



A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043

11405

RECORDATION NO. .... Filed 1425

JAN 22 1980 - 10 52 AM

INTERSTATE COMMERCE COMMISSION

January 17, 1980

No. 0-022A018

Date JAN 22 1980

Fee \$ 50.00

ICC Washington, D. C.

Secretary  
Interstate Commerce Commission  
Washington, DC 20523

Dear Sir:

Enclosed for recording please find the original and two copies of a duly executed and acknowledged Agreement of Subordination and No Set-Off By Lessee between Citicorp Industrial Credit, Inc., as Lender, and Hillsdale County Railway Co., Inc., as Lessee. Hillsdale County Railway Co., Inc. has its principal place of business at 50 Monroe Street, Hillsdale, Michigan. Citicorp Industrial Credit, Inc. has its principal place of business at 399 Park Avenue, New York, New York 10043.

I have enclosed a check for \$50 to cover the recording fees. Please return the original document to me at the above address.

Very truly yours,

CITICORP INDUSTRIAL CREDIT, INC.

By: Kenneth A. Raskin  
Kenneth A. Raskin  
Counsel

RECORDED  
JAN 22 1980

**Citicorp Industrial Credit, Inc.**

*C. A. Raskin* *Conna Kelly*

RECORDATION NO. **11405** Filed 1425

JAN 22 1980 - 10 11 AM

INTERSTATE COMMERCE COMMISSION

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AGREEMENT OF SUBORDINATION AND NO SET-OFF BY LESSEE

Dated as of DECEMBER 21, 1979

between

CITICORP INDUSTRIAL CREDIT, INC.

and

HILLSDALE COUNTY RAILWAY CO., INC.

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Covering Various XM Boxcars

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Recordation No. \_\_\_\_\_

Filed and Recorded with the Interstate Commerce  
Commission pursuant to Section 11303 of Title 49 of the  
United States Code on \_\_\_\_\_ at \_\_\_\_\_ .

AGREEMENT OF SUBORDINATION AND NO SET-OFF

THIS INDENTURE made this 21 day of December, 1979 between CITICORP INDUSTRIAL CREDIT, INC., having a place of business at 560 Sylvan Avenue, Englewood Cliffs, New Jersey (hereinafter called the "Lender") and HILLSDALE COUNTY RAILWAY CO., INC., having a place of business at 50 Monroe Street, Hillsdale, Michigan (hereinafter called the "Lessee");

W I T N E S S E T H:

WHEREAS, Lessee is a party to a certain Lease Agreement dated February 1, 1978, as amended by a certain Addendum to Lease, effective as of said February 1, 1978, between Naporano Iron and Metal Co., as Lessor, and Hillsdale County Railway Co., Inc., as Lessee (hereinafter called the "Lease"), wherein Lessor undertakes to lease to Lessee certain XM Boxcars, all as more fully described in schedules attached to said Lease; and

WHEREAS, Lessor proposes to assign all of its right, title and interest in and to the Lease to NIM Leasing Corp., a New Jersey corporation and wholly-owned subsidiary of Lessor (hereinafter called the "Assignee"); and

WHEREAS, the Assignee proposes to borrow certain moneys from the Lender and it is proposed that Assignee's note to be given to Lender evidencing such indebtedness be secured by a mortgage or security interest in and to the boxcars which are the subject of the Lease; and

WHEREAS, it is proposed that such obligation shall be

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further secured, among other things, by an assignment of Assignee's right title and interest in and to the Lease and all payments of moneys due or to become due thereunder, together with all other rights, privileges, powers and remedies of Assignee thereunder; and

WHEREAS, the Lender requires, as a condition of such financing, that the Lessee subordinate its rights under the Lease to Lender's mortgage or security interest and to agree with Lender that there shall be no right of set-off on the part of the Lessee as against the Lender; and

WHEREAS, Lessee is desirous of executing and delivering this Agreement to the Lender so as to obtain Lender's agreement of nondisturbance and to further facilitate and insure the orderly performance by Assignee of its obligations under the Lease;

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

1. It is expressly agreed by Lessee that its rights under the Lease are subordinate and junior in rank to a mortgage or security interest in the Lease or in the boxcars which are the subject thereof given or which at any time subsequent to the execution of this Agreement is given to the Lender by the Lessor or by the Assignee.

2. Lessee agrees with Lender that its obligation under the Lease, including, without limitation, the obligation

to pay the rental charges described therein, shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever, provided, however, that nothing in this Agreement shall prevent Lessee from asserting any claim directly against the Lessor or Assignee.

3. Lender hereby covenants and agrees that so long as Lessee is not in default under the Lease or this Agreement, the Lease shall not be cut off or terminated by Lender in the event of a default and foreclosure of the mortgage or security interest.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper corporate officers thereunto duly authorized and their proper corporate seals to be hereunto affixed the day and year first above written.

CITICORP INDUSTRIAL CREDIT, INC.

Attest:



JOHN A. CATHERWOOD VP  
Citicorp Industrial Credit



HILLSDALE COUNTY RAILWAY CO., INC.

Attest:



Sely  
ERIC GERST



JOHN MARINO Pres

STATE OF *NEW YORK* :  
COUNTY OF *NEW YORK* :

BE IT REMEMBERED, That on this *18<sup>th</sup>* day of *JANUARY, 1980*, ~~1979~~, before me, the subscriber, a *NOTARY PUBLIC*, personally appeared *JEAN CATERWOOD, a VICE* President of CITICORP INDUSTRIAL CREDIT, INC., who, I am satisfied, is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; and that the within instrument is the voluntary act and deed of said corporation made by virtue of authority from its Board of Directors.

*Patrice A. Marchese*  
PATRICE A. MARCHESE  
Notary Public, State of New York  
No. 03-4696611  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1981

STATE OF *Virginia* :  
*City* OF *Alexandria*

BE IT REMEMBERED, That on this *21<sup>st</sup>* day of December, 1979, before me, the subscriber, a *Notary Public*, personally appeared *John H. Marino*, President of HILLSDALE COUNTY RAILWAY CO., INC., who, I am satisfied, is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; and that the within instrument is the voluntary act and deed of said corporation made by virtue of authority from its Board of Directors.

*Carolyn L. Pruitt*

Prepared by: Martin Clinton Conant

