meanings ascribed to them therein), among the Trustee, the Trustor, and the other Trustors named in the Trust Agreement, hereby certifies as follows:

(i) This Participation Certificate is one of the participation certificates referred to in the Trust Agreement, which participation certificates have been or are to be issued by the Trustee pursuant to the Trust Agreement;

(ii) The Trustee acknowledges receipt from the Trustor of \$ \_\_\_\_\_ in payment by said Trustor of its obligation to provide funds provided for by Section 4.1 of the Trust Agreement;

(iii) The Trustee acknowledges receipt from the Trustor of its Trustor's Demand Note in the principal amount of \$ \_\_\_\_\_, provided by the Trustor pursuant to Section 4.2 of the Trust Agreement; and

(iv) Subject to the terms and provisions of the Conditional Sale Agreement, the holder of this Participation Certificate has, ratably with the holders of the other participation certificates, an undivided beneficial interest in the the Trust Estate and is entitled to receive ratably with holders of the other participation certificates, a \_\_\_\_\_ % undivided beneficial interest in the Trust Estate and is entitled to receive, ratably with the

holders of the other participation certificates, as provided in the Trust Agreement, a like percentage share of each and every distribution of funds and other property which may be received by the Trustee pursuant to the terms of the Trust Agreement and to which the Trustors are entitled, as more particularly set forth in the Trust Agreement.

All amounts payable by the Trustee hereunder and under the Trust Agreement shall be paid only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of the Trust Agreement.

The rights of the holders of the participation certificates under the Trust Agreement, as well as the beneficial interest of the holders of the participation certificates in and to the properties of the Trustee constituting all or part of the Trust Estate, are subject and subordinated to the rights of the Vendor under the Conditional Sale Agreement. Reference is hereby made to the Trust Agreement for statements with respect to the rights and obligations of the holders of this Participation Certificate, and the rights and obligations of the other holders of participation certificates, pursuant to the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Participation Certificate to be executed in its corporate name by one of its officers duly authorized as of the date hereof.

**THE CITIZENS AND SOUTHERN  
NATIONAL BANK OF SOUTH  
CAROLINA,**  
as Trustee

(SEAL)

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

Attest:

---

EXHIBIT A  
TO  
TRUST AGREEMENT

CONDITIONAL SALE AGREEMENT  
dated as of  
December 17, 1977

between

CITICORP LEASING, INC.,  
as Vendor

and

THE CITIZENS AND SOUTHERN NATIONAL BANK  
OF SOUTH CAROLINA,  
as Trustee

EXHIBIT B  
TO  
TRUST AGREEMENT

MANAGEMENT AGREEMENT  
dated as of  
December 17, 1977

between

THE CITIZENS AND SOUTHERN NATIONAL BANK  
OF SOUTH CAROLINA,  
as Trustee

and

NATIONAL RAILWAY UTILIZATION CORPORATION,  
as Manager

Annex C  
to  
Trust Agreement

DEMAND NOTE

\$

December 30, 1977

FOR VALUE RECEIVED, ON DEMAND, hereby promises to pay to THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, as Trustee (the Trustee) under a Trust Agreement dated as of December 17, 1977 (the Trust Agreement), or order, at the principal office of the Trustee at 47 East Camperdown Way, Greenville, South Carolina 29602, the principal sum of \$ , without interest. Demand may be made hereunder at any time or from time to time and, in the case of any demand in respect of less than all of the principal amount hereof, the Trustee shall record on the reverse side hereof the amount so paid and the date thereof.

This Note is one of the Trustor's Demand Notes issued by the maker hereof under and pursuant to the terms of the Trust Agreement, to which agreement reference is hereby made for the terms and provisions thereof.

This Note is made and delivered in the State of South Carolina and shall be construed and enforced in accordance with and governed by the laws of such State.

---

EXHIBIT B  
TO  
CONDITIONAL SALE AGREEMENT

**BILL OF SALE**

**NATIONAL RAILWAY UTILIZATION CORPORATION** (the Builder), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, assign, set over and transfer to **CITICORP LEASING, INC.**, a Delaware Corporation (Citicorp Leasing), as assignee of The Citizens and Southern National Bank of South Carolina, as Trustee under a Trust Agreement dated as of December 17, 1977 (the Trustee) under the Trustee's Purchase Order dated December \_\_, 1977, and to the successors and assigns of Citicorp Leasing, 28 70-ton 50'6" Boxcars, bearing railroad numbers NSL 102270-102297, inclusive; and the Builder hereby warrants to Citicorp Leasing that on the date hereof the Builder had full legal title to the above-described Boxcars and good and lawful right to sell said Boxcars and the title to said Boxcars was free of all claims, liens and encumbrances of any nature whatsoever; and the Builder further covenants to Citicorp Leasing that the Builder will warrant and defend said title.

**IN WITNESS WHEREOF**, the Builder has caused this instrument to be signed in its name by one of its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, this \_\_\_\_th day of December, 1977.

**NATIONAL RAILWAY UTILIZATION CORPORATION**

By:.....  
Title:.....

[Corporate Seal]

**ATTEST:**  
.....

EXHIBIT C  
TO  
CONDITIONAL SALE AGREEMENT

December , 1977

Citicorp Leasing, Inc.  
399 Park Avenue  
New York, New York 10022  
Attention: Manager, Contract  
Administration

Dear Sirs:

As counsel for National Railway Utilization Corporation, a South Carolina corporation (the **Builder**), we are familiar with that certain Purchase Order dated December \_\_, 1977 (the **Purchaser Order**) executed by The Citizens and Southern National Bank of South Carolina, as trustee under a Trust Agreement dated as of December 17, 1977 (the **Trustee**), and the assignment of such Purchase Order to Citicorp Leasing, Inc. (**Citicorp**) pursuant to the Conditional Sale Agreement. The Purchaser Order, as so assigned, provides for the sale by the Builder to Citicorp of 28 70-ton 50'6" Boxcars bearing railroad numbers NSL 102270-102297, inclusive (the **Boxcars**), built by the Builder.

As counsel for the Builder, we are of the opinion that:

(a) the Builder is a duly organized and existing corporation in good standing under the laws of the State of South Carolina and has the power and authority to own and convey its properties and to carry on its business as now conducted;

(b) the Builder has the full power, authority and legal right to enter into and perform the Purchase Order and the Bill of Sale dated the date hereof, and the execution, delivery and performance by the Builder of the Purchase Order and such Bill of Sale have

been duly authorized by necessary corporate action on the part of the Builder;

(c) the Purchase Order has been duly accepted by the Builder and constitutes, and the abovementioned Bill of Sale, when executed and delivered in accordance with the Purchase Order, will constitute, the legal, valid and binding obligations of the Builder enforceable against the Builder in accordance with the respective terms thereof;

(d) the acceptance and performance by the Builder of the Purchase Order and the execution, delivery and performance by the Builder of the abovementioned Bill of Sale will not contravene any provision of law or of the Builder's certificate of incorporation, by-laws or any agreement or other instrument binding upon the Builder; and

(e) upon delivery by the Builder of the abovementioned Bill of Sale against payment of the purchase price set forth in the Purchase Order, Citicorp Leasing, Inc. will acquire and be vested with full legal title to the Boxcars free of all claims, liens and encumbrances created or arising by action of the Builder.

Very truly yours,

EXHIBIT D  
TO  
CONDITIONAL SALE AGREEMENT

December , 1977

Citicorp Leasing, Inc.  
399 Park Avenue  
New York, New York 10022  
Attention: Manager, Contract  
Administration

Dear Sirs:

We are acting as counsel for The Citizens and Southern National Bank of South Carolina, as Trustee (the **Trustee**) under a Trust Agreement dated as of December 17, 1977 (the **Trust Agreement**) in connection with the execution and delivery of the Trust Agreement and, pursuant thereto, the Conditional Sale Agreement dated as of December 17, 1977 (the **Conditional Sale Agreement**) between the Trustee and you. This opinion is being delivered to you pursuant to paragraph (d) of Article 1 of the Conditional Sale Agreement and all defined terms used herein shall, unless otherwise indicated, have the meanings given such terms in the Conditional Sale Agreement.

As counsel for the Trustee we are of the opinion that:

(a) The Citizens and Southern National Bank of South Carolina (the **Bank**) is a national banking association duly organized and validly existing in good standing under the laws of the United States of America, and has the corporate power and authority to enter into and perform its obligations under the Trust Agreement and, acting pursuant thereto, the Conditional Sale Agreement and the Management Agreement.

(b) The execution, delivery and performance by the Bank of the Trust Agreement have been duly authorized by

all necessary corporate action on its part and do not require any stockholder approval.

(c) The Trust Agreement has been duly executed and delivered by one of the authorized officers of the Bank and one of its Assistant Trust Officers who are duly authorized to execute and deliver the Trust Agreement on behalf of the Bank, and constitutes the legal, valid and binding obligation of the Trustee enforceable against it in accordance with its terms.

(d) The execution and delivery by the Trustee of the Conditional Sale Agreement, the Trust Agreement and the Management Agreement are not, and the performance by the Trustee of its obligations under each will not be, inconsistent with the articles of association or by-laws of the Trustee, do not and will not contravene any law, governmental rule or regulation of the United States of America or the State of South Carolina or any judgment or order applicable to the Trustee, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Trustee is a party or by which it is bound or require action in respect of or by, any governmental authority of the United States of America or the State of South Carolina or other organization or person, except such as have been obtained, given or accomplished.

(e) The Conditional Sale Agreement and the Management Agreement have been duly authorized by the Trustee acting pursuant to the Trust Agreement, have been duly executed and delivered by the Trustee acting pursuant to the Trust Agreement and constitute legal, valid and binding obligations of the Trustee enforceable in accordance with their respective terms.

(f) No litigation or administrative proceedings are pending or, to our knowledge, threatened against the Trustee, the adverse determination of which would affect the validity of the Conditional Sale Agreement, the ability of the Trustee to fulfill its obligations thereunder, or the rights of the Vendor thereunder.

(g) Upon delivery by NRUC of the NRUC Bill of Sale, the Vendor shall thereby acquire full legal title to the Units described in the NRUC Bill of Sale and good lawful right to sell such Units and title to such Units shall be vested in Vendor free of all Liens subject only to the rights of the Trustee under the Conditional Sale Agreement.

(h) The Units conform to all Interstate Commerce Commission and Department of Transportation (Federal Railroad Administration) requirements and specifications interpreted as being applicable to railroad equipment of the character of such Units.

(i) Trustor's Demand Notes, as such term is defined in the Trust Agreement, in the aggregate original principal amount \$786,240 and payable to the Trustee, have been duly executed and delivered by the respective Trustors and are the valid and binding obligations of the respective Trustors enforceable in accordance with their respective terms and, by reference thereto in such Trustor's Demand Notes, the terms of the Trust Agreement.

The opinions set forth in paragraphs (c), (d), (e) and (i) above are subject to the qualifications that (i) enforceability of the Trust Agreement, the Conditional Sale Agreement, the Management Agreement and the Trustor's Demand Notes in accordance with their respective terms may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally, and (ii) certain laws and judicial decisions may affect the enforceability of certain rights and remedies provided in the Conditional Sale Agreement and, through the Conditional Sale Agreement, the Management Agreement and the Trustor's Demand Notes. In respect of the latter qualification, however, we are of the opinion that none of such laws now in effect and none of such judicial decisions make the rights and remedies provided in the Conditional Sale Agreement and in the Management Agreement and the Trustor's Demand Notes, taken as a whole, inadequate for the enforcement of payment of the Conditional Sale Indebtedness.

Very truly yours,

EXHIBIT E  
TO  
CONDITIONAL SALE AGREEMENT

CERTIFICATE OF ACCEPTANCE

December , 1977

Citicorp Leasing, Inc.  
399 Park Avenue  
New York, New York 10022  
Attention: Manager, Contract Administration

The Citizens and Southern National Bank  
of South Carolina, as Trustee  
47 East Camperdown Way  
Greenville, South Carolina 29601

Gentlemen:

The undersigned, being a duly authorized inspector for National Railway Utilization Corporation, as Manager under a Management Agreement dated as of December 17, 1977, hereby certifies that he has made an inspection of Twenty-eight (28) 70-ton 50'6" Boxcars bearing numbers as follows:

NSL 102270-102297 (both inclusive)

has fully and finally accepted such Boxcars on behalf of the Vendor, and has found that each of said Boxcars is plainly marked in stencil on both sides of each Boxcar with the words:

CITICORP LEASING, INC., OWNER AND VENDOR

in readily visible letters not less than one inch (1") in height; and that each of said Boxcars conforms to and fully complies with the terms of said Management Agreement and is in condition satisfactory to the Manager.

NATIONAL RAILWAY UTILIZATION CORPORATION

BY: \_\_\_\_\_

EXHIBIT F  
TO  
CONDITIONAL SALE AGREEMENT

**MANAGEMENT AGREEMENT**

**THIS AGREEMENT**, dated as of December 17, 1977, between **National Railway Utilization Corporation (NRUC)**, and **THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA**, as Trustee under a Trust Agreement dated as of December 17, 1977 (the **Trustee**):

**W I T N E S S E T H:**

WHEREAS, the Trustee has executed and delivered to Citicorp Leasing, Inc., as Vendor (the **Vendor**), a Conditional Sale Agreement dated as of December 17, 1977 (the **Conditional Sale Agreement**) with respect to the purchase by the Trustee, subject to the terms and conditions therein stated, of 28 70-ton 50'6" Boxcars which are to bear railroad numbers NSL 102270-102297, inclusive (the **Equipment**, and each such Boxcar being herein referred to as a **Unit**), manufactured by the Golden Tye Division of NRUC;

WHEREAS, the Trustee has agreed under the Conditional Sale Agreement to do and perform certain things with respect to the management, maintenance and operation of the Equipment and, consequently, the Trustee desires to retain the services of NRUC, as agent of the Trustee, for such purpose; and

WHEREAS, NRUC is willing to accept such appointment as agent, to perform on behalf of the Trustee all duties and obligations of the Trustee under the Conditional Sale Agreement and to manage the Equipment for the account of the Trustee during the term of this Agreement;

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

1. **Appointment of Agent; Acceptance.** Subject to the terms and conditions of this Agreement, the Trustee hereby appoints NRUC as agent of the Trustee for the purposes herein stated and NRUC hereby accepts such appointment. In such connection, NRUC acknowledges receipt of an executed copy of the Conditional Sale Agreement and hereby agrees that in the performance of its duties as agent hereunder it shall be bound by the terms and provisions thereof and that its rights hereunder and the rights of any railroad through which the Units shall be placed in service or the rights of any railroad with which NRUC, on behalf of the Trustee, shall have executed a per diem

lease in accordance herewith, shall be subject and subordinate to the rights of the Vendor under the Conditional Sale Agreement.

2. **Term.** This Agreement shall remain in force until it shall have been terminated as to all of the Units of Equipment. The term of this Agreement with respect to each Unit shall commence on the date of delivery of such Unit as provided in Section 3 and shall continue for five (5) years, unless sooner terminated as hereinafter provided.

3. **Delivery and Acceptance of Units.** Pursuant to Article 1 of the Conditional Sale Agreement, upon delivery of each Unit of the Equipment to a point designated by NRUC, NRUC will inspect the same and, if such Unit shall be found to be in good order, accept the same for the Vendor and the Trustee by executing the Certificate of Acceptance described in the Conditional Sale Agreement. Upon execution of such Certificate of Acceptance such Unit shall be deemed to be subject to this Agreement. NRUC agrees to deliver to the Vendor and the Trustee executed copies of all such Certificates of Acceptance.

4. **Management Duties.** The agency and management functions to be performed by NRUC hereunder shall include those set forth in the Conditional Sale Agreement and, to the extent not inconsistent therewith, those specifically set forth in this Section 4 and such other duties and responsibilities as shall be agreed upon from time to time by the parties hereto, with the prior written consent of the Vendor:

A. NRUC shall manage and arrange for the utilization of the Units at NRUC's complete discretion and shall perform all necessary administrative acts to ensure the proper utilization of said Units and the protection of the Vendor's and the Trustee's interest therein.

B. NRUC shall make available for the Units the markings of a railroad controlled by NRUC or with which NRUC has executed a per diem lease. The Trustee agrees that on or before delivery of the Units to NRUC, the Units shall have affixed thereto the markings required by Article 5 of the Conditional Sale Agreement and 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 units 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 Units in accordance with AAR railroad interchange agreements. Such

matters shall include, but shall not be limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Units; (ii) registration for each Unit in the Official Railway Equipment Register and the Universal Machine Language Equipment Register directing, *inter alia*, that all correspondence from railroads using such Units shall be addressed to NRUC; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Units. Any record keeping performed by NRUC and all records of payments and charges and all correspondence relating to the Units shall be separately recorded and maintained by NRUC in a form suitable for reasonable inspection by Vendor and the Trustee from time to time during regular business hours of NRUC. NRUC shall supply the Vendor and the Trustee with such reports regarding the use of the Units as the Vendor and the Trustee may reasonably request.

D. NRUC shall perform all car accounting services for the Units and send reports to the Vendor and the Trustee on a quarterly basis itemizing all revenues by Units number.

E. Except for property taxes (which shall be payable, if at all, by the Trustee), NRUC, as agent, will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Unit during the term of this Agreement, including but not limited to all liability and property damage insurance, government fees, repairs, maintenance and servicing. NRUC agrees to pay such amount to the person entitled thereto and to send reports to the Vendor and the Trustee on a quarterly basis itemizing all such payments by Unit number. The Trustee 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 Units. Any recovery under such warranty shall be made payable to NRUC. All proceeds from such recovery shall be used to repair or replace the Units.

F. NRUC shall make or cause to be made such inspections of and maintenance and repairs to the Units as may be required. 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 Units in good operating condition (ordinary wear and tear excepted), in accordance with applicable standards set forth in the Conditional Sale Agreement, throughout the term of this Agreement. NRUC shall be responsible for arranging repairs and maintenance at its expense.

G. NRUC shall collect and receive all mileage charges, car hire revenues (including both basic per diem and incentive per diem paid by other railroads with respect to the Units) and all other revenues, and shall pay such revenues to the Trustee quarterly on March 30, June 30, September 30 and December 30 of each year. NRUC may deduct from such revenues the management fee provided in Section 5 and the maintenance fee provided in Section 6.

It is understood and agreed that NRUC is managing other railroad equipment for its own account and that NRUC may have conflicts of interest between the management of the Trustee's Units and other railroad equipment owned, controlled or managed by NRUC. Although there can be no assurance that the Trustee's Units will earn revenues equal to those of other railroad equipment owned, controlled or managed by NRUC, NRUC agrees to use reasonable efforts to integrate the Trustee's Units into the fleet of railroad equipment controlled by NRUC and to manage the Trustee's Units in a manner consistent with the management by NRUC of railroad equipment for its own account. NRUC shall have no liability under this Agreement except for misfeasance, bad faith or gross mismanagement.

**5. Management Fees.** In consideration of the management services performed by NRUC, the Trustee agrees to pay NRUC 20% of all revenues earned by the Trustee's Units (net of reclaims); **provided, however,** that the management fee shall under no circumstances be less than \$2.40 per Unit per day. If, because of the foregoing sentence, the management fee exceeds 20% revenues for any calendar year, the Trustee shall have the right to terminate this Agreement. In the event the ICC during the term of this Agreement shall increase the car hire rates (including incentive per diem) and mileage rates, NRUC shall be entitled to additional daily management fees (above the fee based on current car hire and mileage rates) equal to 50% of the increase in such car hire and mileage rates.

**6. Maintenance Fee.** The Trustee shall pay to NRUC a maintenance fee of \$1.96 per Unit per day during the term of this Agreement. The maintenance fee shall be held in escrow by NRUC in an account completely segregated from all other funds of NRUC. The funds in such account shall only be used for maintenance. At the termination of this Agreement any funds not expended for maintenance shall be retained by NRUC; **provided, however,** the Trustee shall have the right to inspect the Units at the termination of this Agreement to determine that the Units are in good working order and repair (normal wear and tear excepted) and NRUC shall cause to be made at its expense such repairs as are necessary to restore the Units to such condition. The maintenance fee shall be subject to increase (but not decrease) as follows:

If the labor rate established by the Association of American Railroads and in effect on December 31 of each year

commencing December 31, 1978 (the **Prevailing Labor Rate**) shall differ from the labor rate so established and in effect on the date hereof (the **Current Labor Rate**), the maintenance fee shall be adjusted to be the product obtained by multiplying the maintenance fee by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which shall be such Current Labor Rate. Any such adjustment shall be instituted by notice from NRUC to the Trustee and shall take effect with respect to maintenance fees coming due next after the date of such notice; **provided, however**, that no adjustment shall be made which would reduce the maintenance fee below the initial maintenance fee.

7. **Insurance.** NRUC will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained insurance with respect to all Units subject hereto, and all risks, physical loss or damage insurance and public liability insurance in amounts and against risks required to be maintained by the Trustee under the Conditional Sale Agreement. NRUC will furnish to the Trustee and the Vendor, concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months, proof of insurance coverage for the ensuing year. NRUC will agree to advise the Trustee and the Vendor 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 Units. All insurance shall be taken out in the name of, and losses paid thereunder shall be payable to, NRUC, the Trustee and the Vendor, as their interests may appear. The policies or certificates shall provide that there shall be no recourse against the Trustee or the Vendor for the payment of premiums and shall provide for at least thirty (30) business days prior written notice to be given to the insureds 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, the Trustee and the Vendor may, but shall not be obliged to, pay such premium, and if either the Trustee or the Vendor shall do so, NRUC shall repay the amount thereof to the Trustee or the Vendor on demand, together, in the case of any such payment by the Vendor, with interest in the amount of 11 1/4% per annum.

8. **Possession and Use.** NRUC, as agent, shall be entitled to the possession of the Units and shall also be entitled (i) to the use of the Units by it or any affiliate upon lines of railroads owned or operated by it or any affiliate or upon lines of railroads 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; (ii) to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; and (iii) to lease any Unit or Units 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 and subject to all the terms and conditions of this Agreement and the Conditional Sale Agreement. NRUC shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

NRUC agrees that to the extent it has physical possession and can control use of the Units, the Units will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and order of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either the Trustee or NRUC may in good faith and by appropriate proceedings contest the application of any such rule, regulation, or order in any reasonable manner at the expense of the contesting party. 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 Units or any interest therein or in this Agreement, except the rights of the Vendor under the Conditional Sale Agreement. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time by persons claiming through or under NRUC.

#### 9. Default.

A. The occurrence of any of the following events shall be Evnts of Default hereunder:

(i) The nonpayment by either party of any sum required hereunder to be paid by the other party within ten days after notice thereof;

(ii) The default by either party under any other term, covenant or condition of this Agreement which is not cured within ten days after notice thereof from such party.

(iii) 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.

(iv) 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 apointment is set aside or

withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of the property of NRUC to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs the capacity of NRUC to fulfill its obligations under this Agreement.

#### 10. Remedies Upon Default.

A. Upon the occurrence of any event of default by one party to this Agreement, the other party may terminate this Agreement and proceed by appropriate court action to enforce performance by the other party of this Agreement and to recover direct financial damages which result from a breach thereof and such defaulting party shall bear the other party's costs and expenses, including reasonable attorney's fees, in securing such enforcement;

B. In the event of default by NRUC, the Trustee may, by notice in writing to NRUC, terminate the right of possession of NRUC of the Units, whereupon all right and interest of NRUC in the Units shall terminate; and thereupon the Trustee may by its agents enter upon any premises where the Units may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of NRUC;

C. In the event of default by the Trustee, NRUC, by notice in writing to the Trustee, may terminate its obligations hereunder.

11. **Termination.** At the expiration or termination of this Agreement as to any Units NRUC will surrender possession of such Units to the Trustee by delivering the same to the Trustee. The assembling, delivery, storage, and transporting of the Units shall be at the expense and risk of the Trustee. A Unit shall be deemed terminated and no longer subject to this Agreement upon removal of the railroad markings from the Unit placed thereon by NRUC and the placing thereon of such markings as may be designated by the Trustee.

NRUC, at the expense of the Trustee, will arrange for storage of the Units for such period of time as shall be required by the Trustee or the Vendor.

If such Units are not on the railroad line of NRUC or its affiliates upon the expiration or termination of this Agreement, all costs of assembling, delivering, storing, and transporting such Units, except as provided above, to NRUC's railroad line or the railroad line of a subsequent agent, purchaser or lessee shall be borne by the Trustee.

From and after termination of this Agreement with respect to any Unit and until its return to the Trustee, all revenues earned by such Unit shall be paid to the Trustee after deducting the management fee provided in Section 5.

**12. Indemnities.** NRUC will defend, indemnify and hold harmless the Trustee from and against:

A. Any and all loss or damage of or to the Units, usual wear and tear excepted;

B. Any claim, cause of action, damage, liability, costs or expense (including legal fees and costs to which the Units may be subject or which may be incurred in any manner by or for the account of any such Unit) as a result of the use, maintenance, repair, replacement, operation or the condition thereof.

**13. 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 and authority, and is duly qualified and authorized to do business whenever necessary, to carry out its present business and operations and to own or hold its properties and to perform its obligations under this Agreement.

B. The entering into and 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 Units 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, suits or proceeding pending or threatened against NRUC before any court or administrative agency or other governmental body which, if adversely determined, might have a material adverse effect on the business properties, assets or condition, financial or otherwise, of NRUC.

D. NRUC is not 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. NRUC or its affiliated railroad is eligible and entitled to collect incentive per diem charges on the Units in the possession of other railroads and to apply the incentive per diem

charges to the payment of all amounts due to the Trustee under this Agreement.

F. Neither NRUC nor 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 the Vendor in the United States of America.

Upon request of the Trustee or the Vendor from time to time, NRUC shall deliver to the Trustee and the Vendor an opinion of its counsel addressed to the Trustee and the Vendor, in form and substance satisfactory to the Trustee and the Vendor, which opinion shall confirm and be to the effect of the matters set forth in this Paragraphs A thru F of this Section 14.

#### 14. Lease and Assignment.

A. NRUC shall not have the right to assign this Agreement without the prior written consent of the Trustee and the Vendor.

B. All rights of the Trustee hereunder are hereby assigned, pledged, mortgaged, transferred by the Trustee to the Vendor as additional security for the obligations of the Trustee under the Conditional Sale Agreement and NRUC hereby acknowledges such assignment and agrees to pay all revenues and other monies due to the Trustee hereunder directly to the Vendor at the address provided herein. This Agreement and NRUC's rights hereunder are and shall be subject and subordinate to the rights of the Vendor under the Conditional Sale Agreement.

The making of the foregoing assignment by the Trustee shall not serve to relieve the Trustee of any liability or undertaking hereunder, nor shall such assignment impose any liability or undertaking hereunder upon the Vendor.

#### 15. Miscellaneous.

A. This Agreement shall be binding upon and shall 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:

Trustee at: 47 East Camperdown Way  
Greenville, South Carolina 29602  
Attention: Trust Officer

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

Vendor at: 399 Park Avenue  
New York, New York 10022  
Attention: Manager, Contract Admini-  
stration

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

C. NRUC shall take all action requested by the Trustee or the Vendor to confirm the interest of the Trustee or the Vendor in the Units and that NRUC has no interest in the Units other than as Agent hereunder.

D. During the continuance of this Agreement, the Trustee and the Vendor shall have the right at their own cost and expense, to inspect the Units at any reasonable time or times wherever the Units may be.

E. 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 further exercise thereof of the exercise of any other right, power or remedy.

F. 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: \_\_\_\_\_

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

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

THE CITIZENS AND SOUTHERN NATIONAL BANK OF  
SOUTH CAROLINA

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

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

ATTEST:

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

STATE OF SOUTH CAROLINA )

COUNTY OF )

On this \_\_\_\_\_ day of December, 1977, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of The Citizens and Southern National Bank of South Carolina, and \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

My Commission Expires: \_\_\_\_\_

(Seal)

STATE OF )

COUNTY OF )

On this \_\_\_\_\_ day of December, 1977, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ President of National Railway Utilization Corporation, and \_\_\_\_\_, to me personally known to be the 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

My Commission Expires: \_\_\_\_\_

EXHIBIT G  
TO  
CONDITIONAL SALE AGREEMENT

December , 1977

Citicorp Leasing, Inc.  
399 Park Avenue  
New York, New York 10022  
Attention: Manager, Contract  
Administration

Dear Sirs:

We are acting as counsel for National Railway Utilization Corporation, a South Carolina corporation (NRUC), in connection with the execution and delivery of the Management Agreement dated as of December 17, 1977 between NRUC and The Citizens and Southern National Bank of South Carolina, as Trustee (the **Trustee**) under a Trust Agreement dated as of December 17, 1977 (the **Trust Agreement**). This opinion is being delivered to you pursuant to paragraph (i) of Article 1 of the Conditional Sale Agreement dated as of December 17, 1977 (the **Conditional Sale Agreement**) between the Trustee and you and all defined terms used herein shall, unless otherwise indicated, have the meanings given such terms in the Management Agreement or the Conditional Sale Agreement.

As counsel for NRUC we are of the opinion 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 and authority, and is duly qualified and authorized to do business whenever necessary, to carry out its present business and operations and to own or hold its properties and to perform its obligations under the Management Agreement.

(b) The entering into and performance of the Management 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 Units 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, suits or proceeding pending or, to our knowledge, threatened against NRUC before any court or administrative agency or other governmental body which, if adversely determined, might have a material adverse effect on the business properties, assets or condition, financial or otherwise, of NRUC.

(d) NRUC is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, in our opinion, 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 the Management Agreement.

(e) NRUC or its affiliated railroad is eligible and entitled to collect incentive per diem charges on the Units in the possession of other railroads and to apply the incentive per diem charges to the payment of all amounts due to the Trustee under the Management Agreement.

(f) There is no requirement for recording, filing or depositing the Management Agreement, other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of the Vendor in the United States of America.

Very truly yours,