CHARLES P. TURNBURKE
VICE PRESIDENT FINANCE

NATIONAL RAILWAY UTILIZATION CORP.
1100 Centre Square East / 1500 Market Street / Philadelphia, Pennsylvania 19102 / (215) 569-2220

RECORDATION NO. 11097 Filed 1425

NOV 27 1979 1 30 PM

INTERSTATE COMMERCE COMMISSION

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I.C.C.
FEE OPERATION BR.

11097/A
RECORDATION NO. ..... Filed 1425

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INTERSTATE COMMERCE COMMISSION

November 27, 1979

No. 9-331A058
Date NOV 27 1979
Fee $ 50.00
ICC Washington, D. C.

Mrs. Mildred R. Lee
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Room 2303
Washington, DC 20423

Dear Mrs. Lee:

It is respectfully requested that the following documents be recorded according to 49 U.S.C. 11303 of the Interstate Commerce Act:

1. Conditional Sale Agreement dated as of November 27, 1979 between National Railway Utilization Corporation and Pickens Railroad Company as Vendees and Evans Transportation Company as Vendor.

2. Agreement and Assignment dated as of November 27, 1979 between Evans Transportation Company as Vendor and Girard Bank as Assignee.

The adresses of the parties to the transaction are:

National Railway Utilization Corporation
1100 Centre Square East
1500 Market Street
Philadelphia, Pa. 19102

Pickens Railroad Company
402 Cedar Rock Drive
P. O. Box 216
Pickens, SC 29671

Evans Transportation Company
East Tower
2550 Golf Road
Rolling Meadows, IL 60008

Girard Bank
National Division - 8th floor
Three Girard Plaza
Philadelphia, Pa. 19102

The agreement covers fifty (50) 50 foot - 6 inch, 70 ton general purpose boxcars bearing the mechanical designation XM and the road numbers MISS 304000 - 304049 (both inclusive).

Sincerely yours,

Charles P. Turnburke

Charles P. Turnburke

CPT/km
Encs.

Interstate Commerce Commission

Washington, D.C. 20423

11/27/79

OFFICE OF THE SECRETARY

Charles P. Turnburke
Natl. NW. Utilization Corp.
1100 Centre Square East
1500 Market St.
Phila. Pa. 19102

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/27/79 at 1:30pm , and assigned recordation number(s). 11097 & 11097-A, 11098 & 11098-A

Sincerely yours,

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

8/9/79
ML&B

11097
RECORDATION NO.....Filed 1425

NOV 27 1979 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of November 27, 1979

between

EVANS TRANSPORTATION COMPANY, as Builder/Vendor

and

NATIONAL RAILWAY UTILIZATION CORPORATION

and

PICKENS RAILROAD COMPANY, as Vendee

CONDITIONAL SALE AGREEMENT, dated as of November 27, 1979, between EVANS TRANSPORTATION COMPANY (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and NATIONAL RAILWAY UTILIZATION CORPORATION and PICKENS RAILROAD COMPANY, both South Carolina corporations (hereinafter jointly and severally called the Vendee).

WHEREAS, the Builder agrees to assemble and construct, and to sell and deliver to the Vendee, and the Vendee agrees to purchase, that number of units of railroad equipment described in Annex B hereto (hereinafter called the Equipment) which is accepted hereunder by the Vendee on or prior to March 31, 1980 (and which, if less than the number specified in Annex B, is to be specifically described by supplement hereto subject to the provisions hereof); and

WHEREAS, THE CONNECTICUT BANK AND TRUST COMPANY (hereinafter sometimes called the Assignee or the Vendor), acting not in its individual capacity, but solely as Agent for certain investors pursuant to a Participation Agreement (hereinafter called the Participation Agreement), among the Assignee, the Vendee and the parties named in Schedule B thereto, in the form annexed hereto as Annex C, is agreeing to finance on behalf of said Investors 80% of the cost of the Equipment; and

WHEREAS, GIRARD BANK (hereinafter called Girard) is agreeing to finance, for an interim period, 80% of the cost of the Equipment prior to and in contemplation of the financing referred to in the immediately preceding WHEREAS clause, on the terms and conditions stated herein, as modified and supplemented for such interim period by Article 23 hereof;

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the fourth paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignments; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the number of units of the Equipment described in the first WHEREAS clause of this Agreement, it being understood that the Equipment shown on Annex B hereto not accepted pursuant to this Article 2 on or before March 31, 1980, shall be excluded from this Conditional Sale Agreement and not included in the term Equipment, and the Vendor and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore accepted and settled for hereunder. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of assembly and manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, including units intended for interchange, and each such unit will be new railroad equipment. As and when any Equipment shall from time to time be accepted by the Vendee hereunder within the limitations described in the first WHEREAS clause of this Agreement as evidenced by the Vendee's Certificate of Acceptance, the same shall be deemed accepted hereunder and shall ipso facto and without further instrument pass under and become subject to all the terms and provisions hereof.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Assignment have been filed pursuant to 49 U.S.C. §11303 of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (e) or (f) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, or if Ex Parte 275 Order, served October 3, 1975 by the Interstate Commerce Commission, is made final by said Commission and special counsel for the Assignee is unable to conclude that the Vendee may, nevertheless, incur additional Conditional Sale Indebtedness hereunder without obtaining prior authorization of the Commission. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder (including payment therefor pursuant to the Assignment) on or prior to March 31, 1980, shall be excluded from this Agreement; provided, however, that the Vendee shall not thereby be relieved of its obligations to purchase such excluded units pursuant to purchase orders therefor which it may have entered into with the Builder, if and when such excluded units shall be completed and delivered by the Builder in accordance with such purchase orders, it being the intent of this provision, and of the similar provisions appearing in Article 2 and the second paragraph of Article 4 merely to exclude such units from the provisions of this Agreement intended to provide for the financing of the Equipment on an installment purchase basis. Such excluded units shall be paid for in cash on the delivery of such units, either directly or, in case the Vendee shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Vendee shall determine and as shall be acceptable to the Builder.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government, such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors. Any such delay shall not, however, operate to extend the Cut-Off Date (as hereinafter defined).

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the second paragraph of Article 4 hereof or the second paragraph of this Article 3 shall be ineffective, ab initio, to impose on the Assignee any liability, obligation or responsibility with respect thereto.

ARTICLE 4. Purchase Price and Payment. The base price or prices (including all inspection and certification fees) per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Vendee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee plus any applicable sales tax set forth in the same or separate invoices also delivered to the Vendee; and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Vendee (such invoice or invoices being hereinafter called the Invoices).

If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid) and the Vendee agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Vendee shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Vendee shall determine and as shall be acceptable to the Builder.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as the Builder and the Vendee may agree (each such group being hereinafter called a Group), provided, however, that the aggregate Purchase Price of any Group shall not be less than $5,000,000 (± 5%). The term "Closing Date" with respect to any Group shall mean such date or dates (not later than

March 31, 1980, such date being herein called the Cut-Off Date), occurring not more than fourteen days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment, as shall be fixed by the Vendee by written notice delivered to the Assignee at least ten days prior to the Closing Date designated therein.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 80% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made exceeds (y) the Maximum Conditional Sale Indebtedness specified in Annex A and any amount or amounts previously paid or payable with respect to the Purchase Prices pursuant to this clause (ii); and

(b) in equal annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The aggregate installments of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on March 31, 1982, and annually thereafter on the same date in each year to and including March 31, 1993, each such date being hereinafter called a Principal Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness has occurred at the rate of 11 3/8% per annum. Such interest shall be payable quarterly, to the extent accrued, on each March 31, June 30, September 30 and December 31, commencing with the first such date to occur following the Closing Date, to and including the last Principal Payment Date as aforesaid, each such date being hereinafter called an Interest Payment Date. If any such Principal Payment Date or Interest Payment Date is not a business day, then payment shall be made on the next succeeding business day. The Vendee will furnish to the Assignee, promptly after each Closing Date, a schedule, in such number of counterparts as shall be requested by the Assignee, showing the respective amounts of principal and interest

payable on each Principal Payment Date and on each Interest Payment Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

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

Except as set forth in the immediately following paragraph hereof, the Conditional Sale Indebtedness shall be subject to prepayment, either in whole or in multiples of $50,000 aggregating not less than $100,000 at any one time, at the option of the Vendee at any time and from time to time prior to its fixed maturity, on thirty days' written notice to the Vendor, upon payment of the principal or portion of principal thereof to be prepaid and with interest upon such prepaid principal amount accrued to the date of prepayment, together with a premium consisting of the following percentage of the principal amount so prepaid:

If prepaid on or before March 31, 1981	11.375%
If prepaid thereafter and on or before March 31, 1982	10.500%
If prepaid thereafter and on or before March 31, 1983	9.625%
If prepaid thereafter and on or before March 31, 1984	8.750%
If prepaid thereafter and on or before March 31, 1985	7.875%
If prepaid thereafter and on or before March 31, 1986	7.000%
If prepaid thereafter and on or before March 31, 1987	6.125%
If prepaid thereafter and on or before March 31, 1988	5.250%
If prepaid thereafter and on or before March 31, 1989	4.375%
If prepaid thereafter and on or before March 31, 1990	3.500%
If prepaid thereafter and on or before March 31, 1991	2.625%
If prepaid thereafter and on or before March 31, 1992	1.750%
If prepaid thereafter and before maturity	0.875%

Prior to March 31, 1990 the Vendee may not make any prepayment of the Conditional Sale Indebtedness pursuant to the immediately preceding paragraph hereof, directly or indirectly, if such prepayment is the result of, or is in anticipation of, the refunding or refinancing of all or any portion of the Conditional Sale Indebtedness by application, directly or indirectly of funds derived from any issuance of debt securities or borrowings or any shares of preferred stock of the Vendee or any Subsidiary:

(i) having (x) in the case of any such debt securities or borrowings an interest cost (as determined by sound financial practice) to the Vendee or such Subsidiary of less than 11 3/8% per annum, or (y) in the case of any such preferred stock, a fixed dividend rate (expressed as a percentage of the issue price) which, after being divided by a fraction, the numerator of which is the aggregate consolidated income for Federal income tax purposes of the Vendee and its Subsidiaries for the three fiscal years immediately preceding the date of such proposed prepayment minus the aggregate consolidated Federal income tax liability of the Vendee and its Subsidiaries for such period and the denominator of which is the aggregate consolidated income for Federal income tax purposes of the Vendee and its Subsidiaries for such period, is less than 11 3/8%, except that if such preferred stock dividends will at the time be deductible by the issuer for Federal income tax purposes, a fixed dividend rate which is less than 11 3/8%, or

(ii) having as of the date of any proposed prepayment, a Weighted Average Life to Maturity less than the remaining Weighted Average Life to Maturity of the Conditional Sale Indebtedness. The term "Weighted Average Life to Maturity" shall mean (x) as applied to any indebtedness at any date, the number of years obtained by dividing (1) the then outstanding principal amount of such indebtedness into (2) the total of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payment, including payment at final maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment and (y) as applied to any preferred stock at any date, the number of years obtained by dividing (1) the then involuntary liquidation value of such preferred stock into (2) the total of the product obtained by multiplying (A) the amount of each then remaining sinking fund, purchase fund or other required redemption in respect thereof by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the date of such required redemption or purchase.

Any prepayment of Conditional Sale Indebtedness pursuant to the foregoing provisions shall be accompanied by a certificate signed by the chief financial officer of the Vendee, setting forth the ultimate source of funds which will be used to make the prepayment and setting forth (in reasonable detail) such other information as is necessary to evidence that the prepayment is not in violation of said provisions.

Any optional prepayment pursuant to the foregoing paragraphs shall be applied proportionately, as respects each holder of Conditional Sale Indebtedness, in accordance with the ratio of the unpaid principal amounts thereof held by the respective holders thereof. So long as any Conditional Sale Indebtedness remains unpaid, no prepayment pursuant hereto shall relieve the Vendee from its obligation to make the annual payments required by the fifth paragraph of this Article 4 at the times therein specified.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 12 3/8% per annum.

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 the payment of public and private debts.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the fourth paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

ARTICLE 5. Title to the Equipment; Additional Security. Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement. Any and all additions to the Equipment that are not readily removeable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equip-

ment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof, and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

As additional assurance for the payment and performance of all obligations of the Vendee under this Agreement, Vendee hereby assigns and grants to the Vendor a security interest (herein called Additional Security) in all of Vendee's right, title, and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment, including, without limiting the generality of the foregoing, the proceeds of any lease of the Equipment described in Article 11 hereof.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that, so long as the Vendee is not then in default under this Agreement, the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, together with interest thereon at the rate of 11 3/8% per annum, and any amounts so paid by the Vendor shall be secured by and under this Agreement;

provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition and in compliance with the applicable standards from time to time in effect under the Interchange Rules of the Association of American Railroads for use in interchange.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the good-faith opinion of the Vendee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Vendee (or by any lessee of the Vendee) for a period of 90 consecutive days (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Assignee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee, or to any requisitioning authority, as the case may be, of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee, or such authority, to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof which remains unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or pre-payments theretofore made under this Article 7 with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee, provided that no default hereunder shall have occurred and be continuing. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Vendee will, at all times and at its own expense, cause to be carried and maintained all risk, physical loss and damage insurance in respect of the units of Equipment in an amount at least equal to the total Casualty Value of such Units at the time subject hereto, and public liability insurance for an amount of not less than $10,000,000 for each person and $10,000,000 for

each occurrence, all such insurance containing such terms, and in such form, for such purposes and written by such companies as may be satisfactory to Vendor, payable to Vendor as its interest may appear or as an additional insured, and Vendee will deliver to Vendor at its request evidence satisfactory to Vendor that such insurance has been so procured and made payable to Vendor; provided, however, that with respect to Casualty Occurrences only, the Vendee shall have the right to act as self-insurer of the Equipment but only so long as the Vendee's net worth shall be not less than $10,000,000 and the Vendee shall not have sustained during the preceding twelve-month period cash loss of earnings in excess of $1,000,000. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice to the Vendor by the insurers or the insurers' authorized representative, as the case may be. If Vendee fails to maintain satisfactory insurance, except as otherwise permitted as aforesaid, Vendor shall have the option to do so and Vendee agrees to repay with interest, at the rate of 11 3/8% per annum, all amounts so expended by Vendor.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road numbers set forth in Annex B hereto, or, in the case of Equipment not there listed, such road numbers as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permamently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act", or other appropriate

words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by any permitted lessee of the Equipment.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of 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 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 any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, if no default exists hereunder, the Vendee 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 under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. Without the prior written consent of the Vendor, the Vendee shall not assign or transfer its interest under this Agreement in the Equipment or any unit thereof except as provided in this Article 11. The Vendee shall not, on a regular basis, operate or use any unit of the Equipment outside the United States of America, nor shall it permit others to operate or use, on a regular basis, any unit of the Equipment outside the United States of America.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Vendee shall also be entitled (i) to the use of the Equipment by it or any of its subsidiaries or affiliates upon lines of a railroad owned or operated by it or any of its subsidiaries or affiliates or upon lines of a railroad over which the Vendee or any such subsidiary or affiliate has trackage or any other operating rights, or over which railroad equipment of the Vendee or any such subsidiary or affiliate is regularly operated pursuant to contract; (ii) to permit the use of the Equipment 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 of the Equipment to other railroad companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, provided, however, with respect to the permission contained in this clause (iii), that all of the following conditions are satisfied: (w) all such leases shall prohibit any lessee from assigning or permitting the assignment of any unit of the Equipment to service involving the regular operation or use thereof outside the United States of America; (x) all such leases shall provide that the rights of any lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement; (y) the lessee under any such lease has complied with all provisions of Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Box Cars, and is eligible and entitled to the extent provided therein, to collect incentive per diem charges on the Equipment in the possession of other railroads, and to apply the incentive per diem charges to the payment of all rentals due under the lease; and (z) a copy of such lease shall be furnished to the Vendor.

The Vendee hereby assigns to Vendor, as Additional Security hereunder, all of Vendee's right, title and interest in all sums due and to become due under all such leases, together with the Vendee's right to all claims for damages arising out of the breach thereof, and all rights of the Vendee to terminate such lease, to perform thereunder and to compel performance of the terms thereof. Upon written instruction from the Vendor to the lessee (and without any further act being required of the Vendee in connection therewith), all sums payable under any such lease shall thereafter be paid by the lessee directly to the Vendor, it being understood and agreed by the parties hereto, however, that until default shall have occurred hereunder, the Vendor shall refrain from issuing any such instruction.

Until default shall have occurred hereunder, the Vendee may receive and retain compensation (subject to the provisions of Article 4 hereof) for all uses of units of the Equipment as aforesaid, from other railroads and companies so using any of the Equipment.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, any unit thereof or the Additional Security, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim, so long as no default exists hereunder, and so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment or the Additional Security, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder.

The Vendee will bear the responsibility for and 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 unit of or all of the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature whatsoever, except only the rights of the Vendor under this Agreement, subject, however, to the fulfillment by the Vendee of all of its obligations hereunder.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the further agreement of the parties relating to patent indemnification are set forth in Annex A hereto. In addition to the agreement concerning patent indemnification contained in Annex A, the Vendee will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Vendee and not manufactured by the Builder or of any design, system,

process, formula or combination specified by the Vendee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by Vendee and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee of any claim known to the Builder in respect of which liability may be charged against the Vendee hereunder, and the Vendee will give notice to the Builder of any claim known to the Vendee in respect of which liability may be charged against the Builder hereunder.

All covenants of indemnity contained herein shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or (b) except with the prior written consent of the Vendor, sell, assign or otherwise dispose of its rights under this Agreement. Every such transfer, and every such sale, assignment or other disposition shall be expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, its rights and remedies upon the happening of an event of default hereunder).

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 Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligations which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, 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 the assignor's right, title and interest in and to the Equipment and this Agreement, 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 Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any principal sum payable by the Vendee when payment thereof shall be due hereunder, or to comply with any of the provisions of subparagraphs (a), (e), (f), (h), (i), (j), (k), (l) or (m) of Paragraph 9 of the Participation Agreement; or

(b) the Vendee shall fail to pay any interest or other sum payable by the Vendee when payment thereof shall be due hereunder, or under the Participation Agreement, and such failure shall continue for 5 days after the date such payment is due and payable; or

(c) the Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of the Participation Agreement, on its part to be kept and performed, or to make provision satisfactory to the Vendor for such compliance; or

(d) any material representation or warranty of the Vendee in this Agreement or the Participation Agreement shall prove to be incorrect in any material respect on the date as of which made; or

(e) a petition for reorganization under Section 77 of the Bankruptcy Act [or under Subchapter IV of the Bankruptcy Code of 1978 when and if such Code shall become effective] as now constituted or as said Section 77 or Subchapter IV may be hereafter amended, shall be filed by or against the Vendee and, unless such petition shall have been 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 Vendee under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree,

by a trustee or trustees appointed (whether or not subject to ratification) 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

(f) any other proceedings shall be commenced by or against the Vendee 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 have been 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 Vendee under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee 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; or

(g) the Vendee shall make or permit 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 and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(h) the Vendee shall cease to be a common carrier subject to regulation by the Interstate Commerce Commission, unless, within 30 days thereafter, counsel acceptable to the Vendor shall deliver an opinion, satisfactory in form and substance to the Vendor, to the effect that such deregulation does not adversely affect the qualification of the Vendee, in the event of its bankruptcy, for reorganization under §77 of The Bankruptcy Act (or under the comparable provisions of the Bankruptcy Reform Act of 1978, upon its effectiveness); or

(i) default shall occur (and any applicable grace period shall expire) under any other Conditional Sale Agreement to which the Vendee is a party or under any instrument pursuant to which the Vendee shall be indebted for borrowed moneys;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire 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 such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and 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 one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, any lessee or any other person and for such purpose may enter upon the premises of the Vendee or any other 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 the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the railroad lines or premises controlled by the Vendee, or on any other lines of railroad or other premises approved by the Vendor for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises which, or the use of which, are owned or controlled by the Vendee (directly or indirectly), or on any lines of railroad or other premises approved by the Vendor and reasonably convenient to the Vendee, for a period not exceeding six months, provided, however, that the Vendee may at its option and expense cause such storage to be made on the lines of other railroads or other premises (subject in all cases to approval by the Vendor) if the storage on the Vendee's line would interfere with the operation of the railroads of the Vendee. The Vendee agrees either to provide the facilities necessary for such storage or to pay all costs and expenses of such storage, and such storage shall be at no cost or expense to the Vendor. This agreement of the Vendee to deliver the Equipment and furnish facilities 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 Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claim against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

During any storage period, the Vendee will, at its own cost and expense, insure (subject to its right to act as self-insurer as provided in Article 7 hereof), maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users; provided, however, that the Vendee shall not be liable in connection with such inspection, except in the case of negligence of the Vendee or any of its employees or agents, for any injury to or death of any person exercising inspection rights under this paragraph.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, including reasonable attorneys' fees and all expenses of the Vendor on retaking possession of, removing, storing and holding the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other person notified under the terms of this paragraph objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited first to principal, and other amounts not constituting interest payments, due Vendor hereunder or under the Participation Agreement or the Assignment, and thereafter to interest due the Vendor hereunder or under said other instruments.

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 property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the

intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate (applicable in respect of overdue amounts as specified in Article 4 hereof) on the unpaid Conditional Sale Indebtedness with respect to such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

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. No delay or omission of the Vendor 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. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. 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 Vendee.

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

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall, as to such jurisdiction, be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States and Canada, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee 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 by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed by first-class mail, postage prepaid, to it at the following addresses:

(a) to the Vendee, at 1100 Centre Square East, 1500 Market Street, Philadelphia, Pa. 19102;

(b) to the Builder, at the address specified in Annex A hereto;

(c) to any assignee of the Vendor, or the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee;

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

ARTICLE 21. Law Governing. This Agreement having been executed in the Commonwealth of Pennsylvania by one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations hereunder shall be governed by the laws of said Commonwealth; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, 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.

ARTICLE 23. Interim Financing. The parties hereto contemplate that this Agreement may be initially assigned to Girard and thereafter reassigned to THE CONNECTICUT BANK AND TRUST COMPANY in its capacity as Agent under the Participation Agreement. As long as any indebtedness under this Agreement is outstanding to Girard in its capacity as assignee of this Agreement, the terms and conditions contained in the first twenty-two Articles of this Agreement shall be modified and supplemented to the extent set forth in this Article 23, and the parties hereto shall be bound by this Agreement as so modified and supplemented. Upon the reassignment of this Agreement by Girard to the Agent in accordance with the terms and provisions of the Participation Agreement, or to any other person pursuant to an assignment which specifically provides for the annulment of this Article 23, and the payment to Girard of all indebtedness outstanding to Girard under this Agreement, this Article 23 shall be of no further force and effect, and the parties hereto shall be, without any further action on their part or the part of the Agent or such person, bound by the first twenty-two Articles of this Agreement, as stated, without reference or regard to this Article 23.

1. The parenthetical reference "(hereinafter sometimes called the Assignee or the Vendor)" in the second WHEREAS clause of this Agreement shall refer in all cases where appropriate to Girard and not to THE CONNECTICUT BANK AND TRUST COMPANY.

2. The term "Participation Agreement" as used in this Agreement shall mean the Participation Agreement in the form annexed hereto as Annex C whether or not executed by the intended parties thereto, except that in subsections (b), (c) and (d) of Article 15, it shall mean only such agreement as and after it has been executed by such parties.

3. The first sentence of the third paragraph of Article 4 is restated in its entirety as follows: "The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as the Builder, the Vendee and Girard may agree (each such group being hereafter called a Group)."

4. Subparagraph (b) of the fourth paragraph of Article 4 and the fifth paragraph of Article 4 are deleted and the following is substituted therefor:

"b) on the Principal Payment Date, as that term is defined below, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

"The Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on the Principal Payment Date which shall be the earlier of: (i) March 31, 1980; or (ii) the Reassignment Date, as that term is defined in the following sentence. The Reassignment Date shall be the tenth business day immediately following the later of: (y) the day on which the Participation Agreement is executed by all of the parties thereto; or (z) if the Maximum Conditional Sale Indebtedness specified in Annex A hereto is greater than $2,500,000, the day on which the outstanding Conditional Sale Indebtedness hereunder equals at least $4,800,000 or, if the Maximum Conditional Sale Indebtedness specified in Annex A hereto is $2,500,000 or less, the day on which the Conditional Sale Indebtedness outstanding hereunder is equal to at least $4,800,000 when added to the conditional sale indebtedness outstanding under any other conditional sale agreement to which the Vendee is a party, which has been assigned to Girard and which specifies a Maximum Conditional Sale Indebtedness of $2,500,000 or less. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness has occurred at a rate per annum equal to 110% of Girard's Prime Rate. "Girard's Prime Rate" shall be the per annum rate of interest announced by Girard to be in effect from time to time for

unsecured 90-day loans to corporate customers with the highest credit standing and shall change for purposes of this Agreement as of each date on which a change in such rate is made by Girard. Such interest shall be payable, to the extent accrued, on the Principal Payment Date and, if the Principal Payment Date has not then occurred, on September 30, 1979 and December 31, 1979, each such date being hereinafter called an Interest Payment Date. If the Principal Payment Date or any such Interest Payment Date is not a business day, then payment shall be made on the next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed."

5. The tenth paragraph of Article 4 is restated in its entirety as follows:

"The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at a rate which is four percentage points in excess of Girard"s Prime Rate."

6. The words "at the rate of 11 3/8% per annum" in the last sentence of Article 6 and in the last sentence of the sixth paragraph of Article 7 are deleted and there is substituted therefor: "at a rate per annum which is 110% of Girard's Prime Rate".

7. In order to induce Girard to accept an assignment of this Agreement, the Vendee hereby makes to Girard as a third-party beneficiary hereof the representations and warranties contained in each subparagraph (other than subparagraphs (d) and (f)) of paragraph 4 of the Participation Agreement, in each such case deleting therefrom any reference contained therein to the Participation Agreement or Warrants as that term is defined therein and substituting the word "Girard" for the words "each Investor" and "Agent" where such words appear.

IN WITNESS WHEREOF, the parties hereto have executed

or caused this instrument to be executed all as of the date first above written.

EVANS TRANSPORTATION COMPANY

(CORPORATE SEAL)

Attest: By William M. Leyton V.P.

Asst. Secretary

NATIONAL RAILWAY UTILIZATION CORPORATION

(CORPORATE SEAL)

Attest: By

Vice President

Asst. Secretary

PICKENS RAILROAD COMPANY

(CORPORATE SEAL)

Attest: By

Vice President

Asst. Secretary

STATE OF Illinois :
ss:
COUNTY OF Cook :

On this 15th day of November, 1979, before me, personally appeared William M Reyton, to me personally known, who, being by me duly sworn, says that he is an officer of EVANS TRANSPORTATION COMPANY, that one of the seals 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.

[Notarial Seal]

Rita M Kuta
Notary Public

My Commission expires:

My Commission Expires June 13, 1983

COMMONWEALTH OF PENNSYLVANIA :
ss:
COUNTY OF PHILADELPHIA :

On this 19th day of November, 1979, before me personally appeared Richard L Kelly, to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL RAILWAY UTILIZATION CORPORATION, that one of the seals 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.

[Notarial Seal]

Elsie Marlene Williams
Notary Public

My Commission expires:

ELSIE MARLENE WILLIAMS
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 18, 1982

COMMONWEALTH OF PENNSYLVANIA :
ss:
COUNTY OF PHILADELPHIA :

On this 19th day of November, 1979, before me personally appeared Richard L Kelly, to me personally known, who, being by me duly sworn, says that he is a Vice President of PICKENS RAILROAD COMPANY, that one of the seals 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.

[Notarial Seal]

Elsie Marlene Williams
Notary Public

My Commission expires:

ELSIE MARLENE WILLIAMS
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 18, 1982

Annex A

to

Conditional Sale Agreement

Item 1: Evans Transportation Company
East Tower, 2550 Golf Road
Rolling Meadows, IL 60008

Item 2: One group of 50 cars which are specified on Annex B.

Item 3: The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to materials incorporated therein specified by the Vendee and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Vendee, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind. The Vendee shall promptly notify the Assignee if any unit of Equipment is returned to the Builder for such purpose as aforesaid.

With respect to specialties not of its own specification, design and manufacture, the Builder herewith assigns to the Vendee all of Builder's rights under warranties of the manufacturer thereof.

EXCEPT AS STATED ABOVE IN THIS ITEM 3, THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE AND IN ITEM 4 HEREOF.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and its assigns from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee and its assigns every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and in respect of all such designs, systems, processes, formulae, combinations, articles or materials, the Vendee agrees to indemnify the Builder to the same extent and purpose as the Builder agrees to indemnify the Vendee, as above stated. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Vendee will give notice to

the Builder and to the Vendor of any claim known to it from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is $ 2,045,000.

Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $ 1,636,000.

Annex B
to

Conditional Sale Agreement

Type	Builder's Specifications	Builder's Plant	Quantity	Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
50'-6" 70-ton Box Cars, Type XM	Steel, single sheath, outside stake box car, with rigid underframe	Decatur, Georgia	50	MISS 304000 through MISS 304049	$40,900	$2,045,000	November 21, 1979 Decatur, Georgia

8/13/79
ML&B

Annex C

PARTICIPATION AGREEMENT

AMONG

NATIONAL RAILWAY UTILIZATION CORPORATION,

PICKENS RAILROAD COMPANY,

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent

AND

THE PARTIES NAMED IN SCHEDULE B HERETO

Dated as of August 16, 1979

PARTICIPATION AGREEMENT, dated as of August 16, 1979, among NATIONAL RAILWAY UTILIZATION CORPORATION and PICKENS RAILROAD COMPANY, both South Carolina corporations (hereinafter, except as otherwise indicated, jointly and severally called the Vendee); THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation (hereinafter called the Agent); and the parties named in Schedule B hereto (hereinafter called the Investors).

WHEREAS, the Vendee, subject to the fulfillment of certain conditions as hereinafter provided, agrees to purchase various units of railroad rolling stock, as such term is defined for purposes of the Interstate Commerce Act, 49 U.S.C. §10101, et seq. (hereinafter called the Equipment), from various nationally known builders and fabricators thereof (hereinafter called Builders or a Builder as the context may require), pursuant to Conditional Sale Agreements (hereinafter called a Conditional Sale Agreement) substantially in the form of Exhibit A hereto and each Builder will retain title to and a security interest in such respective units until the Vendee fulfills its obligations under the related Conditional Sale Agreement;

WHEREAS, the Investors will finance 80% of the cost of the various units of Equipment by investing in the related Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and the Agent accepting on their behalf either an assignment from a Builder of a Conditional Sale Agreement, or a reassignment from an interim lender (hereinafter called the Interim Lender) of a Conditional Sale Agreement, and the Vendee will make payment of the balance of such cost;

WHEREAS, the security interest of each Builder in the Equipment will be assigned by the Builder, or reassigned by the Interim Lender, as the case may be, to the Agent, acting on behalf of the Investors, pursuant to, in the case of each Conditional Sale Agreement, an Agreement and Assignment (hereinafter called the Assignment) in substantially the form of Exhibit B-1 or B-2 hereto, as the case may be;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The Vendee will enter into Conditional Sale Agreements with the Builders as listed in Schedule A hereto, and pursuant thereto will agree to purchase, as hereinafter provided, the units of Equipment of the types set forth in Schedule A delivered and accepted under the Conditional Sale Agreements having an aggregate Maximum Purchase Price not exceeding the amount set forth in Schedule A.

The Equipment shall be settled for pursuant to each Conditional Sale Agreement in not more than the number of groups provided for therein (each such group hereinafter called a Group) accepted by or on behalf of the Vendee upon issuance of a Certificate of Acceptance (as defined in the Conditional Sale Agreement) for the Group.

The "Purchase Price" for any unit of Equipment shall mean the amount specified in the first paragraph of Article 4 of the Conditional Sale Agreement; viz., the price thereof set forth in the Builder's invoice or invoices (hereinafter called the Invoice or Invoices, respectively) therefor delivered to and accepted by the Vendee, which shall be the base price or prices per unit as set forth in Schedule A hereto with such upward or downward adjustments thereto as may be agreed to by the Builder and by the Vendee, whose acceptance shall be noted on the invoice, plus any applicable sales tax.

The term "Closing Date" with respect to any Group shall mean (i) in the case of the assignment of a Conditional Sale Agreement by a Builder directly to the Agent, the date specified in the third paragraph of Article 4 of the Conditional Sale Agreement; viz., the date occurring not more than fourteen days following the issuance of a Certificate of Acceptance therefor, as shall be fixed by the Vendee by written notice delivered to the Builder and the Agent at least ten days prior to the Closing Date designated therein, and (ii) in the case of a reassignment of a Conditional Sale Agreement by the Interim Lender to the Agent, the Reassignment Date, as defined in Article 23 of the Conditional Sale Agreement; provided, however, that without the consent of each Investor, the last Closing Date under all Conditional Sale Agreements to be financed pursuant hereto shall not occur later than March 31, 1980 (hereinafter called the Cut-Off Date). This first Closing Date to occur under the first Conditional Sale Agreement to be financed pursuant hereto is hereinafter sometimes called the First Closing Date.

On the Closing Dates, the Builders will deliver to the Assignee (as defined in the Assignment) the Builder's bill of sale for the units comprising the Group being purchased, and the other documents provided for in Section 4 of the Assignment.

The Vendee covenants with the Investors, and each Builder as a third-party beneficiary hereof, that, in the event of the exclusion of any unit of Equipment from the Conditional Sale Agreement pursuant to the second paragraph of Article 3 thereof or the second paragraph of Article 4 thereof, the Vendee will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due to the Builder, all in accordance with the terms of the purchase order therefor, or, in case the Vendee

shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Vendee shall determine and as shall be reasonably acceptable to the Builder, and the Agent will reassign, transfer and set over to the Vendee all right, title and interest of the Agent, if any, in and to the units so excluded and the purchase order to the extent relating thereto.

Each Investor respectively represents that it has disclosed and identified each and every employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (hereinafter called ERISA), which participates in such Investor's pooled separate account to the extent that its assets equal or exceed 5% of all assets in the pooled separate account.

The Vendee and the Agent each respectively acknowledges the disclosure, as aforesaid, and (i) the Vendee represents and warrants that neither it, nor, to the knowledge of the Vendee, any Builder, is entering into this Agreement or any Conditional Sale Agreement, directly or indirectly, pursuant to any arrangement or understanding in any way involving the assets of any employee benefit plan with respect to which the Vendee or any Builder is a party in interest (as defined in Section 3(14) of ERISA), and (ii) the Agent similarly represents and warrants that it is not entering into this Agreement or any Conditional Sale Agreement, directly or indirectly, pursuant to any arrangement or understanding in any way involving the assets of any employee benefit plan with respect to which it (in its individual capacity) is a party in interest.

2. Subject to the terms and conditions hereof, the Investors will pay to the Agent, in immediately available funds, not later than 11:00 a.m., local time at the place of receipt, on each Closing Date and in an amount determined in the manner described below, such amounts, however, not to exceed in the aggregate the limitations set forth for each Investor in Schedule B hereto; the respective obligations of the Investors, as so set forth, being separate and several, not joint. The amount to be paid by the Investors to the Agent on any Closing Date shall be equal to 80% of the Purchase Price of the units of Equipment being delivered and accepted, or of the units being refinanced, as the case may be, on such Closing Date. The determination of amounts of indebtedness which may be the subject of any refinancing shall take into account any prepayments thereof theretofore received by the Interim Lender by reason of the happening of a Casualty Occurrence or otherwise. At least ten business days prior to each Closing Date, the Vendee will give to the Agent and to each Investor written notice of the amount of the payments to be made on the Closing Date by the Agent pursuant to the Conditional Sale Agreement (such amount, however, not to exceed in the aggregate each Investor's maximum investment as set forth in Schedule B hereto).

Upon payment to the Agent of any amount required to be paid by any Investor pursuant to this Paragraph 2, the Agent will execute and deliver to the Investor (or, upon the written request of the Investor, to its nominee or nominees) a certificate or certificates of interest with respect to such payment, dated the Closing Date, substantially in the form annexed hereto as Exhibit C.

As soon as practicable after the delivery of any certificate of interest, the Agent will deliver to the Investor a schedule of payments reflecting the dates and amounts of principal and interest payments to be made in respect of such certificate. The Investor, simultaneously with the final payment to it of all amounts payable in respect of such certificate, will surrender such certificate to the Agent.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Hartford, Connecticut, are authorized or obligated to remain closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

Pursuant to the Assignment, the Agent will acquire from the Builder, or from the Interim Lender, as the case may be, all the Builder's right, security title and interest under the Conditional Sale Agreement, except as specifically excepted by the Assignment.

Subject to the terms and conditions hereof, including without limitation (in the event of a Closing Date occurring as contemplated by clause (i) of the fourth paragraph of Paragraph 1 hereof) the receipt of funds by the Agent from each Investor as herein provided, the Vendee will pay for units of Equipment, delivered and accepted under each Conditional Sale Agreement, its proportionate part of the Purchase Price therefor as provided in subparagraph (a) of the fourth paragraph of Article 4 of the Conditional Sale Agreement. The aggregate of all such payments by the Vendee (i.e., including payments, theretofore made by the Vendee, of its proportionate part of the Purchase Price of units of Equipment delivered and accepted under Conditional Sale Agreements which are the subject of reassignments by the Interim Lender to the Agent) shall constitute and mean the Vendee's investment in the Equipment. The Vendee's investment and the Conditional Sale Indebtedness shall together equal the Purchase Price for all of the Equipment purchased by the Vendee in accordance with this Agreement and the Conditional Sale Agreements.

The forms of the Exhibits annexed to this Agreement are hereby approved by the Vendee and each Investor. The Agent will not enter into or consent to any modification or supplement to such forms which could adversely affect the interests of the Investors without the prior written approval of the Investors.

The Agent will hold the moneys deposited with it pursuant hereto and the rights under the Conditional Sale Agreements acquired under the Assignments, security title to the Equipment following its delivery and acceptance thereunder as provided in the Assignments and the Conditional Sale Agreements, and any additional security interest from time to time acquired by it, in trust for the benefit of the Investors in accordance with their respective interests therein as such interests from time to time shall appear. It is expressly understood and agreed that the obligations of the Agent hereunder are only those expressly set forth herein.

3. On each Closing Date the Vendee will execute and deliver to the Investors stock purchase Warrants entitling the Investors to purchase, respectively, as set forth in Schedule B hereto, at any time, or from time to time, for a period of five years ending December 31, 1984, at the initial warrant exercise price of $22.00 per share, shares of Common Stock (as presently constituted) of National Railway Utilization Corporation at the rate and in amounts as follows: 250 shares of such Common Stock for each $100,000 (or part thereof) of Conditional Sale Indebtedness incurred by the Vendee and acquired by the Investors pursuant to the provisions hereof, such shares in the aggregate, however, not to exceed 75,000 shares of such Common stock. Said Warrants, and the terms and conditions thereof, are as set forth in Exhibit D hereto. Each of the Investors, upon exercise of a Warrant in whole or in part, may, at its option, make payment of the warrant exercise price by cancellation and forgiveness, at par, of a like principal amount of Conditional Sale Indebtedness, which cancellation shall be accounted for as an optional prepayment (without premium) of the Conditional Sale Indebtedness held by such Investor (in the inverse order of maturity), as provided in Article 4 of the Conditional Sale Agreement. Accrued and unpaid interest on the principal amount of Conditional Sale Indebtedness so cancelled, to and including the date of cancellation, shall be paid by the Vendee within ten days thereafter.

4. The Vendee represents and warrants as follows:

(a) It is a corporation duly incorporated, validly existing and in good standing under the laws of South Carolina and is duly qualified and authorized to do business and is in good standing in all other jurisdictions where the nature of the properties owned by it, or the nature of the business conducted by it may require such qualification; or if not so qualified, its failure so to qualify in any other jurisdiction will not have a materially adverse impact on this Agreement or any Conditional Sale Agreement.

(b) It has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted and to perform its obligations under this Agreement and the Conditional Sale Agreements; it is a common carrier subject to regulation by the Interstate Commerce Commission, and, as such, would presently qualify for reorganization under §77 of The Bankruptcy Act in the event of its bankruptcy.

(c) This Agreement and the Conditional Sale Agreements have been duly authorized by all necessary corporate action on the part of the Vendee; this Agreement has been, and, upon delivery thereof in accordance with the terms hereof, the Conditional Sale Agreements will have been, duly executed and delivered by duly authorized officers of the Vendee, and each constitutes, or will constitute, a legal, valid and binding obligation of the Vendee enforceable against it in accordance with its terms.

(d) The Warrants have been duly authorized by all necessary corporate action on the part of the issuer thereof, and, upon delivery thereof in accordance with the terms hereof, each will have been duly executed and delivered by duly authorized officers of said issuer, and will constitute a legal, valid and binding obligation of the issuer enforceable against it in accordance with its terms; upon issuance of shares of the Common Stock of the issuer pursuant to exercise of any Warrant and payment (in the manner therein and herein provided) of the warrant exercise price called for thereby, said shares will be duly and validly issued, fully paid and non-assessable; and 75,000 shares of Common Stock of the issuer have been duly and validly reserved for issuance upon exercise of the Warrants.

(e) No authorization or approval is required from any governmental or public regulatory body or authority of the United States of America, or of any of the States thereof or the District of Columbia, in connection with the execution by it of this Agreement or the Conditional Sale Agreements, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof by it or arising from its possession or use of the Equipment in connection with the terms, conditions and provisions of the Conditional Sale Agreements.

(f) No authorization or approval is required from any governmental or public regulatory body or authority of the United States of America other than of the Interstate Commerce Commission, or of any of the

States thereof or the District of Columbia, in connection with the execution and delivery by National Railway Utilization Corporation of the Warrants, or the fulfillment of or compliance with the terms, conditions and provisions thereof (including issuance of shares of its Common Stock upon any exercise of the Warrants); on or before the First Closing Date due authorization of the Interstate Commerce Commission will have been obtained for such execution and delivery (and issuance of shares of Common Stock as aforesaid), and upon such authorization being granted, competitive bidding requirements will not be applicable in connection with the issuance and delivery of the Warrants.

(g) It has not directly or indirectly offered or sold any of the Conditional Sale Indebtedness or the Warrants or other securities to, solicited offers to buy any of the Conditional Sale Indebtedness, the Warrants or other securities from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any of the Conditional Sale Indebtedness or Warrants or other securities with, any person so as to require registration of any thereof under the provisions of Section 5 of the Securities Act of 1933, as amended. It will not offer any Conditional Sale Indebtedness, Warrants or other securities to, or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof, so as to require registration of any thereof under the provisions of Section 5 of said Securities Act.

(h) It has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges required to be paid by it.

(i) It has furnished to each Investor consolidated balance sheets of the Vendee as at December 31, 1977 and 1978, and related statements of earnings and retained earnings and of changes in financial position for the years then ended, in each case accompanied by the report of Ernst & Whinney, certified public accountants. Such financial statements are in accordance with the books and records of the Vendee, and have been prepared in accordance with generally accepted accounting principles. The financial statements have been prepared on a consistent basis throughout the periods covered thereby, except as set forth therein. The financial statements present fairly the financial condition of the Vendee at such dates and the results of its operations for such periods. Since December 31, 1978, there have been no changes, except in the ordinary course of business, and there have been no changes which individually or in the aggregate have been materially adverse to the condition, financial or otherwise, of the Vendee as shown on the

balance sheet as of such date. Schedule C hereto (i) identifies each Subsidiary (as defined in Paragraph 11 hereof) of National Railway Utilization Corporation as of the date hereof, and (ii) sets forth all Consolidated Indebtedness (as defined in Paragraph 11) as of July 31, 1979.

(j) The Equipment will be used in interstate commerce and the respective interests of the Agent and the Investors therein pursuant to this Agreement, the Conditional Sale Agreements and the Assignments, respectively, do not and will not subject the Agent or any Investor to the provisions of the Interstate Commerce Act nor to the authority of the Interstate Commerce Commission.

(k) The Specifications (as defined in the Conditional Sale Agreements) are, in its opinion, sufficient to enable the Equipment to perform the functions for which it will be used by the Vendee.

(l) Neither the execution and delivery of this Agreement, the Conditional Sale Agreements or the Warrants, nor the consummation of the transactions herein and therein contemplated, or the fulfillment of, or compliance with, the terms and provisions hereof and thereof, by the Vendee will conflict with, or result in a breach of, any of the terms, conditions or provisions of its articles of incorporation (as amended) or by-laws (as amended), or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which it is now a party or by which it or its property may be bound as guarantor or otherwise, or constitute (with the giving of notice or the passage of time or both) a default thereunder.

(m) Neither the execution and delivery by it of this Agreement, the Conditional Sale Agreements or the Warrants, nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality.

(n) No mortgage, deed of trust or other lien of any nature whatsoever (other than liens, if any, for taxes not yet due and payable or the security interests and liens created by the Conditional Sale Agreements), which now covers or affects any property or interest therein of the Vendee now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Agent or the Investors therein.

(o) It and any lessee or other proposed user of the Equipment has complied, and at all times will comply, with all provisions of Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Box Cars, and it and each thereof is qualified and at all times will be qualified, to the extent provided therein, to collect incentive per diem charges on the Equipment in the possession of other railroads, and the Vendee is and will be entitled to apply the incentive per diem charges to the payment of the Conditional Sale Indebtedness.

(p) When this Agreement and the Conditional Sale Agreements and the Assignments shall have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 of the Interstate Commerce Act, such filings and recordations will protect the Agent's interest in and to the Equipment, and no filing, recording or deposit with any other federal, state or local government is or will be necessary in order to protect the first lien ownership and first security interest of the Agent in and to the Equipment in the United States of America; and the financing statements necessary to perfect the Agent's first security interest in the Additional Security (as defined in the Conditional Sale Agreements) have each been duly recorded and filed in the appropriate offices and places and no other filing or recording is necessary to perfect the Agent's first security interest in the Additional Security.

(q) There are no actions, suits or proceedings pending or threatened against or affecting it, or any of its property rights, at law or in equity, or before any commission or other administrative agency, arbitration board or tribunal which could materially and adversely affect its condition, financial or otherwise, or its ability to perform its obligations under this Agreement, the Conditional Sale Agreements or the Assignments, and it is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

(r) No accumulated funding deficiency within the meaning of the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder, exists with respect to any defined benefit pension plan which is qualified within the meaning of Section 401(a) of the Internal Revenue Code of 1954, as amended, and which is sponsored by it; no Reportable Event (as defined in said Act) has occurred with respect to any such plan; and the Pension Benefit Guaranty Corporation, established under said Act, has not asserted that it has incurred any liability in connection with any such plan.

5. Each Investor represents, severally and not jointly, that it is acquiring its interest in the Conditional Sale Indebtedness and the Warrants for its own account, or (in the case of the Conditional Sale Indebtedness) for the account of one or more pension or trust funds or other institutional accounts, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

Each Investor understands that the Conditional Sale Indebtedness and the Warrants (or the shares of Common Stock issuable upon exercise thereof) have not been registered under the Securities Act of 1933 because the transaction evidenced by this Agreement is exempt from the registration requirements of such Act, and that the Conditional Sale Indebtedness, Warrants and such shares must continue to be held by it unless a subsequent disposition thereof is registered under said Act or is exempt from registration.

6. The obligation of the Investors to make any payments required of them under Paragraph 2 hereof on each Closing Date, and the obligation of the Agent to make payment on each such Date to a Builder, or the Interim Lender, as the case may be, pursuant to the Assignment, shall be subject to the receipt by the Agent on the First Closing Date of the following documents dated the First Closing Date:

(a) An opinion of Messrs. Morgan, Lewis & Bockius, special counsel for the Investors, addressed to the Investors and the Agent, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery thereof by the Investors, has been duly authorized, executed and delivered and constitutes a legal and valid instrument, binding on the parties thereto and enforceable in accordance with its terms;

(ii) the Conditional Sale Agreements and the Assignments have each been duly authorized, and, upon delivery of each thereof in accordance with the terms of this Agreement, each will have been duly executed and delivered and will constitute a legal and valid instrument, binding on the parties thereto and enforceable in accordance with its terms;

(iii) the Warrants have been duly authorized, and, upon delivery thereof in accordance with the terms of this Agreement, each will have been duly executed and delivered, and will constitute legal and valid obligations of the issuer thereof, enforceable in accordance with their terms;

(iv) upon delivery of each Assignment to the Agent by a Builder, or to the Agent by the Interim Lender by reassignment, as the case may be, the Agent will be vested with all the rights, titles, interests, powers and privileges of the Builders purported to be assigned by such Assignment, and, upon settlement for the units of Equipment pursuant to and in accordance with the Assignment, or upon payment to the Interim Lender of amounts due it pursuant to and in accordance with such reassignment, as the case may be, the Agent will have a valid security interest in such units;

(v) upon the filing and recording of the Conditional Sale Agreements and the Assignments (and of any reassignments thereof) with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act, no other filing or recordation will be necessary for the protection of the rights of the Agent therein or in the Equipment in any state of the United States of America or the District of Columbia;

(vi) the Certificates of Interest being purchased, upon due execution and delivery thereof by the Agent, will constitute legal, valid and binding obligations entitling the Investors to the rights therein specified;

(vii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Agreement, the Conditional Sale Agreements or the Assignments (said counsel, however, being permitted to disclaim any opinion in respect of the Warrants);

(viii) under the circumstances contemplated by this Agreement it is not necessary to register the Conditional Sale Agreements, the Assignments, the Certificates of Interest or the Warrants (or the shares of Common Stock issuable upon exercise thereof) delivered pursuant hereto under the Securities Act of 1933, as in effect on the date of such opinion, or to qualify the Conditional Sale Agreement or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939, as in effect on the date of such opinion; and

(ix) in the event of the bankruptcy of the Vendee, the applicability of §77(j) of the Bankruptcy Act and of Section 1168 of the Bankruptcy Reform Act of 1978 upon its effectiveness (as to which counsel need not express an opinion), will not be adversely affected by the fact that the Investors acquire interests in Conditional Sale Indebtedness by reassignment to the Agent by the Interim Lender of one or more Conditional Sale Agreements, rather than by direct assignment of such Agreements by the Builder to the Agent; and

(x) the legal opinions referred to in subparagraphs (b) and (c) of this Paragraph 6 are satisfactory in form and substance to said special counsel and that in their opinion the Investors, the Agent and they are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Investor may reasonably request.

(b) An opinion of Messrs. Wyche, Burgess, Freeman & Parham, counsel for the Vendee, addressed to the Investors and the Agent, to the effect set forth in clauses (i), (ii), (iii) and (v) of subparagraph (a) of this Paragraph 6, insofar as such matters relate to the Vendee, and to the further effect that:

(i) the Vendee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of South Carolina and is duly qualified to do business and in good standing in such other jurisdictions in which the business and activities of Vendee require such qualification; or if not so qualified,

its failure so to qualify in any other jurisdiction will not have a materially adverse impact on this Agreement or any Conditional Sale Agreement;

(ii) the Vendee has full corporate power, authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted and to perform its obligations under this Agreement and the Conditional Sale Agreements;

(iii) this Agreement and the Conditional Sale Agreements have been duly authorized by all necessary corporate action on the part of the Vendee; this Agreement has been, and, upon delivery thereof in accordance with the terms hereof, the Conditional Sale Agreements will have been, duly executed and delivered by duly authorized officers of the Vendee, and each constitutes, or will constitute, a legal, valid and binding obligation of the Vendee, enforceable against it in accordance with its terms;

(iv) the Warrants have been duly authorized by all necessary corporate action on the part of the issuer thereof, and, upon delivery thereof in accordance with the terms of this Agreement, each will have been duly executed and delivered by duly authorized officers of said issuer, and will constitute a legal, valid and binding obligation of the issuer enforceable against it in accordance with its terms; upon issuance of shares of the Common Stock of the issuer pursuant to exercise of any Warrant and payment (in the manner therein and herein provided) of the warrant exercise price called for thereby, said shares will be duly and validly issued, fully paid and non-assessable; and 75,000 shares of Common Stock of the issuer have been duly and validly reserved for issuance upon exercise of the Warrants;

(v) neither the execution and delivery of this Agreement, the Conditional Sale Agreements or the Warrants, nor the consummation of the transactions herein and therein contemplated, or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the articles of incorporation (as amended) or the by-laws (as amended) of the Vendee, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(vi) neither the execution and delivery by the Vendee of this Agreement, the Conditional Sale Agreements or the Warrants, nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality;

(vii) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Vendee now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Agent or the Investors therein;

(viii) to the knowledge of counsel there are no actions, suits or proceedings pending or threatened against or affecting the Vendee, or any of its property rights, at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect its condition, financial or otherwise, or its ability to perform its obligations under this Agreement, the Conditional Sale Agreements or the Assignments, and the Vendee is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality of which such counsel has knowledge;

(ix) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is necessary for the execution, delivery and performance by the Vendee of this Agreement or the Conditional Sale Agreements;

(x) no authorization or approval is required from any governmental or public regulatory body or authority of the United States of America other than of the Interstate Commerce Commission, or of any of the States thereof or the District of Columbia, in connection with the execution and delivery by the Vendee of the Warrants, or the fulfillment of or

compliance with the terms, conditions and provisions thereof (including issuance of shares of its Common Stock upon any exercise of the Warrants); application has been duly filed with the Interstate Commerce Commission for authorization of such execution and delivery (and issuance of shares of Common Stock as aforesaid) and counsel knows of no reason why such application should not be granted in due course; and, upon issuance of the order of said Commission authorizing such execution and delivery, competitive bidding requirements will not be applicable in connection with the issuance and delivery of the Warrants;

(xi) the interests of the Agent and the Investors in and to the Equipment do not and will not subject either thereof to the provisions of the Interstate Commerce Act or to the authority of the Interstate Commerce Commission; and

(xii) while there have been no decided cases, of which counsel is aware, defining the inclusiveness of the phrase "railroad corporation" for purposes of §77 of The Bankruptcy Act, on the basis of counsel's review of applicable law, a court having jurisdiction in the premises, should determine that National Railway Utilization Corporation, as well as Pickens Railroad Company, in the event of their respective bankruptcies, presently both qualify for reorganization under §77 of The Bankruptcy Act and, such being the case, that neither qualifies for reorganization under any other provision or chapter of said Act; and, accordingly, the benefits afforded secured creditors under §77(j) of said Act (and under Section 1168 of the Bankruptcy Reform Act of 1978, upon its effectiveness) will be applicable in the event of the bankruptcy of either said corporation.

(c) An opinion, addressed to the Investors and the Agent, of counsel for the Builder of the units then being financed, to the effect that the Conditional Sale Agreement and Assignment to which such Builder is a party have each been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other party thereto, is a legal and valid instrument binding on the Builder and enforceable against it in accordance with its terms.

(d) A certificate of an officer of the Vendee, reciting that it is intended for the purpose of the Investors and the Agent relying thereon, to the effect (i) that the Vendee is not in default under, and to the knowledge of the Vendee there is no event which with the passage of time would place the Vendee in default under, this Agreement or any Conditional Sale Agreement, and (ii) that the representations and warranties of the Vendee contained in Paragraph 4 hereof, and elsewhere herein, are true and correct as of the date of such certificate with the same effect as if made on such date.

(e) The original counterpart of the Conditional Sale Agreement and the Assignment thereof (delivered to the Agent only); i.e., the counterpart thereof which bears the legend "Original" conspicuously marked thereon.

(f) Certificate or Certificates of Insurance, satisfactory in form and substance to the Investors and their special counsel, conforming to the requirements of Article 7 of the Conditional Sale Agreements (including identification of the Agent as an additional loss payee), or other documentation, satisfactory to said parties, evidencing compliance with such requirements.

(g) A certified copy of the Order of the Interstate Commerce Commission, authorizing the issuance of the Warrants (including the shares of Common Stock issuable upon exercise thereof).

In giving the opinions specified in subparagraphs (a), (b) and (c) of this Paragraph 6, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (a) of this Paragraph 6, counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder, on the opinion of counsel for the Builder, and (ii) as to any matter governed by the laws of any jurisdication other than the Commonwealth of Pennsylvania, or the United States, on the opinion of counsel for the Builder or the Vendee, as the case may be, as to such matter.

The obligation of each Investor to make any payment required of it, and the obligation of the Agent to make payment to the Builder or the Interim Lender, as the case may be, pursuant to the Assignment (or the reassignment thereof) for units of Equipment, on any Closing Date, including the First Closing Date, shall be subject to (i) the receipt by the Agent from the Builder of the opinion and other documents specified by the first paragraph of Section 4 of the Assignment, (ii) the receipt by the Agent of the certificates specified by the last paragraph of said Section 4, (iii) the receipt by the Agent from the Vendee of a certificate to the effect that each unit of the Equipment then being financed has been permanently and conspicuously marked on each side, in letters not less than one inch in height, with the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act", or with words of similar import, and (iv) the receipt by the Agent from each other Investor of the payment to be made by it on the Closing Date.

7. Subject to the terms and conditions hereof, upon each delivery to and acceptance by the Vendee under the Conditional Sale Agreement of a Group of the Equipment and the receipt by the Agent of the delivery papers with respect thereto to be delivered by the Builder in accordance with the Assignment, on each Closing Date the Investors will pay to the Agent, and the Agent will pay to the Builder, or to the Interim Lender, as the case may be, in accordance with the Assignment or the reassignment thereof (and subject to the conditions specified in Section 4 thereof) out of moneys so paid to the Agent, an amount equal to the Conditional Sale Indebtedness with respect to such Group.

If, on the earlier of (1) the Cut-Off Date, (2) the last Closing Date under this Agreement, and (3) the date of any Event of Default under any Conditional Sale Agreement, as to which the Agent has actual knowledge, the aggregate Conditional Sale Indebtedness will be less than the amount which the Investors have agreed to invest pursuant to Paragraph 2 hereof (less any amounts prepaid pursuant to Paragraph 8 hereof), the Agent will promptly notify the Investors thereof and the Investors' and the Agent's remaining obligations, if any, to make investments and payments pursuant to Paragraph 2 and this Paragraph 7 shall forthwith terminate.

If Ex Parte 275 Order, served October 3, 1975 by the Interstate Commerce Commission, is made final by said Commission and special counsel for the Investors is unable to conclude that the Vendee may, nevertheless, incur additional Conditional Sale Indebtedness hereunder without obtaining prior authorization of the Commission, the Vendee and the Investors shall, ipso facto, be relieved of their respective executory obligations hereunder, and under the Conditional Sale Agreements and the Assignments, to purchase additional units of Equipment, and to advance funds in payment therefor, unless and until such time as the Vendee shall have received requisite authorization of the Interstate Commerce Commission (including exemption from applicable competitive bidding requirements), all of which, at its own expense, the Vendee agrees to exert its best efforts to obtain without undue delay, to the satisfaction of the Investors and their special counsel; provided, however, that the Cut-Off Date shall not thereby be extended without the written consent of each Investor.

8. The Agent will accept payments made to it by or for the account of the Vendee pursuant to the Conditional Sale Agreements, on account of the principal of and interest on the Conditional Sale Indebtedness, and will apply such payments promptly first, to the pro rata payment of interest then due and payable to the Investors on the Conditional Sale Indebtedness, second, to the pro rata payment of the installments of Conditional Sale Indebtedness then due and payable, and, third, but only so long as no event of default under any Conditional Sale Agreement shall have occurred and be continuing, the balance, if any, to the Vendee.

The Agent will accept all sums paid to it pursuant to Article 7 of the Conditional Sale Agreements with respect to any Casualty Occurrence (as therein defined) and will apply such sums promptly to the pro rata prepayment of each of the respective installments of the aggregate Conditional Sale Indebtedness remaining unpaid (in each case in proportion to the principal amount of aggregate Conditional Sale Indebtedness represented by each such installment), without premium, together with interest thereon, the proportionate amounts of any such sums to be applied on the basis of the respective investments of the Investors in the Purchase Price of the Equipment. Promptly thereafter, the Agent will furnish to the Investors revised schedules of payments showing the reduction in the installments of the aggregate Conditional Sale Indebtedness remaining unpaid and the interest payable thereon.

If a Declaration of Default (as defined in the Conditional Sale Agreements) shall be in effect under any Conditional Sale Agreement, then, anything herein to the contrary notwithstanding, all moneys held by or thereafter coming into the possession of the Agent applicable to the payment or prepayment of the Conditional Sale Indebtedness or interest thereon (including without limitation, the net proceeds of any repossession and sale or lease of any unit of the Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease or otherwise hereunder or under the Conditional Sale Agreements and the Assignments which shall not theretofore have been reimbursed to the Agent by the Vendee pursuant to the Conditional Sale Agreement) shall be distributed immediately by the Agent pro rata among the Investors in accordance with their respective interests in the Conditional Sale Indebtedness at the time of such distribution, and the Agent shall otherwise take such action as is referred to in this Paragraph 8.

All payments to be made by the Agent hereunder to the Investors shall (subject to timely receipt by the Agent of available funds) be made by bank wire of immediately available funds to such party at such address as is listed in Schedule B hereof.

So long as, to the actual knowledge of an officer or employee in the Corporate Trust Department of the Agent, no event of default under any Conditional Sale Agreement shall have occurred and be continuing, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it, or which it may be entitled to assert or take, hereunder or under any Conditional Sale Agreement, except as otherwise specifically provided herein. The Agent shall not incur any liability hereunder or otherwise in acting upon any notice, certificate or other paper or instrument believed by it to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its own wilful misconduct or negligence; provided, however, that in case the Agent shall have actual knowledge, in the manner aforesaid, of the occurrence of an event of default under any Conditional Sale Agreement, it shall promptly notify the Investors and the Vendee thereof, and shall take such action and assert such rights under the Conditional Sale Agreements as shall be agreed upon by the Investors holding not less than 51% of the Conditional Sale Indebtedness then outstanding. In case the Agent is required to take action hereunder, it shall be indemnified against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights by the holders directing the Agent to take such action in proportion to each holder's interest in the aggregate Conditional Sale Indebtedness then outstanding and owned by the holders agreeing to such action.

The Agent may consult with independent legal counsel of its own choice, and shall not be under any liability for any action taken or suffered in good faith by it in accordance with the opinion of such counsel.

The Agent will promptly mail or deliver one counterpart or copy of all notices, statements, documents or schedules, received by it from the Vendee pursuant to the Conditional Sale Agreements or the Assignments, to each Investor unless it shall have determined that such Investor has already received a copy of the same.

All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Investor shall be in writing signed by an officer, assistant officer, manager or assistant manager of such Investor, and the Agent may rely on any notice, instruction, direction or approval so signed.

The Agent does not make any representation or assume any responsibility with respect to (i) the validity of any Conditional Sale Agreement, the Assignment or Certificate of Interest (except with respect to its own execution thereof) or any of the matters covered thereby or (ii) the value of or the title to the Equipment.

In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder, or with respect to title to, or possession or use of, any unit of the Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents and title to such unit of the Equipment until such dispute shall have been settled by agreement approved by the Investors or by final order, decree or judgment of a court of competent jurisdiction.

The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to the Investors that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice; it being understood and agreed that the Agent shall also give such notice if it is directed so to do by Investors holding not less than 51% of the Conditional Sale Indebtedness then outstanding. If, prior to the date stated in said notice, such Investors shall have requested in writing that the Agent assign to a person or institution designated by such Investors all right, title and interest of the Agent under the Conditional Sale Agreements and the Assignments and in and to the Equipment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder (which successor shall be a bank or trust company having capital and surplus aggregating at least $50,000,000) and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such assignment by the Agent to a person or institution designated by Investors, as aforesaid, or in the absence of such designation, to a successor appointed by the Agent, the Agent shall thereupon be relieved of all duties and responsibilities hereunder.

9. The Vendee covenants and agrees that until such time as all of the Conditional Sale Indebtedness and interest thereon shall have been paid in full (the term "Vendee", for purposes of this Paragraph 9 and Paragraphs 10 and 11, meaning National Railway Utilization Corporation only):

(a) Certain Additional Indebtedness. The Vendee will not, and will not permit any Restricted Subsidiary to, create, incur, assume, suffer to exist or guarantee or otherwise become or be liable in respect of Senior Debt or Subordinated Debt unless (determined on a consolidated basis):

(i) in the case of Senior Debt, the amount thereof does not, at any time during the calendar years specified, exceed the following percentages of Stockholders' Equity: 700% in 1979; 600% in 1980; 500% in 1981; and 400% in 1982 and thereafter; provided, however, that no additional Senior Debt shall be incurred, without the consent of the Investors, unless and until all Conditional Sale Indebtedness to be incurred pursuant to this Agreement shall have been incurred and be outstanding; and

(ii) in the case of Subordinated Debt, the amount thereof does not at any time exceed 50% of Stockholders' Equity; provided, however, that such Subordinated Debt shall have a final maturity date later than the final maturity date of the Conditional Sale Indebtedness and, if entitled to the benefits of any fixed or contingent sinking fund or of any optional prepayment provisions, (A) shall, in the case of such fixed or contingent sinking fund payment, be periodically repayable, at a proportionate rate of the original principal amount thereof, no more rapidly than the rate applicable to the Conditional Sale Indebtedness, and (B) in the case of such optional prepayment, the Vendee will, at the option of any Investor requesting the same (exercisable at any time within 30 days after notice to such Investor of the Vendee's intention to make such optional prepayment), make such a prepayment on the Conditional Sale Indebtedness held by such Investor (plus the applicable premium thereon prescribed at the time pursuant to the Conditional Sale Agreements) that such prepayment, together with all other prepayments to be made at the same time on all other Conditional Sale Indebtedness pursuant to this proviso, will be proportionate to the optional prepayment to be made on such Subordinated Debt.

(b) Current Indebtedness. Not less frequently than for a period of 45 consecutive days during the 365-day period commencing as of the date hereof, and during each successive 365-day period commencing as of the first day of each calendar month thereafter, the Vendee and its Restricted Subsidiaries shall be free of all Current Indebtedness (determined on a consolidated basis) for money borrowed from Banks.

(c) Cash Flow. The Vendee will not permit Consolidated Cash Flow of the Vendee and its Restricted Subsidiaries for the 12-month period ending on the last day of any fiscal year to be less than 100% of the aggregate of all payments of principal of Consolidated Funded Debt which are scheduled to be made during the next succeeding twelve consecutive month period, including principal indebtedness represented by Capitalized Leases.

(d) Interest Coverage. The Vendee will not permit at the end of any quarterly fiscal period Consolidated Earnings Available for Interest Coverage for such fiscal period then ending and the three quarterly fiscal periods next preceding such fiscal period then ending to be less than 150% of Consolidated Interest Expense for such 12-month period.

(e) Mortgages, Liens and Other Encumbrances. The Vendee will not, and will not permit any Restricted Subsidiary to incur, create, assume or permit to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever, including conditional sales or other title retention agreements (hereinafter collectively called "liens") on any property or assets now owned or hereafter acquired by it, other than:

(i) liens for taxes or assessments and similar charges, either (A) not delinquent or (B) being contested in good faith;

(ii) liens incurred or pledges and deposits in connection with workmen's compensation, unemployment insurance, old-age pensions and other social security benefits or securing the performance of bids, tenders, leases, contracts (other than for the repayment of borrowed money), statutory obligations, surety and appeal bonds and other obligations of like nature, incurred as an incident to and in the ordinary course of business;

(iii) statutory liens of landlords and other liens imposed by law, such as mechanics', carriers', warehousemen's, materialmen's and vendors' liens, incurred in good faith in the ordinary course of business, and deposits made in the ordinary course of business to obtain the release of any such liens;

(iv) zoning restrictions, easements, licenses, reservations, provisions, covenants, conditions, waivers, restrictions on the use of property or minor irregularities of title (and, with respect to leasehold interests, liens incurred, created, assumed or permitted to exist and arising by, through or under or asserted by a landlord or owner of the leased property, with or without consent of the lessee), none of which, in the opinion of the Vendee, materially impairs the use of such property in the operation of the business of the Vendee, or any Restricted Subsidiary or the value of such property for the purpose of such business;

(v) liens created by or resulting from any litigation or proceeding which is currently being contested in good faith by appropriate proceedings and as to which the Vendee, or a Restricted Subsidiary, as the case may be, shall have set aside on its books adequate reserves;

(vi) leases, security agreements, mortgages, conditional sales or title retention contracts to secure the purchase price of fixed or capital assets purchased or leased by the Vendee or any of its Restricted Subsidiaries or existing on such fixed or capital assets at the time of purchase or lease, or any renewal, extension or refunding (in an amount not in excess of the then outstanding indebtedness) of the same, or to secure indebtedness (in an amount not in excess of the lesser of the cost or fair market value of the fixed or capital assets hereinafter referred to) incurred by the Vendee or any of its Restricted Subsidiaries for the purpose of reimbursing itself for the cost of acquisition and/or the cost of improvement of fixed or capital assets owned or leased by the Vendee, or any of its Restricted Subsidiaries, provided that each such lease, security agreement, mortgage, conditional sales or title retention contract shall at all times be confined solely to the fixed or capital assets so purchased, leased or refinanced;

(vii) liens on the property or assets of any Restricted Subsidiary securing indebtedness of such Restricted Subsidiary to the Vendee;

(viii) liens, securing Indebtedness permitted by subparagraph (a) hereof, excluding Subordinated Debt; and

(ix) liens incidental to the conduct of the respective businesses of the Vendee and its Restricted Subsidiaries or the ownership of their respective properties and assets which were not incurred to secure any Indebtedness and which do not in the aggregate materially detract from the value of such properties and assets or materially impair the use thereof in the operation of the respective businesses of the Vendee, and its Restricted Subsidiaries.

In addition, neither the Vendee nor any Restricted Subsidiary shall at any time hereafter incur, create or assume any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any property or assets now owned or hereafter acquired by it securing any of its obligations which were theretofore unsecured (unless such obligations were theretofore subject to an agreement under which the obligee had the option to have the same so secured) unless the Vendee equally and ratably secures the payment of all rentals and indebtedness payable by it under this Agreement and the Conditional Sale Agreements, provided that such securing of payment of rentals and indebtedness shall not be deemed to cure any event of default which would otherwise exist under any Conditional Sale Agreement.

(f) Limitation on Dividends and Other Stock Payments. The Vendee will not declare or pay any dividend on its capital stock of any class or make any distribution to any stockholders (other than a dividend payable solely in shares of Common Stock of the Vendee), or purchase, redeem or otherwise acquire for value, or permit any Restricted Subsidiary to purchase, redeem or otherwise acquire for value, any shares of the Vendee's capital stock of any class, unless, after giving effect to such action, the total of (x) $250,000, plus (y) 25% of Consolidated Net Income (or minus 100% of Consolidated Net Loss, as the case may be) of the Company and its Restricted Subsidiaries accumulated subsequent to December 31, 1978, plus (z) the net cash proceeds received by the Vendee from the sale (including issuance upon conversion of securities and issuance upon exercise of option and warrant rights) of shares of its Common Stock subsequent to June 1, 1979, is not less than the aggregate of the following:

(i) all dividends (other than stock dividends as aforesaid) on the Vendee's capital stock and all other distributions to stockholders between December 31, 1978 and the time of taking such action, plus

(ii) all amounts paid out by the Vendee and its Restricted Subsidiaries for any purchase, redemption or other acquisitions of capital stock of any class of the Vendee between December 31, 1978 and the time of taking such action;

provided, however, that, notwithstanding the foregoing restriction, the Vendee may retire any of its shares of any class in exchange for, or out of the proceeds of the substantially concurrent sale of, other of its shares of any class, and no such retirement of shares shall be included in any computation provided for in this subparagraph (f). A dividend, which is permitted by the foregoing at the time of its declaration, may be paid regardless of such restriction if paid within 60 days of its declaration.

(g) Sale and Leaseback. Subject only to the restrictions hereinafter set forth with respect to "Long-Term Lease Rentals" and "Sales of Assets", the Vendee and any Restricted Subsidiary shall not be restricted in its ability to sell or transfer property and thereafter rent or lease such property, or other property intended to be used for substantially the same purposes as the property sold or transferred.

(h) Long-Term Lease Rentals. The Vendee will not permit the aggregate amount, determined on a consolidated basis, of the net rental obligations payable by the Vendee and any Restricted Subsidiary for any current or future period of 12 consecutive months under all leases of property, real or personal (including property manufactured by the Vendee and subsequently sold to others), to exceed 6% of Consolidated Tangible Assets, exclusive of rental obligations under (i) leases having a term (including terms of renewal at the option of the lessor or the lessee, whether or not any such lease has theretofore been renewed) expiring not more than one year after such time; (ii) leases of office equipment; (iii) leases of data processing equipment; (iv) leases of sales offices; and (v) Capitalized Leases.

(i) Limitation on Investments, Etc. The Vendee will not, and will not permit any Restricted Subsidiary to, acquire, directly or indirectly, or own any bonds, notes, stock or other securities of or other interest in any corporation, association, partnership, or other person (collectively "Investments") (including any guarantee or other contingent liability in respect of any obligation of any person,

excepting, however, guarantees or other contingent liabilities represented by endorsements of negotiable instruments for collection in the ordinary course of business) except the following:

(i) securities issued by the United States Government or an agency thereof and backed by the full faith and credit of the United States;

(ii) commercial paper which at the time of determination is given the highest rating by either Moody's or Standard & Poor's;

(iii) an Investment in any corporation or other person which conducts substantially all of its business in the United States and which at the time of investment is, or as a result thereof or otherwise becomes, a Restricted Subsidiary, and an Investment by any Restricted Subsidiary in the Vendee;

(iv) Investments (except guarantees of indebtedness of others) not otherwise authorized by the foregoing provisions of this subparagraph, provided that at any one time the aggregate amount of all such Investments permitted by this clause (iv), and the other Investments authorized by said foregoing provisions,do not exceed 10% of Consolidated Net Tangible Assets (excluding Capitalized Leases).

(j) Sale of Assets. The Vendee will not, and will not permit any Restricted Subsidiary to, sell or otherwise dispose of, except in the ordinary course of business, any substantial part of its assets in a single transaction or a series of related transactions. A substantial part of assets shall be deemed to be an amount, determined on a consolidated basis, which, when added together with all other assets sold during the course of the fiscal year, exceed 10% of Consolidated Total Assets at the end of the preceding fiscal year.

(k) Consolidation, Merger or Sale of Assets. The Vendee will not permit any Restricted Subsidiary to consolidate with, merge into, or sell, lease or otherwise dispose of its properties as an entirety or substantially as an entirety to, any person other than the Vendee or another Restricted Subsidiary. The Vendee will not consolidate with, merge into, or sell, lease or otherwise dispose of its properties as an entirety or substantially as an entirety to, any person, unless:

(i) the successor formed by or resulting from such consolidation or merger or the transferee to which such sale, lease or other disposition shall have been made shall be a solvent corporation organized under the laws of the United States of America or a State thereof or the District of Columbia;

(ii) such successor or transferee corporation shall expressly assume in writing (by an instrument copies of which shall be delivered or mailed to the Investors and the Agent) the due and punctual payment of the Conditional Sale Indebtedness and interest and prepayment charges, if any, due thereon, and the due and punctual performance and observance of all of the terms, covenants, agreements and conditions of this Agreement and the Conditional Sale Agreements, to be performed or observed by the Vendee, to the same extent as if such successor or transferee corporation had originally executed this Agreement and the Conditional Sale Agreements in the place of the Vendee; and

(iii) immediately after such consolidation, merger, sale, lease, transfer or other disposition, no event of default and no event which, with lapse of time or notice and lapse of time, would become an event of default under any Conditional Sale Agreement, shall have occurred and be continuing, and such successor or transferee corporation shall be entitled to incur at least $1.00 of additional Senior Debt in accordance with the provisions hereof.

(l) Transactions with Affiliates. Neither the Vendee nor any Subsidiary will enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of, and pursuant to, the reasonable requirements of the Vendee or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Vendee or such Subsidiary than would obtain in a comparable arm's length transaction with a person not an Affiliate; provided, however, that this subparagraph (l) shall not prohibit the entering into by the Vendee with Affiliates who are officers or directors of the Vendee of compensation arrangements which are, in the opinion of the Vendee's Board of Directors, in the best interests of the Vendee and not adverse to the creditors of the Vendee, including the holders of Conditional Sale Indebtedness.

(m) Tax Consolidation. The Vendee will not file or consent to the filing of any consolidated income tax return with any person other than a Subsidiary.

(n) Maintain Corporate Existence, Pay Taxes, Etc. The Vendee will, and will cause each Restricted Subsidiary to, continue to engage in the general type of business presently conducted by it and businesses reasonably related thereto, and do or cause to be done all things necessary to preserve and to keep in full force and effect the corporate existence, rights and franchises of the Vendee and each Restricted Subsidiary, except that this covenant shall not preclude a merger or consolidation which does not violate the provisions of subparagraph (k) hereof; the Vendee will, and will cause each Restricted Subsidiary to, pay promptly and discharge all taxes, assessments and other governmental charges which may lawfully be levied or assessed upon the income and profits of the Vendee and its Restricted Subsidiaries, or upon any property, real, personal or mixed, belonging to any thereof, and also all lawful claims for labor, material and supplies which, if unpaid, might become a lien or charge against any such property; provided, however, that the Vendee and such Subsidiaries shall not be required to pay any such tax, assessment, charge, levy or claim so long as the validity thereof shall be actively contested in good faith by proper proceedings, but provided further that any such tax, assessment, charge, levy or claim shall be paid forthwith upon the commencement of proceedings to foreclose any lien securing the same.

(o) Stockholders' Equity. The Vendee and its Restricted Subsidiaries will at all times maintain Stockholders' Equity in an amount not less than $10,000,000.

10. The Vendee will deliver to each Investor, if at the time such Investor continues to hold any Conditional Sale Indebtedness, and to each other institutional holder of then outstanding Conditional Sale Indebtedness:

(a) Quarterly Statements - as soon as practicable after the end of the first, second and third quarterly fiscal periods in each fiscal year of the Vendee, and in any event within 45 days thereafter, duplicate copies of:

(i) the consolidated balance sheet of the Vendee and its Restricted Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income and of surplus of the Vendee and its Restricted Subsidiaries for such quarter and for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal officer of the Vendee;

(b) Annual Statements - as soon as practicable after the end of each fiscal year of the Vendee, and in any event within 90 days thereafter, duplicate copies of:

(i) consolidating and consolidated balance sheets of the Vendee and its Restricted Subsidiaries at the end of such year, and

(ii) consolidating and consolidated statements of income, surplus and changes in financial position of the Vendee and its Restricted Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon (which may, however, omit therefrom reference to consolidating statements) of Ernst & Whinney, independent certified public accountants, or other independent certified public accountants of recognized national standing selected by the Vendee, which opinion shall state that such financial statements fairly present the financial condition of the companies being reported upon, have been prepared in accordance with generally accepted accounting principles consistently applied, and that the examination by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances.

(c) Audit Reports - promptly upon receipt thereof, one copy of each report submitted to the Vendee or any Subsidiary by independent accountants in connection with any annual, interim or special audit made by them of the books of the Vendee or any Subsidiary;

(d) ICC Reports - promptly upon their becoming available, one copy of all reports, including its Annual Report, to the Interstate Commerce Commission, which are required to be filed by the Vendee;

(e) SEC Reports - promptly upon their becoming available, one copy of each financial statement, report, notice or proxy statement sent by the Vendee to its stockholders generally, and of each regular or periodic report and any registration statement, prospectus or written communication (other than transmittal letters) in respect thereof filed by the Vendee with, or received by the Vendee in connection therewith from, any securities exchange or the Securities and Exchange Commission;

(f) ERISA - immediately upon becoming aware of the occurrence of any (i) "reportable event", as such term is defined in Section 4043 of ERISA, or (ii) "prohibited transaction," as such term is defined in Section 4975 of the Internal Revenue Code of 1954, as amended, in connection with any pension plan or any trust created thereunder, a written notice specifying the nature thereof, what action the Vendee or the Subsidiary concerned is taking or proposes to take with respect thereto, and, when known, any action taken by the Internal Revenue Service with respect thereto;

(g) Notice of Default or Event of Default - immediately upon becoming aware of the existence of any condition or event which constitutes an event of default under any Conditional Sale Agreement, a written notice specifying the nature and period of existence thereof and what action the Vendee is taking or proposes to take with respect thereto;

(h) Notice of Claimed Default - immediately upon becoming aware that the holder of any Conditional Sale Indebtedness, or of any other evidence of indebtedness of the Vendee or any Subsidiary has given notice, or taken any other action, with respect to a claimed default or event of default, a written notice specifying the notice given or action taken by such holder and the nature of the claimed default, or event of default, and what action the Vendee is taking or proposes to take with respect thereto; and

(i) Requested Information - with reasonable promptness, such other data and information as from time to time may be reasonably requested; provided that the Vendee shall not be required to provide copies of any examination report of any state or federal agency, or of any confidential communication with any state or federal regulatory agency, without the express written permission of said regulatory agency if such permission is required (which the Vendee shall use its reasonable efforts to obtain), but the Vendee shall not be entitled to withhold information or data taken from the books and records of the Vendee or a Subsidiary solely by reason of the fact that such information or data is included in any such examination report or confidential communication with any such agency.

Each set of financial statements delivered pursuant to subparagraph (a) or (b) of this Paragraph 10 shall be accompanied by a certificate of the President or any appropriate Vice President and the Treasurer or an Assistant Treasurer of the Vendee setting forth: (i) Covenant Compliance - the information (including detailed calculations) required in order to establish whether the Vendee was in compliance with the several requirements of Paragraph 9 hereof during the period covered by the income statement then being furnished; and (ii) Event of Default - that the signers have reviewed the relevant terms of this Agreement and have made, or caused to be made, under their supervision, a review of the transactions and conditions of the Vendee and its Subsidiaries from the beginning of the accounting period covered by the income statements being delivered therewith to the date of the certificate, and that such review has not disclosed the existence during such period of any condition or event which constitutes an event of default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Vendee has taken or proposes to take with respect thereto.

Each set of annual financial statements delivered pursuant to subparagraph (b) of this Paragraph 10 shall be accompanied by a certificate of the accountants who certify such financial statements, stating that they have reviewed this Agreement and stating further, whether, in making their audit, such accountants have become aware of any condition or event which then constitutes an event of default, and, if any condition or event then exists, specifying the nature and period of existence thereof.

The Vendee will permit representatives of each Investor, so long as it continues to hold any Conditional Sale Indebtedness, and the representatives of any other institutional holder of then outstanding Conditional Sale Indebtedness, at such holder's expense, to visit and inspect any of the properties of the Vendee or any Subsidiary, to examine all their books of account, records, reports and other papers (subject, however, to the limitations set forth above in subparagraph (i) hereof), to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (and by this provision the Vendee authorizes said accountants to discuss the finances and affairs of the Vendee and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested.

11. As used in this Agreement, the following terms shall have the respective meanings indicated. Accounting terms, not specifically defined herein, shall have the meanings customarily associated therewith in accordance with generally accepted accounting principles.

"Affiliate" of any designated person shall mean any person (other than a Restricted Subsidiary or a Subsidiary) which, directly or indirectly, controls or is controlled by or is under common control with such designated person and, without limiting the generality of the foregoing, shall include (i) any person which beneficially owns or holds 5% or more of any class of voting securities of such designated person or 5% or more of the equity interest in such designated person and (ii) any person of which such designated person beneficially owns or holds 5% or more of any class of voting securities or in which such designated person beneficially owns or holds 5% or more of the equity interest, and shall include any individual who is an officer or director of such designated person.

"Capitalized Lease" shall mean any lease of real or personal property which is required to be capitalized under Generally Accepted Accounting Principles as to which the Vendee or a Restricted Subsidiary is the lessee.

"Cash Flow" shall mean for the specified period as to which the term is used the sum of (i) Consolidated Net Income for such period before provision for United States and any other income taxes and (ii) depreciation and all other non-cash items deducted from revenues in the computation of such Consolidated Net Income, including amortization of debt discount and goodwill, minus the sum of (y) United States and any other taxes actually paid during such period and (z) non-cash items which were added to revenues in the computation of such Consolidated Net Income, including non-cash residual values and deferred income items, all as determined in accordance with Generally Accepted Accounting Principles.

"Consolidated" shall mean, with respect to the accounting item being described, such accounting item of the Vendee and its Restricted Subsidiaries, as consolidated in accordance with Generally Accepted Accounting Principles, including the elimination of intercompany items and transactions and after appropriate adjustment for any minority interests.

"Consolidated Earnings Available for Interest Coverage" shall mean for any period the sum of (i) Consolidated Net Income for such period, (ii) state, Federal and local taxes measured by income and excess profits which were deducted in the computation of Consolidated Net Income for such period, and (iii) Consolidated Interest Expense for such period.

"Consolidated Interest Expense" shall mean for any period interest paid or accrued and unpaid during such period, including amortization of debt discount and expense and the imputed interest factor in rentals under all Capitalized Leases.

"Consolidated Net Income" shall include cash dividends, if any, paid to the Vendee or a Restricted Subsidiary by any joint venture affiliate or similar entity.

"Consolidated Net Tangible Assets" shall mean Consolidated Tangible Assets, after appropriate adjustment for any minority interests, less the sum of:

(i) all reserves for depletion, depreciation, obsolescence and/or amortization of its properties as shown by the books of such corporation and all other proper reserves which, in accordance with Generally Accepted Accounting Principles, should be set aside in connection with the business conducted by such corporation,

(ii) all indebtedness and other liabilities of such corporation other than funded debt and capital stock and surplus, and

(iii) any write-up in the book value of any asset resulting from a revaluation thereof.

"Consolidated Tangible Assets" shall mean all assets which, in accordance with Generally Accepted Accounting Principles, would appear on the asset side of a balance sheet (including leased property to which Capitalized Lease rentals are attributed, but excluding intangible assets (such term, as used herein, meaning patents, franchises, trademarks, organizational expense and the like, treasury stock, goodwill and any other identifiable or unidentifiable assets generally classified as intangible assets) and unamortized debt discount and expense).

"Current Debt" shall mean with respect to any person all liabilities for borrowed money and all liabilities secured by any lien existing on property owned by such person whether or not such liabilities have been assumed, which, in either case, are payable on demand or within one year from the creation thereof, except:

(i) any such liabilities which are renewable or extendable at the option of the debtor to a date more than one year from the date of creation thereof, and

(ii) any such liabilities which, although payable within one year, constitute payments required to be made on account of principal of indebtedness expressed to mature more than one year from the date of creation thereof.

"Debt" or "Indebtedness" shall mean, without duplication, (i) all indebtedness of the Vendee or any Restricted Subsidiary for the repayment of borrowed money whether or not represented by bonds, debentures, notes or other securities, (ii) all Capitalized Leases, (iii) all indebtedness secured by any mortgage, pledge or lien, existing on property or interests owned or held by the Vendee or any Restricted Subsidiary, (iv) all guarantees, endorsements (other than endorsements of negotiable instruments for collection in the ordinary course of business) and other contingent liabilities (whether direct or indirect) of the Vendee or any Restricted Subsidiary in connection with the obligations, stock or dividends of any person, (v) obligations of the Vendee or any Restricted Subsidiary under any contract providing for the making of loans, advances or capital contributions to any person, or the purchase of any property from any person, in each case in order to enable such person primarily to maintain working capital, net worth or any other balance sheet condition to pay debts, dividends or expenses, (vi) obligations of the Vendee or any Restricted Subsidiary under any contract for the purchase of materials, supplies or other property from any person if such contract (or related document) requires that payment for such materials, supplies or other property shall be made regardless of whether or not delivery of such materials, supplies or property is ever made or tendered, (vii) obligations of the Vendee or any Restricted Subsidiary under any contract to rent or lease (as lessee) any real or personal property if such contract (or any related document) provides that the obligation to make payments thereunder is absolute and unconditional under conditions not customarily found in commercial operating leases then in general use, or require that the lessee purchase or otherwise acquire securities or obligations of the lessor, (viii) obligations of the Vendee or any Restricted Subsidiary under any contract which, in economic effect, is substantially equivalent to a guarantee of the obligation of any person, and (ix) all indebtedness incurred or assumed by the Vendee or any Restricted Subsidiary in connection with any merger, consolidation or acquisition of assets.

"Generally Accepted Accounting Principles" shall mean generally accepted accounting principles in effect on June 30, 1979, except where such principles are inconsistent with the requirements of this Agreement.

"Restricted Subsidiary" shall mean any Subsidiary of which the Vendee owns, directly or indirectly, at least 80% of the securities of any class or classes the holders of which are entitled to elect a majority of the corporate directors, provided that all Subsidiaries in existence on the date of this Agreement are, ipso facto, Restricted Subsidiaries.

"Senior Debt" shall mean all Debt which is not Subordinated Debt.

"Stockholders' Equity" shall mean, at any date, the Vendee's capital stock and retained earnings accounts, identified as such on its consolidated balance sheet at such date, less intangible assets.

"Subordinated Debt" shall mean unsecured Indebtedness of the Vendee or any Restricted Subsidiary meeting the requirements set forth in Schedule D hereto.

"Subsidiary" shall mean a corporation of which the Vendee owns, directly or indirectly (through one or more Subsidiaries or otherwise), at least 50% (exclusive of directors' qualifying shares) of the securities of any class or classes the holders of which are entitled to elect a majority of the corporate directors.

"Vendee" shall mean, for purposes of Paragraphs 9, 10 and 11 hereof only, National Railway Utilization Corporation; otherwise, said term shall mean, jointly and severally, said corporation and Pickens Railroad Company.

12. The Vendee agrees to pay all costs and expenses incidental to the transactions contemplated by this Agreement, including, but not limited to: (i) all of the costs and expenses in connection with the preparation, execution and delivery of this Agreement, the Conditional Sale Agreements, the Assignments, the Warrants, and any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of Messrs. Morgan, Lewis & Bockius as special counsel for the Investors, (ii) the reasonable fees and disbursements of the Agent, and (iii) all costs and expenses incurred by any party in connection with the issuance, exchange or transfer of the Certificates of Interest herein provided for. The Vendee hereby indemnifies the Investors and the Agent, respectively, against, and agrees to hold each harmless in respect of, any claims for brokerage, finder's fees or other commission relating to the transactions contemplated by this Agreement made by any person claiming through the Vendee.

The Vendee will make all necessary arrangements for, and pay all expenses incidental to, the filing and recordation of this Agreement, the Conditional Sale Agreements and the Assignments, with the Interstate Commerce Commission, and obtaining authorization from said Commission for the issuance and delivery of the Warrants (and the shares of Common Stock issuable upon exercise thereof).

13. All documents deliverable hereunder to the Agent shall be delivered to it at its address at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, or as the Agent may otherwise specify. All documents, notices and funds deliverable hereunder to the Investors, shall be delivered or mailed to them at their respective addresses set forth in Schedule B hereto, or as any of them may otherwise specify. All documents and notices deliverable to either Vendee shall be delivered or mailed to it at 1100 Centre Square East, 1500 Market Street, Philadelphia, Pennsylvania 19102. All documents deliverable hereunder to Messrs. Morgan, Lewis & Bockius shall be delivered to them at The Fidelity Building, 123 South Broad Street, Philadelphia, Pennsylvania 19109.

In order to permit the Investors to comply with reporting requirements applicable to themselves as institutional lenders, the Vendee will, contemporaneously with the execution and delivery of this Agreement, furnish to the Agent, for the use of the Investors, an Information Certificate substantially in the form of Schedule E hereto.

14. In the event that the Vendee shall have knowledge of an event of default under any Conditional Sale Agreement, it shall give prompt telephonic notice (confirmed in writing) thereof to the Agent and the Investors.

15. This Agreement having been executed in the Commonwealth of Pennsylvania by at least one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations of the parties hereto hereunder shall be governed by the laws of said Commonwealth. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

16. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, all as of the date first above written.

NATIONAL RAILWAY UTILIZATION CORPORATION

By CHARLES P. TURNBURKE
Vice President

PICKENS RAILROAD COMPANY

By CHARLES P. TURNBURKE
Vice President

THE CONNECTICUT BANK AND TRUST COMPANY,
as Agent

By DONALD E. SMITH
Asst. Vice President

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

By DAVID P. MARKS
Investment Officer

CONGEN FIVE & CO.

By DAVID G. PRUYNE
Partner

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By DAVID M. MUNRO
Second Vice President

SCHEDULE A

Builder	Type of Equipment	Builder's Specifications	Approximate Quantity (Allocations Tentative)	Approximate Unit Base Price +
Berwick Forge *	50'-6" 70-ton Box Cars, Type XM	Steel, single sheath, outside stake box car, with rigid underframe	100	$ 40,000
Southern Iron **	50'-6" 70-ton Box Cars, Type XM	Steel, single sheath, outside stake box car, with rigid underframe	714	40,900
NRUC Car Shops ***	50'-6" 70-ton Box Cars, Type XM	Steel, single sheath, outside stake box car, with rigid underframe	100	42,900

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* Whittaker Corporation (Berwick Forge & Fabricating Division)

** Evans Transportation Company (Southern Iron & Equipment Company Division)

*** Golden Tye Car Shop; Rail Fleet Corporation; and St. Lawrence Car Shop

\+ The Unit Base Prices are subject to adjustment as provided in the Purchase Orders, and in the event any exceed the amount specified above to an extent that the Total Base Price of all Equipment exceeds $37,500,000 (the Maximum Purchase Price), the quantity of Units may be subject to downward adjustment to the end that the Maximum Purchase Price shall not be subject to increase.

SCHEDULE B

INVESTOR:	Shares of Common Stock Subject to Warrant Purchase
Connecticut General Life Insurance Company	50,000

Maximum Investment: $20,000,000

Address for delivery of documents:

Hartford, Connecticut 06152
Attention: Private Placement Department N-74

Address for delivery of funds:

Wire transfer (with sufficient information to identify source and application of funds) to:

Hartford National Bank and Trust Company
Hartford, Connecticut
a/c Connecticut General Life Insurance Company
Account No. 029-7898

With confirmation, and other communications with respect to payments, to:

Connecticut General Life Insurance Company
Hartford, Connecticut 06152
Attention: Securities Accounting Department N-77

Participant to the extent of $1,000,000 (and 2,500 Warrants):

Congen Five & Co.

Address for delivery of documents:

Hartford, Connecticut 06152
Attention: Private Placement Department N-74

Address for delivery of funds:

Wire transfer (with sufficient information to identify source and application of funds) to:

Hartford National Bank and Trust Company
Hartford, Connecticut
a/c Congen Five & Co.
Account No. 029-7909

With confirmation, and other communications with respect to payments, to:

Congen Five & Co.
Hartford, Connecticut 06152
Attention: Securities Accounting Department N-77

INVESTOR:	Shares of Common Stock Subject to Warrant Purchase
John Hancock Mutual Life Insurance Company	25,000

Maximum Investment: $10,000,000

Address for delivery of documents:

John Hancock Mutual Life Insurance Company
Attention: Bond Department
John Hancock Place
P. O. Box 111
Boston, Massachusetts 02117

Address for delivery of funds:

Wire transfer (with sufficient information to identify source and application of funds) to:

The First National Bank of Boston
Attention: Customer Securities Department
100 Federal Street
Boston, Massachusetts 02110
a/c John Hancock Mutual Life Insurance Company
Account No. 279-8000

With confirmation, and other communications with respect to payments, to:

John Hancock Mutual Life Insurance Company
Attention: Treasury Department, Securities Control
John Hancock Place
P. O. Box 111
Boston, Massachusetts 02117

SCHEDULE C

I. Description of Subsidiaries. Hereinafter set forth are (i) the name of each Subsidiary, (ii) the jurisdiction of incorporation of each such Subsidiary, and (iii) the percentage of the issued and outstanding capital stock of each such Subsidiary owned by National Railway Utilization Corporation and other Subsidiary:

Name of Subsidiary	State of Incorporation

II. Indebtedness. Set forth below is a correct and complete description of all Consolidated Indebtedness of National Railway Utilization Corporation and its Subsidiaries as of July 31, 1979:

Title of Indebtedness	Obligor	Interest Rate	Final Maturity Date	Amount Outstanding 12/31/78	Amount Outstanding 7/31/79

SCHEDULE D

"Subordinated Debt" of the Vendee and/or any Restricted Subsidiary shall mean unsecured Indebtedness of the corporation issued or incurred under or pursuant to an instrument or instruments containing substantially the following provisions with respect to the subordination of such Indebtedness (hereinafter in this paragraph called "Subordinated Indebtedness") to other Indebtedness of the corporation including the Conditional Sale Indebtedness (hereinafter in this schedule called "Senior Indebtedness").

(1) The Subordinated Indebtedness shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to the Senior Indebtedness:

(a) in the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith relative to the corporation or to its creditors, as such, or to its property, or in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the corporation, whether or not involving insolvency or bankruptcy, then the holders of Senior Indebtedness shall be entitled to receive payment in full of all principal of, and interest and fees, expenses and premium, if any, on, all Senior Indebtedness before the holders of Subordinated Indebtedness shall be entitled to receive any payment on account of principal of, or interest or premium, if any, on, Subordinated Indebtedness, and to that end (but subject to the power of a court of competent jurisdiction to make other equitable provisions reflecting the rights conferred by these provisions upon Senior Indebtedness and the holders thereof with respect to Subordinated Indebtedness and the holders thereof by a lawful plan of reorganization under applicable bankruptcy law) the holders of Senior Indebtedness shall be entitled to receive for application in payment thereof any payment or distribution of any kind or character, whether in cash or property or securities, or by set-off or otherwise, which may be payable or deliverable in any such proceedings in respect of Subordinated Indebtedness (including any such payment or distribution which may be payable or deliverable by reason of the provisions of any Indebtedness of the corporation which is subordinate and junior in right of payment to the payment of the Subordinated Indebtedness), except securities which are subordinate and junior in right of payment to the payment of Senior indebtedness; and

(b) in the event that any Subordinated Indebtedness is declared due and payable before its expressed maturity because of the occurrence of a default thereunder (under circumstances when the provisions of the foregoing subclause (a) shall not be applicable), the holders of Senior Indebtedness outstanding at the time such Subordinated Indebtedness so becomes due and payable because of such occurrence of a default thereunder, shall be entitled to receive payment in full of all principal of, and interest and fees, expenses and premium, if any, on, all Senior Indebtedness before the holders of Subordinated Indebtedness shall be entitled to receive any payment on account of the principal of, or interest or premium, if any, on, the Subordinated Indebtedness; provided, however, that the holders of Subordinated Indebtedness shall not be required to pay to the holders of Senior Indebtedness any amounts received by the holders of Subordinated Indebtedness (except any amounts received in contravention of clause (2) below) before any Subordinated Indebtedness is declared due and payable before its expressed maturity because of an occurrence of a default thereunder.

(2) No payment or prepayment, directly or indirectly, on account of the principal of, or interest and premium, if any, on, the Subordinated Indebtedness shall be made (in cash or property or securities, or by set-off or otherwise) and no holder of Subordinated Indebtedness shall be entitled to demand or receive any such payment or prepayment (a) unless all amounts then due for principal of, and interest and fees, expenses and premium, if any, on, all Senior Indebtedness have been paid in full in cash, or (b) if, at the time of such payment or prepayment or immediately after giving effect thereto, there shall have occurred any event of default under any Senior Indebtedness or under any agreement pursuant to which any Senior Indebtedness is issued which permits the holders of such Senior Indebtedness to declare such Senior Indebtedness to be due and payable before its expressed maturity, or (c) if such payment or prepayment would contravene any provision of, or result in the occurrence of any default under, any Senior Indebtedness or any agreement pursuant to which any Senior Indebtedness is issued. Any amounts received by the holders of Subordinated Indebtedness in contravention of this clause (2) shall be held by such holders in trust for the benefit of the holders of all Senior Indebtedness then outstanding for application to the payment of the principal of, and interest and fees, expenses and premium, if any, on such Senior Indebtedness until such time, if any, as all defaults under any Senior Indebtedness or under any agreement pursuant to which any Senior Indebtedness is issued shall have been remedied.

(3) Subject to the payment in full of all Senior Indebtedness, holders of the Subordinated Indebtedness shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the corporation applicable to the Senior Indebtedness until the Subordinated Indebtedness shall be paid in full, and no payments or distributions to the holders of the Senior Indebtedness by or on behalf of the corporation from the proceeds that would otherwise be payable to the holders of the Subordinated Indebtedness or by or on behalf of the holders of the Subordinated Indebtedness, shall, as between the corporation and the holders of Subordinated Indebtedness, be deemed to be a payment by the corporation on account of the Senior Indebtedness.

(4) These provisions with respect to the subordination in respect of Senior Indebtedness shall not be amended, modified or waived without the prior written consent of the holders of all Senior Indebtedness at the time outstanding.

(5) No present or future holder of Senior Indebtedness shall be prejudiced in his right to enforce subordination of Subordinated Indebtedness by any act or failure to act on the part of the corporation. The foregoing provisions as to subordination are solely for the purpose of defining the relative rights of the holders of Senior Indebtedness, on the one hand, and the holders of Subordinated Indebtedness, on the other hand, and none of such provisions shall impair, as between the corporation and any holders of Subordinated Indebtedness the obligation of the corporation, which is unconditional and absolute to pay to the holders of Subordinated Indebtedness the principal thereof, and the interest and premium, if any, thereon, in accordance with its terms, nor shall any such provisions prevent any holder of Subordinated Indebtedness from exercising all remedies otherwise permitted by applicable law or under the terms of such Subordinated Indebtedness upon default thereunder, subject to the rights under the foregoing provisions of holders of Senior Indebtedness to receive for application in payment thereof any payment or distribution of any kind or character, whether in cash or property or securities, or by set-off or otherwise, which may be payable or deliverable to the holders of Subordinated Indebtedness.

(6) The corporation agrees, for the benefit of the holders of Senior Indebtedness, that in the event any Subordinated Indebtedness is declared due and payable before its expressed maturity because of the occurrence of a default thereunder or otherwise, (a) the corporation will give prompt notice in writing of such happening to the holders of Senior Indebtedness, and (b) all Senior Indebtedness shall forthwith become immediately due and payable upon demand, regardless of the expressed maturity thereof.

SCHEDULE E

INFORMATION CERTIFICATE

PART I — GENERAL INFORMATION

1. Name of security issuer: _____
2. Issuer's principal type of business: _____
3. Date prepared: _____
4. This certificate was prepared by: _____

Name and Title

_____

Signature

PART II — FINANCIAL INFORMATION

1. Issuer ☐ is ☐ is not current as to all principal and interest payments on its outstanding debt. If not, or there is knowledge of an imminent default on any of such debt service payments, an explanatory statement accompanies this certificate.

2. Fixed Charges (5 most recent fiscal years).

	A Fiscal Year Ending	B Net Earnings * Available for Fixed Charges	C + Fixed Charges	D Column B Divided by Column C	E Contingent Interest
a.	_____	$ _____	$ _____	_____	$ _____
b.	_____	_____	_____	_____ X	_____
c.	_____	_____	_____	_____ X	_____
d.	_____	_____	_____	_____ X	_____
e.	_____	_____	_____	_____ X	_____
F.	Total a-e	$ _____	$ _____	X	_____

* Net income before Federal, state and local income taxes, fixed charges and extraordinary non-recurring items of income or expense.

\+ Include actual interest incurred on funded and unfunded debt. Contingent interest should be excluded from Column C, but included in Column E.

3. Working Capital (excess of current assets over current liabilities).

A Most Recent Fiscal Year	B Working Capital	C Long Term Debt	D Ratio of Column B To Column C
	$	$	

Date:

4. Capitalization

	A As of Close of Latest Fiscal Year (Insert Date)	% of Total	B * Pro-Forma as of	% of Total
Secured Debt	$		$	
Unsecured Debt				
Subordinated Debt				
Total Debt	$		$	
Preferred Stock (net outstanding)	$		$	
Common Stock (net outstanding)	$		$	
Earned and Capital Surplus	$		$	
Total Capitalization	$	100%	$	100%

* Pro-Forma to reflect issuance or retirement of securities subsequent to date entered in Column A. If entries are made in Column B, please supply the following information:

Pro-Forma fixed charges $

5. Adjusted Earnings

	Five Most Recent Fiscal Years				
	Ending	Ending	Ending	Ending	Ending
Adjusted Earnings (net income before depreciation, depletion and extra-ordinary non-recurring items of income or expense)	$	$	$	$	$
Current maturities of long-term debt, per balance sheet	$	$	$	$	$

6. Lease Payments

Lease payments for last fiscal year $ for fiscal year ending

All information to be based upon the most recent audited annual financial statements.