

ALVORD AND ALVORD - 346A007

ATTORNEYS AT LAW
918 SIXTEENTH STREET, N.W.
SUITE 200
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

20006-2973
(202) 393-2266
FAX (202) 393-2156

OF COUNSEL
URBAN A. LESTER

18039
RECORDATION NO. FILED 1425

DEC 11 1992 - 12 50 PM

INTERSTATE COMMERCE COMMISSION

December 11, 1992

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

new No.

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provision of 49 U.S.C. Section 11303(a) are two executed and acknowledged copies of a Financing Agreement dated November 25, 1992, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Debtor: Republic Locomotive Works, Inc.
131 Falls Street, Suite 101
Greenville, South Carolina 29601

Secured Party: ITT Commercial Finance Corp.
11885 Lackland Road, Suite 600
St. Louis, Missouri 63146

A description of the railroad equipment covered by the enclosed document is attached hereto and as Schedule A.

Also enclosed is a check in the amount of \$16 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Counterparts -

DEC 11 12 05 PM '92
NOTES

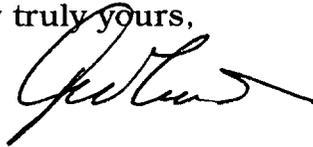
Mr. Sidney L. Strickland, Jr.
December 11, 1992
Page 2

Kindly return one stamped copy of the enclosed document to Robert W. Alvord, Esq., Alvord and Alvord, 918 16th Street, NW, Washington, DC 20006.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Financing Agreement between Republic Locomotive Works, inc., Debtor and ITT Commercial Finance Corp., Secured Party, covering three diesel electric locomotives identified in Schedule A attached hereto.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/bg
Enclosures

Schedule A

To: Lease XX Financing Agreement
UCC-1 Subordination Agreement
Other (specify: _____)

Dated November 25, 1992

Between

the ITT Capital Finance division of ITT Commercial Finance Corp. and

Republic Locomotive Works, Inc. (Customer Name)

Equipment Location: 131 Falls Street Ste 101 Street Address

Greenville, SC 29601 City, State, Zip Code

Equipment Description (including quantity) Year and Model No. Serial No.

1 EMD Model SW1200, 1200
Horsepower Diesel Electric
Switching Locomotive,
Built in 1965, Serial No.
65-HI-1100 (Diesel Engine).

1 GE 50 Ton, 440 Horsepower
Diesel Electric
Industrial Switching
Locomotive, Built in 1941,
Serial No. 15049.

1 GE 80 Ton, 670 Horsepower
Diesel Electric
Industrial Switching
Locomotive, Built in 1951,
Serial No. 21087.

Interstate Commerce Commission
Washington, D.C. 20423

12/11/92

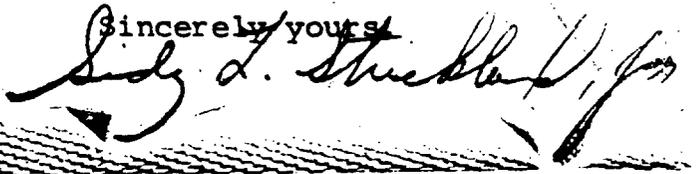
OFFICE OF THE SECRETARY

Robert W. Alvord
Alvord And Alvord
918 Sixteenth Street, NW
Suite 200
Washington, DC. 20006-2973

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/11/02 at 12:50PM, and assigned re-recording number(s). 18039..

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

SE-30
(7/79)

FINANCING AGREEMENT

FINANCING AGREEMENT (this "Agreement") made this 25 day of November, 1992, by and between the ITT Capital Finance division of ITT COMMERCIAL FINANCE CORP. ("ITT"), a Nevada corporation, with a place of business located at 11885 Lackland Road, Suite 600, St. Louis, Missouri 63146, and Republic Locomotive Works, Inc. ("Customer"), a South Carolina Corp.

with its principal place of business located at: 131 Falls Street Ste 101 Greenville, SC 29601

RECITALS: Customer seeks certain financial accommodations from ITT which ITT is willing to provide upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, ITT and Customer hereby agree as follows:

1. DEFINITIONS

1.1 Special Definitions. The following terms shall have the following respective meanings in the Agreements: (a) "Agreements": This Agreement and the Other Agreements. (b) "Collateral": The properties and interests in properties described in Section 3 below. (c) "Equipment": All of Customer's equipment, vehicles and fixtures, together with all additions, attachments, accessories, improvements, parts, repairs and appurtenances thereto, now or hereafter made or acquired, and all substitutions and replacements thereof, described below (or on the attached Schedule A):

DESCRIPTION (including quantity) YEAR & MODEL NO. SERIAL NO. LOCATION (if different than above)

All Equipment As Described On Attached Schedule "A"

RECORDATION NO 18039 FILED 1425

DEC 11 1992 - 12 50 PM

INTERSTATE COMMERCE COMMISSION

(d) "Guarantor": Any guarantor with respect to any of the Obligations. (e) "Note": The promissory note provided for in Section 2 below. (f) "Obligations": All payment and performance obligations of any kind whatsoever due from Customer to ITT arising under or on account of this Agreement, the Note or by operation of law as well as any taxes, governmental charges or third party claims against or with respect to Customer or any Collateral. (g) "Other Agreements": All instruments, documents and agreements heretofore, now or hereafter executed by or for the benefit of Customer and delivered by or on behalf of Customer to ITT or to a third party and assigned to ITT, by operation of law or otherwise. (h) "person": Any individual or entity whatsoever. (i) "Policies": All policies of insurance required to be maintained by Customer under this Agreement.

1.2 Definitions. Each term defined in any of the Other Agreements which have been executed between Customer and ITT or by Customer specifically for ITT's benefit and not defined in this Agreement shall have the meaning provided in such Other Agreement. Any term used in (a) any of the Agreements and not specifically defined herein or therein, or (b) in such of the Other Agreements which have not been executed by or specifically for the benefit of ITT, shall have the meaning provided by the Uniform Commercial Code to the extent the same is defined or used therein.

1.3 Amendments. All amendments, riders, supplements, modifications or renewals of the Agreements shall be included within the definition of the affected Agreement.

1.4 Supplement. If Customer and ITT have heretofore executed Other Agreements in connection with any part of the Collateral, this Agreement shall supplement each and every such Other Agreement, and in that event this Agreement shall neither be deemed a novation nor a termination of any such previously executed Other Agreement nor shall execution of this Agreement be deemed a satisfaction of any obligation secured by such previously executed Other Agreement.

1.5 Conflicts. If any conflict shall exist among the provisions herein and any Other Agreement, the terms of this Agreement shall prevail.

2. LOAN

In consideration of Customer's performance of its Obligations, ITT agrees to grant to Customer a loan in the amount of \$ 326,850.12 (the "Loan"), Customer's obligations in respect of which shall be represented by the Note. ITT shall make an advance under the Loan upon Customer's execution and delivery of the Note and ITT's acceptance of this Agreement. The Loan shall be used exclusively to acquire the Equipment for use in Customer's business. EACH STATEMENT OF ACCOUNT RENDERED BY ITT TO CUSTOMER RELATING TO THE OBLIGATIONS SHALL BE PRESUMED TO BE CORRECT AND SHALL BE FULLY BINDING UPON CUSTOMER UNLESS, WITHIN TWENTY (20) DAYS FROM THE DATE OF SUCH STATEMENT, CUSTOMER PROVIDES ITT WITH A WRITTEN OBJECTION SPECIFYING THE ERROR OR ERRORS CONTAINED IN SUCH STATEMENT. Customer shall repay the entire amount of the Loan (including all finance charges, late charges and costs) in the manner provided in the Note. All payments shall be in immediately available funds in accordance with ITT's instructions. Any payment received by ITT in connection with the obligations represented by this Agreement shall be deemed to have been made with the Customer's full knowledge and consent, and by reason of such payment having been made by the Customer or on behalf of the Customer the Customer hereby waives any and all rights whatsoever which the Customer has or may have (1) to recover from ITT any portion of such payment, or (2) to bring any action against ITT in connection with such payment.

3. COLLATERAL

In consideration of ITT's grant to Customer of the Loan, and to secure both payment and full and prompt performance and observance of all of the Obligations, Customer grants to ITT a security interest in and to all: (a) Equipment; (b) Policies; (c) books, records and files pertaining to the Equipment and Policies; and (d) proceeds and products of the Equipment and Policies. Customer shall execute and deliver to ITT, at such time or times as ITT may request, all financing statements, certificates of title, applications for vehicle titles and other documents that ITT may deem necessary (i) to perfect and maintain perfected ITT's security interests in the Collateral, and (ii) to fully effectuate all of the transactions contemplated by the Agreements. A copy of this Agreement may serve and be filed as a financing statement. Customer shall make appropriate entries on its books and records disclosing ITT's security interests in the Collateral. The Equipment (except for any titled vehicles) is now and shall at all times while any Obligations are outstanding be located at Customer's address as set forth above and shall not be removed therefrom without the prior written consent of ITT. Under no circumstances whatsoever shall any item of Equipment be removed from the continental United States.

4. WARRANTIES, REPRESENTATIONS, AND COVENANTS

4.1 General Affirmative Warranties, Representations and Covenants. Except as otherwise specifically provided in any of the Other Agreements, Customer warrants and represents to and covenants with ITT that: (a) ITT's security interest in each item of Collateral (1) is now and shall at all times constitute a first priority security interest in such Collateral, and (2) is not now and shall not become subordinate or junior to the lien or claim of any person; (b) Customer is and shall at all times during the term of this Agreement be either (1) a corporation or (2) a general or limited partnership; in each case, duly organized, and in good standing under the laws of the state under which it was organized, and licensed to do business in any other state in which the nature of its business requires it to be qualified or licensed, or (3) a sole proprietorship; (c) Customer has the right and power and is duly authorized to enter into each of the Agreements; (d) each Guarantor has the right and power to and is duly authorized to make such guaranty; (e) Customer's execution of the Agreements does not constitute a breach of any provision contained in Customer's articles of incorporation, bylaws or partnership agreement, as the case may be, or of any other agreement to which Customer is now or may hereafter become a party or by which Customer is or may hereafter become bound; (f) all financial statements and information relating to Customer and any Guarantor which have been or may hereafter be delivered by Customer or any Guarantor to ITT are true, correct and complete and have been prepared in accordance with generally accepted accounting principles consistently applied, and there has been and will be no material adverse change in the financial or business condition of Customer since the submission of any such financial information to ITT; (g) there are and will be no actions or proceedings pending or threatened against Customer which might result in any material adverse change in Customer's financial or business condition; (h) Customer has and will hereafter duly file all tax returns which it is required by law to file; (i) all taxes, assessments and governmental charges of any nature which are or may be due by Customer, including in connection with any part of the Collateral, have been fully paid, and Customer shall maintain reserves adequate in amount to fully pay, and shall promptly pay when due (unless timely and appropriately contested) all such liabilities which may hereafter accrue; (j) Customer shall permit ITT (or any person designated by it) during Customer's usual business hours, to have access to and examine the Collateral and any and all of Customer's books and records in connection therewith and, in connection with the latter, permit the copying of the same; (k) Customer shall deliver to ITT (1) within ninety (90) days after the end of each of Customer's fiscal years, both a reasonably detailed balance sheet and a profit and loss statement covering Customer's operation for such fiscal year in form and substance satisfactory to ITT and (2) within twenty (20) days after request therefor by ITT; any other report requested by ITT relating to the Collateral or the financial condition of Customer (each such report delivered to ITT under this Subsection 4.1 (k) shall be accompanied by the certificate of an authorized officer of Customer to the effect that the same is complete, correct and thoroughly and accurately presents the financial condition of Customer and that there exists on the date of delivery of said certificate no condition or event which constitutes a breach or event of default under any of the Agreements); (l) any certification of Customer's corporate resolutions delivered to ITT in connection with the Agreements shall remain in full force and effect and may be relied upon by ITT unless Customer shall provide ITT with not less than ten (10) days prior written notice to the contrary; (m) Customer shall promptly supply ITT with such other information concerning its or any Guarantor's affairs as ITT from time to time hereafter may reasonably request and shall promptly notify ITT of any material adverse change in Customer's and any Guarantor's financial or business condition or event which constitutes or may constitute a breach or an event of default under any of the Agreements; (n) Customer and each Guarantor is now and at all times during the term of this Agreement shall be solvent; (o) Customer shall keep and maintain all the Equipment in good operating condition and repair and shall make all necessary replacements of and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved; and (p) Customer shall promptly notify ITT of any decline in value of the Collateral and the amount of such decline.

4.2 General Negative Covenants. Except as otherwise provided in any of the Other Agreements, Customer covenants with ITT that Customer shall not: (a) except to ITT, grant to or in favor of any person a security interest in or permit to exist a lien or claim upon any of the Collateral; (b) permit any levy, attachment or restraint to be made affecting any of the Collateral; (c) permit any receiver, trustee, custodian or assignee for the benefit of creditors to be appointed to take possession of its assets; (d) other than in the ordinary course of its business, (1) sell, lease or in any manner dispose of or transfer any of its assets (other than the Collateral), or any interest therein, or (2) incur any debts except renewals or extensions of existing debts and interest thereon; (e) permit any item of Equipment to become a fixture to real estate or accession to other property; or (f) sell, lease, assign or in any other manner dispose of encumber or permit the disposition or encumbrance of any Collateral or interest therein.

Customer agrees to all of the terms and conditions set forth herein including those on the reverse side hereof, and acknowledges receipt of a copy of this Agreement. THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH SHALL BE ENFORCED BY THE PARTIES.

IN WITNESS WHEREOF, Customer has executed this Agreement as of the date first above written.

WITNESS: [Signature]

(SEAL) ATTEST: [Signature] Secretary

Republic Locomotive Works, Inc. (Customer) By: [Signature] President (Sign and Type Name) Hugh B Hamilton (Title)

Customer Federal Taxpayer I.D. # 57-0702483 (Customer)

ACCEPTED this 30 day November 1992

By: (Sign and Type Name) (Title)

Customer Federal Taxpayer I.D. #

ITT Capital Finance division of ITT COMMERCIAL FINANCE CORP.

ADDITIONAL PROVISIONS

4.3 **Warranties, True/Survival.** All of Customer's warranties, representations and covenants in the Agreements and all conditions to be performed by Customer pursuant to each of the Agreements are true and have been satisfied at the time of Customer's execution of each of the Agreements and shall survive the execution, delivery and closing of all such Agreements.

5. INSURANCE

Customer, at its sole expense, shall (a) keep the Equipment insured against loss or damage by fire, theft, accident and all other hazards and risks ordinarily insured against by owners or users of such properties in similar businesses, and (b) maintain public liability insurance relating to Customer's ownership and use of its assets. All Policies shall be in form, with companies and in amounts satisfactory to ITT. Customer shall deliver to ITT true and correct copies of all Policies as well as such other evidence of insurance as ITT may from time to time require and, on ITT's request, evidence of payment of all premiums therefor. Each of the Policies shall contain both an endorsement showing that losses under the Policies shall be payable directly to ITT and a waiver wherein each insurer shall agree to waive any right such insurer may have to assert, by way of counterclaim or affirmative defense in any action to enforce ITT's rights under the Policies, any claim whatsoever against ITT. Upon receipt of insurance proceeds by ITT, ITT may either (i) apply the same on account of the Obligations, or (ii) require Customer to use the same to repair or restore damaged Equipment (if in ITT's sole discretion it determines that it is economically feasible to repair or restore such damaged Equipment). Each insurer shall agree that it will give ITT at least thirty (30) days written notice before any Policy shall be altered or cancelled, and that no act, omission or default of Customer or any other person shall affect the right of ITT to recover under the Policies.

6. RELEASE AND INDEMNITY

Customer releases ITT from any and all claims and causes of action which Customer now or may hereafter have for any loss or damage to it claimed to be caused by or arising from: (a) any failure of ITT to protect or collect upon any of the Collateral; (b) any diminution in the value of the Collateral; (c) any act or omission to act by ITT (except for willful misconduct) or any person whatsoever; and (d) any other cause whatsoever. All risk of loss, damage or destruction of any Collateral shall be borne by Customer. Customer shall indemnify and hold ITT harmless from and defend ITT against any and all claims, causes of action and demands of all persons as to any matter whatsoever relating to any of the Agreements or the Collateral.

7. DEFAULT

7.1 **Definition.** Any one or more of the following events shall constitute a Default by Customer under the Agreements: (a) if Customer or any Guarantor fails to perform, keep or observe any covenant, warranty or representation contained in any of the Agreements which is required to be performed, kept or observed by such person; (b) if any representation, statement, report or certificate made or delivered by Customer or any Guarantor to ITT is not true and correct; (c) if Customer fails to pay any of the Obligations when due and payable or declared to be due and payable; (d) if ITT shall determine that it is insecure with respect to any of the Collateral or the repayment of any part of the Obligations; (e) if a proceeding under the Bankruptcy Code shall be filed by or against Customer or any Guarantor; (f) if Customer shall suspend business (other than seasonal curtailment in accordance with its customary practices); (g) if any proceeding is filed or commenced by or against Customer or any Guarantor for its dissolution or liquidation; (h) if Customer is enjoined, restrained or in any way prevented by court order from conducting all or part of its business affairs; (i) if an application is made for the appointment of a receiver, trustee or custodian of any of Customer's or Guarantor's assets; (j) if there shall be a change in control of Customer; (k) if the obligation of any Guarantor is terminated or expires for any reason; or (l) if, at any time during which Obligations are outstanding, the aggregate fair market value of the Equipment (as determined by ITT in its sole discretion) decreases by more than twenty-five percent (25%) of its original value.

7.2 **Rights of ITT.** In the event of a Default, ITT may, without notice or demand, do any one or more of the following: (a) declare all or any part of the Obligations immediately due and payable; (b) cease advancing money or extending credit to or for the benefit of Customer; (c) exercise any or all of the rights accruing to a secured party, upon default by a debtor, under the Uniform Commercial Code and any other applicable law; (d) take possession of all or any part of the Collateral and use or store it in Customer's premises (without charge to ITT), or remove or require Customer, at Customer's expense, to remove it to such other place or places as ITT may deem convenient; (e) sell or otherwise dispose of the Collateral at public or private sale as ITT deems advisable, for cash or credit (provided, however, that ITT may (f) become the purchaser at any such sale, and, in lieu of actual payment of the purchase price, offset the amount thereof against Customer's Obligations, and (ii) deduct and retain from the proceeds of any such sale all amounts owed ITT in respect of the Obligations including without limitation all amounts in connection with any taking of the Collateral); (f) use, without charge or liability, any of Customer's labels, trade names, licenses or other of Customer's rights, properties or interests in properties in advertising for sale, selling or otherwise disposing of the Collateral; and (g) exercise all powers granted under any of the Agreements. In connection with ITT's sale of Collateral, the same may be sold in its then condition or after repair or preparation thereof, utilizing in connection therewith, without charge or liability to ITT therefor, any and all of Customer's assets. If at any time or times hereafter ITT shall employ counsel for advice or other representation (i) to enforce any right of ITT in any way relating to any of the Collateral or in respect of the Obligations against Customer, Guarantor or any other person that may be obligated to ITT by virtue of any of the Agreements (including Customer's account debtors), or (ii) to defend any action brought by Customer or any Guarantor contesting the validity or enforceability of any of the Agreements, ITT may collect all reasonable attorney's fees arising from such services.

7.3 **Customer's Obligations, Waiver, Notice.** All of ITT's rights and remedies granted under the Agreements are cumulative and non-exclusive. In the event of a Default by Customer under this Agreement, Customer waives and releases any right it may have to assert, by way of counterclaim or affirmative defense in any action to enforce Customer's obligations hereunder, any claim whatsoever against ITT, any and all claims and causes of action which it may now or ever have against ITT as a result of any possession, repossession, collection or disposition by ITT of any of the Collateral, notwithstanding the effect of any such action upon Customer's business; all rights of redemption from any such sale; and the benefit of all valuation, appraisal and exemption laws. If ITT seeks to take possession of any of the Collateral by replevin or other court process, Customer hereby irrevocably waives any bonds, surety and security relating thereto required by any statute, court rule or otherwise as an incident to such possession and any demand for possession of the Collateral prior to the commencement of any suit or action to recover possession thereof. Any notice of any kind required to be given by ITT may be personally delivered to Customer or may be deposited in the United States mail, postage prepaid, and duly addressed to Customer at its address set forth above. Any such notice shall be deemed to constitute reasonable and fair notice to Customer of any such action if so delivered or mailed at least five (5) business days prior to such proposed action.

8. MISCELLANEOUS

8.1 **Collection, Demand.** Customer agrees that all instruments delivered to ITT on account of the Obligations shall constitute conditional payment until funds are actually received by ITT. Customer agrees that ITT shall have the continuing exclusive right to apply and reapply any and all payments received by ITT on account of the Obligations in such manner as ITT may deem advisable notwithstanding any entry by ITT upon any of its books and records. Customer hereby waives: (a) notice and opportunity for hearing; (b) demand, protest and notices of protest or dishonor; (c) notices of payment and nonpayment; and (d) notices of default, release, compromise, settlement, extension or renewal of any documents or instruments at any time held by ITT on which Customer may in any way be liable.

8.2 **Reimbursement.** Customer shall pay ITT on demand all charges and expenses which ITT incurs in protecting or enforcing its security interests in the Collateral, in defending any claim asserted by Customer against ITT, and in enforcing the payment or performance of the Obligations. ITT, without waiving or releasing any Default or Obligation, may perform any Obligations that Customer fails or refuses to perform, and may, at any time or times hereafter, but shall be under no obligation to do so, pay, acquire or accept any assignment of any lien or claim against the Collateral asserted by any person. All sums paid by ITT in performing in satisfaction or on account of any of the foregoing and any expenses, including reasonable attorney's fees, court costs and charges relating thereto, shall be a part of the Obligations, payable on demand and secured by the Collateral.

8.3 **Alteration/Waiver.** None of the Agreements may be altered or amended except in a writing signed by authorized representatives of Customer and ITT. ITT's failure at any time to require strict performance by Customer of any agreement or Obligation shall not waive or diminish any right of ITT thereafter to demand strict compliance and performance. Any waiver by ITT of any Default by Customer shall not waive or affect any other Default by Customer, whether such Default is prior or subsequent to such other Default and whether of the same or a different type. None of the agreements and Obligations of Customer contained in the Agreements and no Default shall be deemed waived by ITT unless such waiver is by a written instrument specifying such waiver, signed by an officer of ITT and directed to Customer. Upon Customer's payment in full to ITT of the Obligations, Customer shall release ITT of any and all claims, causes of action, debts and liabilities relating in any manner whatsoever to the Agreements and the Equipment.

8.4 **Severability, Discretion.** If any provision of any of the Agreements or the application thereof is held invalid or unenforceable, the remainder of each of the Agreements and the application thereof will not be affected thereby, the provisions of each of the Agreements being severable in any such instance. To the extent any of the Agreements grant any discretion to ITT in the exercise of its rights, such discretion shall be absolute and unconditional. Any termination of any of the Agreements by ITT, whether in the event of Default, by notice of termination or as permitted therein by the Customer shall, in the sole discretion of ITT, accelerate payment of all Obligations.

8.5 **Power of Attorney.** Customer hereby irrevocably makes and appoints ITT (and any person designated by it) as Customer's true and lawful attorney with full power to: (a) sign the name of Customer on any form, title, document or instrument and make all necessary corrections thereto that ITT shall deem necessary or appropriate to perfect and maintain perfected the security interests in the Collateral (including correcting or inserting serial numbers, as needed); (b) make, settle and adjust claims under the Policies and endorse Customer's name on any draft, instrument or other item of payment in respect of the Policies; (c) take control in any manner of any item of payment or proceeds of Collateral; and (d) prepare, file and sign Customer's name on any proof of claim in bankruptcy or similar document against any obligor. The Power of Attorney granted by this Section is coupled with an interest and is irrevocable so long as any Obligations remain outstanding.

8.6 **Missouri.** The Agreements are submitted by Customer to ITT, at ITT's place of business in St. Louis, Missouri, and shall not be binding upon ITT or become effective unless accepted in writing by ITT. If so accepted, the Agreements shall be deemed to have been made in St. Louis, Missouri. THE AGREEMENTS AND ALL TRANSACTIONS PURSUANT THERETO SHALL BE GOVERNED AND CONSTRUED IN ALL RESPECTS (INCLUDING, BUT NOT LIMITED TO, THE LEGALITY OF ANY INTEREST CHARGED TO CUSTOMER PURSUANT THERETO) BY THE LAWS OF THE STATE OF MISSOURI. Customer, in order to induce ITT to accept the Agreements, agrees that all actions or proceedings arising in connection with, out of, or in any way related to the Agreements ("Litigation") may be litigated, at ITT's sole discretion, in courts located in the State of Missouri. CUSTOMER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION. To the extent permitted by the law of the state of Customer's place of business, CUSTOMER HEREBY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING IN WHICH ITT AND CUSTOMER ARE PARTIES.

8.7 **Other Provisions.** (a) The paragraph titles used in the Agreements are for convenience only and do not define or limit the contents of any paragraph. The Agreements shall be binding upon and inure to the benefit of ITT and Customer and their respective heirs, personal representatives, successors and assigns. Customer shall have no right to assign any of the Agreements or any Obligation without the prior written consent of ITT. If this Agreement is executed by more than one person, all Obligations of each person are joint and several. (b) Customer warrants and represents to and covenants with ITT that: (1) the Agreements contain the entire agreement of the parties with respect to the Loan; (2) all prior agreements, commitments, understandings, representations, warranties and negotiations in connection herewith, if any, are hereby merged into this Agreement; and (3) no oral representations shall in any manner modify or explain any of the terms and conditions herein. Customer shall indemnify ITT from and against any and all losses and expenses suffered or incurred by ITT as a result of any breach by Customer of its warranties contained in this Paragraph 8.7(b).

8.8 **Arbitration.** All disputes and/or claims in any way related to this Agreement or the relationship of the parties evidenced by this Agreement, including without limitation any tort claim (collectively the "Disputes"), shall be resolved by binding arbitration pursuant to the Code of Procedure in effect from time to time (the "Code") of the National Arbitration Forum ("NAF") whose current address is 2124 DuPont Avenue, Minneapolis, Minnesota 55405, where copies of the Code may be obtained. If the Code is abolished or the NAF ceases operation, all arbitrable Disputes shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. In the event of any inconsistency between the Code (or the Rules) and this provision (as determined by the arbitrator(s)), this provision shall control. All arbitration proceedings hereunder shall be conducted in St. Louis, Missouri. Missouri law shall govern the arbitration proceedings except that if the jurisdictional requirements of the Federal Arbitration Act (the "FAA") are satisfied, the FAA shall govern the arbitration. The parties recognize and agree that this Agreement evidences a transaction involving commerce among the several states.

Nothing in this Agreement shall be construed to prevent either party's use of bankruptcy, receivership, injunction, repossession, replevin, claim and delivery, sequestration, seizure, attachment, foreclosure, dation, garnishment or any other prejudgment or provisional remedy or action relating to any collateral or security for any debts owed by either party to the other under the Agreement. The institution and maintenance of any such action shall not constitute a waiver of the right of any party to compel arbitration of any Dispute subject to arbitration hereunder. If either party brings any other action for relief with respect to any Dispute that the parties have agreed to arbitrate under this Agreement, the party who brought such action shall immediately pay to the other party all of such other party's expenses (including attorney's fees) incurred to defend such action and/or to remove such Dispute to arbitration.

In any Dispute arbitrated pursuant to this Agreement, the arbitrator shall be empowered to hear and decide pre-hearing motions to dismiss and for summary judgment. The parties agree to permit discovery proceedings of to such discovery shall be resolved by the arbitrator. All arbitration proceedings conducted hereunder shall be conducted on a confidential basis and all awards granted thereunder shall be kept confidential. Any award, judgment or order rendered by the arbitrator may be entered and enforced by either party in any state or federal court having competent jurisdiction. Each party agrees to submit to the jurisdiction of any court for purpose of enforcement of any such award, order or judgment.

If either party brings a legal action to vacate or modify the arbitrator's award and such party does not prevail, such party shall pay all expenses, including attorney's fees, incurred by the other party in defending such action. Such expenses shall also be assessed against the petitioning party if such party does not prevail in any subsequent appellate action.

An arbitration proceeding must be instituted within twelve (12) months after the later of the date the last payment was received by the instituting party with respect to any Dispute for the collection of contractual debts arbitrable hereunder and the date the incident giving rise to the Dispute initially occurred (regardless of whether any damage was sustained or ascertainable at that time or whether either party had knowledge of the occurrence of such Dispute at such time). Failure to institute an arbitration proceeding within such period shall constitute an absolute bar to the institution of any proceeding with respect to such Dispute.

Schedule A

To: _____ Lease XX Financing Agreement
_____ UCC-1 _____ Subordination Agreement
_____ Other (specify: _____)

Dated November 25, 1992

Between

the ITT Capital Finance division of ITT Commercial Finance Corp. and

Republic Locomotive Works, Inc. (Customer Name)

Equipment Location: 131 Falls Street Ste 101 Street Address

Greenville, SC 29601 City, State, Zip Code

Equipment Description (including quantity) Year and Model No. Serial No.

1 EMD Model SW1200, 1200
Horsepower Diesel Electric
Switching Locomotive,
Built in 1965, Serial No.
65-HI-1100 (Diesel Engine).

1 GE 50 Ton, 440 Horsepower
Diesel Electric
Industrial Switching
Locomotive, Built in 1941,
Serial No. 15049.

1 GE 80 Ton, 670 Horsepower
Diesel Electric
Industrial Switching
Locomotive, Built in 1951,
Serial No. 21087.

Together with all parts, accessories, attachments, substitutions, repairs, improvements and replacements, and any and all rights thereunder and proceeds thereof, including without limitation insurance proceeds.

Republic Locomotive Works, Inc.

(Type or Print Customer Name)

By: [Signature]
Hugh B Hamilton

Title: President

Notary Affidavit

The foregoing instrument was acknowledged before me this 30th day of November
1992, by Hugh D. Harahan Jr, of Republic Leasing Works Inc
of, a South Carolina corporation. He/she is personally
known to me or has produced SC driver's license as
identification and did [], did not take an oath.

Patricia A. McCollum

Notary Public

MY COMMISSION EXPIRES 8-14-1997

(Stamp)