

SECURITY AGREEMENT JUN 12 1975 -2 55 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made and entered into as of this 10th day of June, 1974, between Track One Company, a Partnership (hereinafter called "Borrower") and NORTH CAROLINA NATIONAL BANK, CHARLOTTE, NORTH CAROLINA, (hereinafter called "Bank")

The parties hereto agree as follows:

(1) Borrower has guaranteed that certain Note of National Railway Utilization Corporation to Bank dated June 10, 1974, in the amount of \$300,000.00.

(2) Borrower hereby grants to Bank to secure Borrower's liability under said guaranty, a security interest in:

88 seventy ton, fifty foot freight cars, bearing car numbers PICK 55,030 through PICK 55,117 (inclusive)

(3) So long as Borrower shall have any liability to Bank under said guaranty, Borrower will not, without the prior written consent of Bank, grant any security interest in or permit any lien or encumbrance to attach to any of the foregoing collateral.

(4) Borrower represents and warrants that as of the date of delivery it will be the owner of said freight cars free and clear of all liens and encumbrances except the prior lien of Bank on said cars. The lien created hereby shall rank with and be equal to the prior lien held by Bank.

(5) Borrower will cause each freight car described herein to be kept numbered with the identifying number as set out in this Agreement and will cause each such unit to be plainly, distinctly, permanently and conspicuously marked in letters not less than one inch (1") in height, the words "Track One Company - Owner", or other appropriate words with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interest of the Bank to such freight cars and its rights under this Agreement. Borrower will not permit any such freight car of the Equipment to be placed in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such marking or renew any such marking, which may be removed, defaced or destroyed. The Borrower will not permit the identifying numbers of any such units to be changed except in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Bank by the Borrower and promptly filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

(6) In the event that any freight car shall be or become worn out, lost, stolen, destroyed or irreparably damaged from any cause whatsoever during the continuance of this Agreement (hereinafter called a Casualty Occurrence) the Borrower shall replace the unit at its own cost with other operable standard gauge rolling stock equal in value to the depreciated value and of substantially as good material and construction as that worn out, lost, stolen, destroyed or irreparably damaged, and shall give the Bank or its assignee an opinion of counsel to the effect that this Agreement constitutes a first lien on such replacement unit, and shall execute, deliver and file and record such further document as may be reasonably requested by the Bank or its assignee in support of such opinion, or the Borrower shall promptly pay to the Bank a sum equal to three and one-third (3 1/3%) percent of the balance due with said note with interest accrued thereon to the date of such payment, in which event all succeeding payments under said note shall be correspondingly reduced.

(7) Borrower will at all times maintain each freight car in good order and repair at his own expense.

(8) During the term of this Agreement, the Borrower will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which the freight cars may be operated, with all standards recommended by the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the freight cars to the extent that such laws and rules affect the operation or use of the freight cars. In the event that such laws or rules require the alteration of the freight cars, the Borrower will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Borrower 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 Bank, adversely affect the property or rights of the Bank hereunder.

(9) An event of default shall occur in case:

- (a) The Borrower shall fail to pay in full, when due and payable any sum payable by the Borrower under said note and such failure shall continue for more than ten (10) days after such payment shall have become due and payable; or
- (b) Borrower shall, for more than 30 days after the Bank shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of said note or this Agreement on its part to be kept or performed or to make provision satisfactory to the Bank for such compliance; or
- (c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against Borrower or any Lessee of said cars and, unless such petition shall be dismissed, nullified, stayed, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Borrower under this Agreement shall not have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or
- (d) Any proceedings shall be commenced by or against the Borrower or any Lessee of said cars for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Borrower or such Lessee shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Borrower or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees

or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier.

(10) At any time after the occurrence of such event of default the Bank may:

- (a) At its option, declare (hereinafter called a Declaration of Default) the entire unpaid balance of said note, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of ten and one-half (10 1/2%) percent per annum, and the Bank shall thereupon be entitled to recover judgment in any court having jurisdiction over the Borrower or its property, in addition to its other remedies provided for herein, for said amount payable, with interest as aforesaid, together with attorney's fees and expenses incurred to recover such judgment, and any other amounts due and owing hereunder, and to collect such judgment out of any property of the Borrower wherever situated;
- (b) Take or cause to be taken by its agent or agents immediate possession of the freight cars, or any unit thereof, without liability to return to the Borrower any sums therefor paid and free from all claims whatsoever, except as hereinafter in this subparagraph expressly provided, and may remove the same from possession and use of Borrower or its Lessors or assignees with or without process of law.

In case the Bank shall rightfully demand possession of the freight cars in pursuance of this Agreement and shall designate a point or points for the delivery of the freight cars to the Bank, Borrower shall at its own expense, forthwith and in the usual manner, cause the freight cars to be moved to such point or points as shall be designated by the Bank and shall there deliver the freight cars or cause them to be delivered to the Bank. At the option of the Bank, the Bank may keep the freight cars in storage for a reasonable time until the Bank shall lease, sold or otherwise disposed of the same. For such purpose the Borrower agrees to pay all such charges for rent, storage and the necessary facilities at any point or points selected by the Bank. The Borrower hereby expressly waives any and all claims against the Bank and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the freight cars in any reasonable manner so long as such retaking by the Bank shall be undertaken with reasonable care.

After the entire indebtedness under said note shall have been declared immediately due and payable as hereinabove provided (unless such Declaration has been rescinded), the Bank with or without retaking possession thereof at its election and upon ten days' notice to the Borrower and to any other persons to whom the law may require notice of the time and place, may sell the freight cars, or any unit thereof, free from any and all claims of the Borrower or any other party claiming by, through or under the Borrower at law or in equity, at public or private sale and with or without advertisement as the Bank may determine; provide however, that prior to such sale or prior to the making of a contract for such sale, the Borrower may make full payment of the entire indebtedness under said note, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Bank in retaking, holding and preparing the freight cars for disposition and arrangement for the sale and the Bank's reasonably attorneys' fees. The proceeds of any such sale, less the attorneys' fees and any other expenses incurred by the Bank in taking possession of, removing, storing and selling the freight cars shall be credited on the amount due to Borrower under the provisions of this Agreement and said Note.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Bank may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of said sale the property to be sold, and in general in such manner as the Bank may determine. The Bank may itself bid for and become the purchaser of the freight cars, or any unit thereof, so offered for sale.

Each and every power and remedy hereby specifically given to the Bank 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 expressly limited herein. 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 except as such exercise may be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Bank from the sale shall be applied, first to the payment of the expenses and liabilities of the Bank herein undertaken to be paid, second to the payment of interest on the unpaid balance under said note accrued and unpaid and third to the payment of the unpaid principal under said Note. If, after applying as aforesaid all sums of money realized by the Bank under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement. Borrower shall have no personal liability for such deficiency and Bank shall look solely to said cars to satisfy obligations of Borrower under this Agreement and under said Note.

If, after applying as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall be paid to the Borrower.

Borrower will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Agreement. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Bank may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

(11) Borrower shall furnish to Bank quarterly operating statements with respect to the freight cars commencing with the quarter beginning April 1, 1975.

(12) Borrower shall pay all costs incident to the preparation, execution, acknowledgement and recordation of this Agreement including the reasonable fees of Counsel for Bank incurred in reviewing this document.

(13) Bank hereby consents to the lease of the freight cars to Pickens Railroad Company. Bank shall have the right to approve the Lessee if such cars are hereafter leased to any other party which consent shall not be unreasonably withheld.

(14) Any notice hereunder shall be deemed to be properly served if delivered or mailed as follows:

(a) to Borrower: Post Office Box 8931 - Station A
Greenville, South Carolina 29604

(b) to Bank:
Charlotte, North Carolina

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

(15) The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of North Carolina, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by the recordation provisions of any other act pursuant to which this Agreement is recorded.

(16) This Agreement may be 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.

(17) Notwithstanding any provision to the contrary herein contained, Borrower shall have no personal liability hereunder. This Agreement is executed by Borrower for the sole purpose of subjecting said freight cars to the lien of Bank given to secure the obligations created by this Agreement and said guaranty.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this Agreement to be duly signed in their respective names as of the date first above written.

WITNESS:

Donna A. Kerns

TRACK ONE COMPANY

By: Sterling Capital, Ltd. *General Partner*

ATTEST:

ad CRD
Asst Secretary

By: *John M. Sterling Jr.* *President*

NORTH CAROLINA NATIONAL BANK

By: *J. Douglas Buchan*
VICE President

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 19th day of June, 1974, before me personally appeared John Sterling, Jr., to me personally known, who, being by me duly sworn, says that he is President of Sterling Capital, Ltd., The General Partner of Track One Company, that as such he is authorized to execute and deliver the foregoing instrument on behalf of Track One Company and that the foregoing instrument was signed by him and he acknowledged that the execution of the foregoing instrument was his free act and deed.

Elizabeth B. Wood
Notary Public for South Carolina

My Commission Expires: 5/6/81

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

On this 22nd day of ~~June~~ ^{Oct.}, 1974, before me personally appeared D. Douglas Buchanan, to me personally known, who being by me duly sworn, says that he is Vice President of North Carolina National Bank, that one of the seals 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.

Ina H. Fort
Notary Public for North Carolina
My Commission Expires December 17, 1978

My Commission Expires: _____