



NATIONAL RAILWAY
UTILIZATION CORP.

100 NORTH TWENTIETH STREET
SECOND FLOOR
PHILADELPHIA, PA 19103
215 • 569 • 2220

14683
REGISTRATION NO. _____ Filed 1425

JUN 4 1985 10 00 AM

INTERSTATE COMMERCE COMMISSION

June 3, 1985

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423
Attn: Mr. Bains

Dear Mr. Bains:

Enclosed for recording are one original and one copy of a Management Agreement dated June 1, 1985. The parties to this transaction are:

OWNER: JAMES M. SHOEMAKER, JR.,
P.O. Box 10207
Greenville, South Carolina 29603

MANAGER: NRUC Corporation
100 North Twentieth Street
Philadelphia, Pennsylvania 19103

The purpose of the agreement is to grant authority to NRUC on behalf of the owner.

Your cooperation is appreciated.

Sincerely,

Charles Craft
Charles Craft
Director of Marketing

CC/cbs

MANAGEMENT AGREEMENT JUN 1 1985 10 00 AM NRUC CONTRACT # 2478

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of JUNE 1, 1985, between NRUC CORPORATION (NRUC) and JAMES M. SHOEMAKER, JR. (OWNER).

W I T N E S S E T H:

WHEREAS, the Owner owns 1 70-ton 50' boxcars which bear railroad numbers SEE ATTACHEMENT A (the Equipment, and each such boxcar being herein referred to as a Unit); and

WHEREAS, the Owner desires to retain the services of NRUC, as manager for the Owner, for the purpose of managing the Equipment; and

WHEREAS, NRUC is willing to accept such appointment as manager, to manage the Equipment for the account of the Owner during the term of this Agreement; and

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

1. Appointment of Manager; Acceptance. Subject to the terms and conditions of this Agreement, the Owner hereby appoints NRUC as manager of the Equipment for the purposes herein stated and NRUC hereby accepts such appointment. NRUC hereby agrees that in the performance of its duties as agent hereunder it shall be bound by the terms and provisions of any applicable financing document, and that its rights hereunder and the rights of any railroad with which NRUC, on behalf of the Owner, shall arrange for use of the Equipment in accordance herewith, shall be subject and subordinate to the right's of any Lender under such financing document.

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 JUNE 1, 1985
and shall continue until MAY 31, 1987, unless sooner terminated as
hereinafter provided.

3. Ownership. The parties agree that the Owner shall at all times be and remain the owner of the Equipment, and that nothing in this Agreement is in any way intended to grant any ownership interest or property right in the Equipment to NRUC or to any railroad whose markings appear on the Equipment. Further, NRUC will not directly or indirectly create or suffer to exist, any mortgage, pledge, lien, charge, encumbrance, or other security interest in claim on or with respect to the Equipment in favor of persons claiming through or under NRUC. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim in favor of persons claiming through or under NRUC and shall indemnify Owner and hold the Owner harmless from and against all claims, damages and expenses arising out of any such third party claim.

4. Management Duties. The management functions to be performed by NRUC hereunder shall include 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:

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 Owner's interest therein.

B. NRUC shall make available for the Units the markings of a railroad controlled by NRUC or with which NRUC has entered an agreement for the use of the Equipment. NRUC agrees that the Units shall at all times

have affixed thereto the markings required by the Security 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 may 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 for the Units in accordance with Association of American Railroad (AAR) interchange agreement. Such matters shall include, but shall not be limited to, the preparation of the following documents: (i) appropriate AAR interchange agreement with respect to the Units; (ii) registration when required for each Unit in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the Interstate Commerce Commission (ICC) and other regulatory agencies with respect to the Units. Any record keeping performed by NRUC and all records of payment 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 the Owner or Owner's agents from time to time during regular business hours of NRUC. NRUC shall supply the Owner and any Lender with such reports regarding the use of the Units as the Owner and/or Lender may reasonably request.

D. NRUC shall perform all car accounting services for the Units and send reports to the Owner on a quarterly basis itemizing all revenues by Unit Numbers.

E. NRUC shall monitor, make, or cause to be made, such inspections of and maintenance and repairs to the Equipment, including replacement of parts, as may be required to maintain the Equipment in good operating condition (ordinary wear and tear excepted) and in compliance with all applicable rules and regulations of government and industry authorities relating to the qualification of the Equipment for the use in the Railroad Interchange System throughout the term of this Agreement. All expenses of maintenance and repairs shall be paid directly by the Owner (but NRUC shall have the right to pay such expenses on behalf of the Owner and to deduct such amounts from the Owner's Gross Revenues). NRUC agrees that it shall reasonably pursue all claims against third parties for damage to the Equipment on behalf of and at the expense of the Owner. The Owner agrees that, with respect to any claim or right against any third party relative to the physical condition of any Unit, the Owner shall, to the extent reasonably required to permit NRUC to seek recovery from such third party, assign such claim or right to NRUC. Unless NRUC is obligated to bear the cost or expense for which recovery is sought, such recovery shall be for the benefit of the Owner. NRUC may elect to require the Owner to advance reasonable costs to be incurred by NRUC on the Owner's behalf in any particular case.

F. NRUC shall make, or cause to be made, in either case at the expense of the Owner, all alterations or modifications to the Equipment required by government or industry regulations; provided, however, if the direct costs of such alterations or modifications shall exceed \$500 per Unit (computed cumulatively from the date of this Agreement), then NRUC shall first give the Owner prior written notice of the Proposed alterations and modifications and an estimate of the cost thereof, and NRUC shall not thereafter make or cause such modifications to be made if the Owner advises NRUC in writing within fifteen days after receipt of such notice that Owner

does not desire to have such alterations or modifications made. In the event Owner elects not to proceed with such required alterations or modifications, NRUC may elect to terminate this Agreement as to the Equipment requiring such alterations or modifications upon five days prior written notice to Owner.

G. NRUC shall use its best efforts to the end that no Units will be used predominantly outside the United States within the meaning of Section 48(a) (2)(A) of the Internal Revenue Code of 1954 (as amended), or any successor provisions thereof, and applicable regulations thereunder.

H. NRUC shall pool the revenues and expenses related to the Equipment with the revenues and expenses relating to the boxcars of others who contemporaneously acquired boxcars and entered into management agreements with NRUC. Such pooling shall be as provided herein:

(i) Gross Revenues and expenses with respect to all boxcars, the revenues of which are included in the Revenue Pool, shall be allocated to (and, as apportioned, be the Gross Revenues and expenses of) each participant in the Revenue Pool.

(ii) Apportionment shall be effected with respect to each calendar quarter on the basis of the number of days in such quarter that each boxcar was included in the Revenue Pool. As to each Boxcar, such apportionment rate shall be based on days of participation as a ratio of the total number of boxcar days of participation in the Revenue Pool. However, NRUC shall, pursuant to a mathematical formula, adjust the apportionment rate to reflect the fact that different boxcars included in the Revenue Pool may have different rate entitlements from time to time by virtue of age and cost difference between boxcars.

(iii) Gross Revenues received in any calendar quarter shall be allocated among boxcar owners in accordance with the apportionment rate in effect with respect to the quarter in which such revenues were earned. Except to the extent NRUC determines as to any particular item of expense to apportion such item in accordance with the apportionment rate in effect with respect to the quarter in which such expense was incurred, expenses paid in any calendar quarter shall be allocated among boxcar owners in accordance with the apportionment rate in effect with respect to the quarter in which such expenses were paid.

(IV) It is understood that the following items of income are expressly excluded from Gross Revenues and are not to be pooled: insurance proceeds or other casualty damage proceeds or the proceeds from sale or other disposition of a participant's boxcar, and the following items of expense are expressly excluded from expenses to be pooled: collision and other casualty expenses, liability obligations for personal injury or property damage, ad valorem and similar taxes, expenses of sale or other disposition of a boxcar, principal of and interest on debt.

(V) Withdrawal of a boxcar from the Revenue Pool shall be effected automatically upon the loss or destruction of (or damage beyond repair to) such boxcar. Further, such withdrawal shall be automatically effected upon termination of NRUC's management of such boxcar.

(VI) No participant in the Revenue Pool shall gain, by reason of such participation, any ownership or other economic interest whatsoever in any boxcar of any other participant, it being understood and agreed that the Revenue Pool is merely a bookkeeping arrangement as to the pooling of certain items of income and expense of a limited period. No participant in the Revenue Pool shall have any contractual relationship with any other participant in the Revenue Pool pursuant to this Agreement, and the sole

contractual relationship to which the Owner is a party being that between the Owner and NRUC.

5. Receipt and Disbursement of Revenue.

A. NRUC shall collect, on behalf of the Owner, all mileage charges and car hire revenues paid by railroads with respect to the use of the Equipment. Such collected mileage charges and car hire revenues are referred to herein as the "Gross Revenues." From the Gross Revenues, NRUC may pay all expenses which shall be required to be paid with respect to the operation of the Owner's Equipment together with management fees provided in Section 7 of this Agreement. The balance of the Owner's Gross Revenue after payment of such expenses and management fee is referred to herein as "Owner's Quarterly Net Revenues."

B. NRUC shall distribute Owner's Quarterly Net Revenue 15 days after the close of each calendar quarter. Such disbursement shall be to an account of the Owner and shall be accompanied by a report to Owner in sufficient detail to permit calculation of the management fee and any other sums deducted by NRUC at that time.

6. Conflicts of Interest. Owner understands that NRUC is managing other boxcars for its own account and for the account of persons associated with NRUC and that NRUC may have conflicts of interest between the management of Owner's Equipment and other boxcars owned, controlled or managed by NRUC. Although there can be no assurance that the Owner's Equipment 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 Owner's Equipment into the fleet of railroad equipment managed by NRUC and to manage the Owner's Equipment in a manner consistent with the management by NRUC of railroad equipment for all other persons in an effort to provide the

same rate of utilization for the Owner's Equipment that it achieves for all other boxcars which it manages. NRUC shall have no liability under this Section 6 except for fraud, bad faith or gross mismanagement.

7. Management Fees. In consideration of the management services performed by NRUC, the Owner agrees to pay NRUC a management fee of 15% of all revenues earned by Owner's units (net of reclaims) or \$1.50 per day per car for each car which is not in storage or repair, whichever is greater.

8. Insurance. NRUC will cause to be carried and maintained public liability insurance in an amount not less than \$3,000,000.

9. Compliance with Applicable Laws, Rules and Regulations. 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 jurisdictions in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of the Units, except that either the Owner 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.

10. Indemnification. Owner and NRUC jointly and severally acknowledge, agree and covenant that NRUC is entering into this Agreement solely as the manager of the equipment.

A. The Owner agrees that he shall not attempt to enter into contracts or commitments in the name, or on behalf of, NRUC or to bind NRUC in any manner or respect whatsoever except insofar as may be consistent with NRUC's status as manager under this Agreement. Further, the Owner agrees to indemnify and hold NRUC harmless from any and all claims, demands, causes of

action (at law or equity), costs, damages, reasonable attorneys' fees, expenses and judgments which may hereafter be asserted against or sustained by NRUC by reason of a claim of a third party against NRUC based on or relating to the Equipment or arising out of operation or use thereof or the Owner's title thereto, except a claim which gives rise to NRUC's obligation to indemnify the Owner hereunder.

B. NRUC agrees that it shall not attempt to enter into contracts or commitments in the name, or on behalf of, the Owner, or to bind the Owner in any manner or respect whatsoever except insofar as may be consistent with NRUC's status as manager under this Agreement. NRUC agrees to indemnify and hold harmless the Owner from and against any and all claims, demands, causes of action (at law or equity), costs, demands, reasonable attorneys' fees, expenses and judgments which may hereafter be asserted against or sustained by the Owner by reason of any act or omission by NRUC (i) if a result of negligence, fraud or bad faith of NRUC, (ii) if a result of any misrepresentation or breach of any covenant or warranty made by NRUC hereunder, or (iii) if a result of any act of NRUC outside the scope of NRUC's authority granted under this Agreement.

11. Default.

The occurrence of any of the following events shall be Events of Default hereunder;

(i) The nonpayment by either party of any sum required hereunder to be paid by the other party within 10 days after notice thereof;

(ii) The default by either party under any other material term, covenant or condition of this Agreement which is not cured within 10 days after notice thereof from such party.

12. 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 attorneys' fees, in securing such enforcement.

B. In the event of default by NRUC, the Owner may by notice in writing to NRUC, terminate the right of possession of NRUC of the Units, and thereupon the Owner 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 rights of NRUC.

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

13. Termination: At the expiration or termination of this Agreement as to any Units, NRUC will surrender possession of such Units to the Owner by delivering the same to such location as the Owner shall reasonably designate. The assembling, delivery, storage and transporting of the Units shall be at the expense and the risk of the Owner.

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

14. 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 wherever 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. 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 adversely affect the ability of NRUC to perform its obligations under this Agreement.

15. Miscellaneous.

A. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, 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:

OWNER at: P.O. Box 10207
Greenville, South Carolina 29603

NRUC at: 100 North Twentieth Street
Suite 200
Philadelphia, Pennsylvania 19103

LENDER at:

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

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

D. During the continuance of this Agreement, the Owner and the Lender 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. Subject to the Owner or NRUC obtaining prior approval from any railroad, repair shop, or storage location not owned or controlled by NRUC.

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 or 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 THEREOF, the parties hereto have executed this Agreement as of the date above written.

FOR: NRUC CORPORATION

By: Robert L. Shiner, Jr.
ROBERT L. SHINER, JR.

Title: VICE PRESIDENT

ATTEST: Barbara Rastetter
BARBARA RASTETTER

Title: ASSISTANT SECRETARY

FOR: OWNER

By: James M. Shoemaker, Jr.
Name: JAMES M. SHOEMAKER, JR.

ATTEST: Sara A. Barfield

Name: Sara A. Barfield

NOTARIES

STATE OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA)

On this 14th day of MAY, 1985, before me personally appeared ROBERT L. SHINER, JR., to me personally known, who, being by me duly sworn, says that he is a Vice President of NRUC CORPORATION - TRANSPORTATION DIVISION; 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 such officers acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara Ann Fagan

Notary Public

My Commission Expires: 4-14-86

BARBARA ANN FAGAN
Notary Public, Phila., Phila. Co.
My Commission Expires April 14, 1986

STATE OF South Carolina)
)
COUNTY OF Greenville)

On this 20th day of May, 1985, before me personally appeared James M. Shoemaker, Jr., me personally known, who, being by me duly sworn, says that said instrument was signed by him and he acknowledged that the execution of the foregoing instrument was his free act and deed.

Sara A. Barfield

Notary Public

My Commission Expires 9/23/90

EXHIBIT "A"

OWNER JAMES M. SHOEMAKER, JR.

NRUC CONTRACT NUMBER 2478

NUMBER OF CARS 1

CURRENT
RAILROAD
MARKINGS

CURRENT
CAR
NUMBER

ORIGINAL RAILROAD
MARKING AND
SERIAL NUMBER

MISS

150449

NSL 150449