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HOWARD L. MEYERS  
DIAL DIRECT (215) 491-9536

RECORDATION NO. 10768 Filed 1425

SEP 12 1979 - 1 20 PM September 11, 1979

INTERSTATE COMMERCE COMMISSION

BY MESSENGER

Interstate Commerce Commission  
Washington, D. C.

SEP 12 1979  
10:00  
CC Washington, D. C.

Re: Seventy-five, 70-ton General Purpose Boxcars  
(NSL155617 through NSL155691, inclusive) -  
Interstate Commerce Commission File No. 10768

Gentlemen:

Enclosed herewith for filing under the above recorda-  
tion number are three counterparts of the following supplemental  
document in connection with the permanent financing of the above-  
referenced railroad rolling stock:

Further Agreement and Assignment, dated as of  
September 12, 1979, between Girard Bank, as  
Assignor, and The Connecticut Bank and Trust  
Company, as Assignee, acting as Agent for  
Connecticut General Life Insurance Company,  
Congen Five & Co. and John Hancock Mutual  
Life Insurance Company.

Previous documents recorded under this recordation number are a  
Conditional Sale Agreement, dated as of August 28, 1979, between  
Evans Transportation Company, as Vendor, and National Railway  
Utilization Corporation and Pickens Railway Company, collectively,  
as Vendee (ICC Recordation Number 10768), and an Agreement and  
Assignment, dated as of August 28, 1979, between Evans Trans-  
portation Company, as Assignor, and Girard Bank, as Assignee  
(ICC Recordation Number 10768-A).

The railroad rolling stock covered by the foregoing  
agreements are a 50' 6", 70-ton, single sheath, outside stake,  
rigid underframe boxcars, type XM.

RECEIVED  
SEP 12 1 16 PM '79  
I.C.C.  
OPERATION BR.

*Wayne M. Lee*  
*C. [Signature]*

MORGAN, LEWIS & BOCKIUS

Interstate Commerce Commission  
September 11, 1979  
Page Two

The filing fee for the enclosed document accompanies this letter of transmittal.

Kindly acknowledge your receipt of the enclosed document and the filing fee by affixing your customary stamp to a copy of this letter and returning it to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard Meyer".

HLM/fmw  
Enclosures

RECORDATION NO. *10768 B* Filed 1425

SEP 12 1979 -1 20 PM

INTERSTATE COMMERCE COMMISSION

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FURTHER ASSIGNMENT AND AGREEMENT

Dated as of September 12, 1979

between

GIRARD BANK

and

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent

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FURTHER ASSIGNMENT AND AGREEMENT

FURTHER ASSIGNMENT AND AGREEMENT,  
dated as of September 12, 1979 between  
GIRARD BANK (hereinafter called Girard)  
and THE CONNECTICUT BANK AND TRUST COMPANY,  
as Agent for the Investors under a  
Participation Agreement dated as of  
August 16, 1979 (hereinafter called the  
Participation Agreement), said Agent being  
hereinafter called the Assignee.

WHEREAS, Evans Transportation Company (hereinafter called the Builder) and NATIONAL RAILWAY UTILIZATION CORPORATION and PICKENS RAILROAD COMPANY (hereinafter collectively called the Vendee) have entered into a Conditional Sale Agreement dated as of August 28, 1979 (hereinafter called the Conditional Sale Agreement) covering the assembly, construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS, Girard is the Assignee of the Conditional Sale Agreement under and by virtue of an Agreement and Assignment dated as of August 28, 1979 (hereinafter called the Assignment) between it as Assignee and the Builder as Assignor; and

WHEREAS, the Conditional Sale Agreement and the Assignment contemplate the reassignment of the Conditional Sale Agreement to the Assignee upon the payment to Girard of all indebtedness outstanding to Girard under the Conditional Sale Agreement;

NOW, THEREFORE, THIS FURTHER ASSIGNMENT AND AGREEMENT WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to Girard, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Girard hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of Girard in and to each unit of the Equipment, subject only to the rights of the Vendee under the Conditional Sale Agreement;

(b) all the right, title and interest of Girard in and to the Conditional Sale Agreement (except the right of the Builder to construct and deliver the Equipment and to receive the payments specified in subparagraph (a) of the fourth paragraph of Article 4 thereof, the Builder's right of reimbursement, as provided in Article 6 thereof, for taxes paid or incurred by the Builder, and Girard's rights specified in and arising out of Article 23 thereof), and, except as aforesaid, in and to any and all amounts which hereafter may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded;

(c) except as limited by subparagraph (b) of this paragraph, all Girard's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement; and

(d) all of Girard's rights, titles, powers, privileges and remedies under the Assignment (except the right to receive, collect, and sue for the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) heretofore paid to and received by Girard);

without any recourse hereunder, however, against the Builder or Girard for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any provisions of the Conditional Sale Agreement, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Builder to deliver the equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood that, notwithstanding this Agreement or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, to the extent

provided therein and in the Assignment, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, Girard authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or, to the extent provided in the Assignment, in the name of and as attorney for the Builder, or in the name of and as attorney, hereby irrevocably constituted, for Girard, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The parties hereto understand and agree that Article 23 of the Conditional Sale Agreement is annulled by this Agreement.

SECTION 3. Concurrently with the execution of this Agreement, Girard transfers and delivers to the Assignee the original, executed copies of the documents specified in clauses (a), (b), (c) and (e) of Section 4 of the Assignment without any representation or warranty as to the accuracy, completeness or sufficiency thereof.

SECTION 4. The Assignee agrees that, as required by the second paragraph of Section 3 of the Assignment, it will give prompt notice to the Builder of any claims, known to the Assignee, for alleged patent or other infringement. The Assignee further agrees to give written notice to the Vendee of the assignment hereunder, together with a counterpart or copy of this Agreement, stating the identity and post office address of the Assignee.

SECTION 5. Girard hereby represents and warrants to the Assignee, its successors and assigns, that:

(a) this Agreement has been duly authorized by Girard and has been duly executed and delivered by duly authorized officers of Girard and constitutes the legal, valid and binding obligation of Girard enforceable against Girard in accordance with its terms;

(b) Girard has not entered into any amendment or modification of the Conditional Sale Agreement or the Assignment;

(c) to the best of its knowledge, no event of default has occurred under the Conditional Sale Agreement; and

(d) no lien or encumbrance has attached to the Equipment (other than pursuant to the Conditional Sale Agreement) or to the Conditional Sale Agreement by virtue of the assignment of the Conditional Sale Agreement to Girard pursuant to the Assignment which is not effectitively transferred to the Assignee pursuant hereto.

Girard further agrees that it will from time to time, at the request and expense of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Except as specifically set forth in this Section 5, Girard makes no representations or warranties to the Assignee concerning the Conditional Sale Agreement, the Equipment or the title thereto.

SECTION 6. This Agreement, constituting an assignment of rights under a conditional sale agreement which by its terms is governed by the laws of the Commonwealth of Pennsylvania, the terms hereof, and all rights and obligations hereunder shall also be governed by the laws of said Commonwealth, provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303 of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Agreement as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Agreement shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 7. This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective names by duly authorized officials or representatives, all as of the date first above written

GIRARD BANK

(CORPORATE SEAL)

By Linda K. Winston  
(title)  
Banking Officer

Attest:

John B. Ford  
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY

(CORPORATE SEAL)

By \_\_\_\_\_  
(title)

Attest:

\_\_\_\_\_  
Secretary

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective names by duly authorized officials or representatives, all as of the date first above written

GIRARD BANK

(CORPORATE SEAL)

By \_\_\_\_\_  
(title)

Attest:

\_\_\_\_\_  
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY

(CORPORATE SEAL)

By  \_\_\_\_\_  
(title)

Attest:

ASSISTANT VICE PRESIDENT

  
\_\_\_\_\_  
Asst Secretary

COMMONWEALTH OF PENNSYLVANIA :

SS :

COUNTY OF PHILADELPHIA :

On this 11th day of September, 1979, before me, personally appeared Linda K. Winston, to me personally known, who, being by me duly sworn, says that he is an officer of GIRARD BANK, 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.

Bertha M. Burkhard  
Notary Public

[Notarial Seal]

My Commission expires;

BERTHA M. BURKHARD  
PHILADELPHIA COUNTY  
MY COMMISSION EXPIRES 09.20.1982  
Member, Pennsylvania Association of Notaries

I hereby certify that I am  
not an Officer or Director of  
the above named Corporation.



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Further Assignment and Agreement is hereby acknowledged as of September 12, 1979. For the further security of the Assignee therein named, the undersigned hereby assign to said Assignee, as its interest may appear, the rights of the undersigned under and pursuant to the Builder's warranties appearing in Annex A to the Conditional Sale Agreement.

NATIONAL RAILWAY UTILIZATION CORPORATION

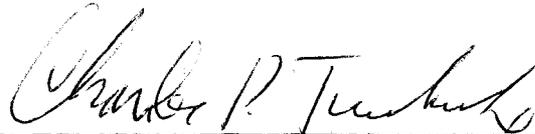
By



Vice President

PICKENS RAILROAD COMPANY

By



Vice President

8/13/79

ML&B

Annex C

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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

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Dated as of August 16, 1979

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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 Lessee 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 jurisdiction 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.

(1) 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 (1) 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 \_\_\_\_\_

Vice President

PICKENS RAILROAD COMPANY

By \_\_\_\_\_  
Vice President

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Agent

By \_\_\_\_\_  
Vice President

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

By \_\_\_\_\_

CONGEN FIVE & CO.

By \_\_\_\_\_

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Authorized Officer

SCHEDULE A

<u>Builder</u>	<u>Type of Equipment</u>	<u>Builder's Specifications</u>	<u>Approximate Quantity (Allocations Tentative)</u>	<u>Approximate Unit Base Price</u> +
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

Shares of Common  
Stock Subject to  
Warrant Purchase

INVESTOR:

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:

<u>Name of Subsidiary</u>	<u>State of Incorporation</u>
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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:

<u>Title of Indebtedness</u>	<u>Obligor</u>	<u>Interest Rate</u>	<u>Final Maturity Date</u>	<u>Amount Outstanding 12/31/78</u>	<u>Amount Outstanding 7/31/79</u>
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## 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.

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		B *	
	As of Close of Latest Fiscal Year (Insert Date)	%	Pro-Forma as of	%
	_____	_____	_____	_____
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

	<u>Five Most Recent Fiscal Years</u>				
	<u>Ending</u>	<u>Ending</u>	<u>Ending</u>	<u>Ending</u>	<u>Ending</u>
Adjusted Earnings (net income before depreciation, depletion and extraordinary 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.