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November 30, 1990

RECORDING NO. 17095  
FEB 24 1991

NOV 30 1990 - 12 55 PM

INTERSTATE COMMERCE COMMISSION

NOV 30 12 47 PM '90  
MOTOR OPERATING UNIT

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two originally executed copies of a Loan Agreement, Chattel Mortgage and Security Agreement dated as of November 30, 1990, between The First National Bank of Maryland and Railcar, Ltd. The Loan Agreement, Chattel Mortgage and Security Agreement is a primary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

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

Lender: The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

Borrower: Railcar, Ltd.  
1819 Peachtree Road, N.E.  
Suite 303  
Atlanta, Georgia 30309-1847

A description of the railroad equipment covered by the enclosed document is set forth in Schedules I-IV attached hereto and made a part hereof.

Enclosed is a check in the amount of \$15.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a filed-stamped copy of the enclosed document to Alan J. Mogol, Esquire, Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202-1643.

*Accountants*  
*Robert W. Cost*

Ms. Noreta R. McGee  
November 30, 1990  
Page Two

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

Loan Agreement, Chattel Mortgage and Security Agreement dated as of November 30, 1990, between The First National Bank of Maryland, Lender, and Railcar, Ltd., Borrower, covering six centerbeam bulkhead flatcars, thirty 100-ton boxcars, twelve 100-ton flatcars and thirty-five 70-ton RBL boxcars.

Sincerely yours,

  
Alan J. Mogol

AJM:caa  
Enclosures

Schedule I

Thirty-five (35) Plate B, 52 foot, 70 ton RBL boxcars with Dual Air-Pak Bulkheads subject to a letter agreement dated February 28, 1990 by Railcar, Ltd. and accepted and agreed to on April 27, 1990, by Consolidated Rail Corporation. The reporting numbers and marks of the 35 boxcars are LW 10000 through 10034.

Schedule II

Twelve (12) 100-ton former bulkhead flatcars with a minimum length between end sills of 64'6" to be subject to a lease dated September 10, 1990, by and between Railcar, Ltd. and RailTex, Inc. The reporting numbers and marks of the 12 flatcars are SCRF 301 through 312.

Schedule III

Thirty (30) 60-foot, 100-ton boxcars with 16 foot wide doors to be subject to a lease dated September 19, 1990, by and between Railcar, Ltd. and National Salvage & Service Corp. The reporting numbers and marks of the boxcars are NSSX 12000 through 12029.

Schedule IV

Six (6) rebuilt 100 ton, 83' centerbeam bulkhead flatcars (AAR car type F284) with an extreme height of 18'5" to be subject to a lease dated October 1, 1990, by and between Railcar, Ltd. and Southern Railway Company. The reporting numbers and marks of the flatcars are SOU 118330 through 118335.

RECORDED TO 17095  
NOV 30 1990 -12 55 PM  
INTERSTATE COMMERCE COMMISSION

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**LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT**

Dated as of November 29, 1990

between

**THE FIRST NATIONAL BANK OF MARYLAND,**

and

**RAILCAR, LTD.**

---

Covering  
6 Centerbeam Bulkhead Flatcars  
30 100-Ton Boxcars  
12 100-Ton Flatcars  
35 70-Ton RBL Boxcars

---

Filed and recorded with the Interstate Commerce Commission pursuant to the Interstate Commerce Act, 49 U.S.C. § 11303 on the \_\_\_ day of \_\_\_\_\_, 1990, at \_\_\_ .m., recordation no. \_\_\_.

LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT

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**LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT**

THIS LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 1990, by and between RAILCAR, LTD., a Georgia corporation with its principal place of business and chief executive office at 1819 Peachtree Road, N.E., Suite 303, Atlanta, Georgia 30309-1847 (the "Borrower") and THE FIRST NATIONAL BANK OF MARYLAND, a national banking association with its principal place of business at 25 South Charles Street, Baltimore, Maryland 21201 (the "Bank").

**RECITALS**

A. Borrower is the owner and lessor of (i) 35 70-ton RBL boxcars (described on Schedule I attached hereto and made a part hereof, the "Conrail Cars") presently being leased to Consolidated Rail Corporation ("Conrail") pursuant to that certain letter agreement dated as of February 28, 1990, between the Borrower, as lessor, and Conrail, as lessee (the "Conrail Lease"), (ii) 12 100-ton former bulkhead flatcars (described on Schedule II attached hereto and made a part hereof, the "RailTex Cars") presently being leased to RailTex, Inc. ("RailTex") pursuant to that certain Lease Agreement dated as of September 10, 1990, between the Borrower, as lessor, and RailTex, as lessee (the "RailTex Lease"), (iii) 30 100-ton boxcars (described on Schedule III attached hereto and made a part hereof, the "NSSC Cars") presently being leased to National Salvage & Service Corp. ("NSSC") pursuant to that certain Lease Agreement dated as of September 19, 1990, between the Borrower, as lessor, and NSSC, as lessee (the "NSSC Lease"), and (iv) 6 center-beam bulkhead flatcars (described on Schedule IV attached hereto and made a part hereof, the "Southern Railway Cars") presently being leased to Southern Railway Company ("Southern Railway") pursuant to that certain Lease Agreement dated as of October 1, 1990, between the Borrower, as lessor, and Southern Railway, as lessee (the "Southern Railway Lease"). As used herein, the term "Equipment" shall mean the Conrail Cars, the RailTex Cars, the NSSC Cars and the Southern Railway Cars and any other equipment which is now or hereafter described on Schedules I, II, III and IV hereto, and each item thereof shall be referred to as an "Item of Equipment"; the term "Leases" shall mean the Conrail Lease, the RailTex Lease, the NSSC Lease and the Southern Railway Lease, and each of them shall be a "Lease"; and "Lessees" shall mean Conrail, RailTex, NSSC and Southern Railway, and their respective successors and assigns, and each of them shall be a "Lessee".

B. Each of the RailTex Cars, the NSSC Cars and the Southern Railway Cars are currently undergoing a Rule 88 rebuild. In addition to the rebuild, the Southern Railway Cars are switching from 70-ton trucks to 100-ton trucks.

C. Borrower has applied to the Bank for a five-year term loan in an amount not to exceed \$900,000, to be used by the Borrower to finance the acquisition and rebuilding of railcars and for other corporate purposes (the "Loan").

D. The Bank is willing to provide the Borrower with the requested Loan, upon the terms and subject to the conditions hereinafter set forth.

### AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Borrower and the Bank do hereby agree as follows:

#### I. THE TERM LOAN

Section 1.1. Making of the Loan. Subject to fulfillment of the terms and conditions specified herein, the Bank agrees to lend to the Borrower, under the terms and conditions of this Agreement and on the date(s) to be specified by the Borrower upon not less than three (3) Business Days' prior written notice to the Bank (each a "Closing Date"), an amount not to exceed \$900,000 in the aggregate. On the initial Closing Date, the Borrower shall execute and deliver to the Bank, to evidence the Loan made to the Borrower hereunder, its promissory note (the "Term Note") in substantially the form attached hereto as Exhibit A. The Loan evidenced by the Term Note shall bear interest and be repayable in the manner, on the dates and at the times specified in the Term Note.

Section 1.2. Advance Under the Loan. No advance of the proceeds of the Loan will be made until all conditions precedent to the making of the Loan provided for in Section 3.2 or Section 3.3 of this Agreement, whichever is applicable, are satisfied.

Section 1.3. Notice of Borrowing. The Borrower shall give the Bank written notice at least three (3) Business Days before the requested making of the advances under the Loan. The notice shall specify (i) the Closing Date for the requested advance, and (ii) the amount of the requested advance.

#### Section 1.4. Cash Collateral Account; Application of Rents.

(a) Borrower shall establish and maintain a cash collateral account with the Bank (the "Cash Collateral Account") and shall direct the Lessees to make all future payments of rent and other sums becoming due under the Leases directly to the Cash Collateral Account; and in furtherance thereof, shall: (1) execute and deliver to the Bank such documents as may be required to establish

such account, and (2) execute and cause each of the Lessees to acknowledge a notice of assignment in substantially the form attached hereto as Exhibit B (the "Notice of Assignment and Lessee's Consent and Agreement") directing each of the Lessees to make all payments under the Leases directly to the Cash Collateral Account. Notwithstanding anything contained herein to the contrary, this Section is not applicable to Conrail or to the future payments of rent and other monies becoming due under the Conrail Lease, provided, however that Conrail shall execute and acknowledge a notice of assignment in substantially the form attached hereto as Exhibit C (the "Conrail Notice").

(b) Any rents or other sums paid under the Leases and received by the Bank pursuant to this Agreement shall be deposited in, and held by the Bank as part of, the Cash Collateral Account and, so long as no Event of Default referred to in Section 8 hereof shall have occurred and be continuing, or event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default has then occurred and is continuing, all such rents and other sums shall be paid and applied as follows (subject in all events to sub-part (c) of this Section):

(i) Rents. The amounts from time to time received by the Bank which constitute payment of rents under the Leases shall be applied: first, to any unpaid costs or expenses of the Bank incurred pursuant to this Agreement or the Term Note; second, to unpaid late charges; third, to interest then due and payable on the Term Note; and fourth, to principal in accordance with the Term Note.

(ii) Casualty Payments. Any amounts received by the Bank which constitute payments on account of a casualty pursuant to the Leases shall be applied: first, in accordance with clauses first, second and third of sub-part (b)(i) of this Section; and second, to prepayment (in whole or in part, as applicable) of the principal of the Term Note, in inverse order of maturity.

(iii) Lease Default Payments. Any amounts received by the Bank pursuant to the exercise of the remedies provided in the Leases (or otherwise available at law or in equity as a result of the occurrence of an event of default under the Leases) shall be applied in accordance with clauses first and second of sub-part (b)(ii) of this Section.

(iv) Reimbursement of Maintenance Expenses. Upon receipt by the Bank of a request from the Borrower for reimbursement of maintenance expenses actually incurred and paid by the Borrower with respect to the Equipment (together with such evidence thereof as reasonably may be required by the Bank), the Bank shall reimburse the Borrower for such expenses from the Cash Collateral Account, so long as the Borrower is not then in default of its obligations hereunder.

(c) Except upon the occurrence of an Event of Default referred to in Section 8 hereof, while such Event of Default is continuing, no withdrawals or applications of monies from the Cash Collateral Account shall be made which would reduce the balance then held in the Cash Collateral Account below that amount equal to the next installment then becoming due under the Term Note.

(d) So long as an Event of Default has not occurred and is continuing, the Borrower may make withdrawals from the Cash Collateral Account to the extent such withdrawals do not reduce the balance then held in the Cash Collateral Account below that amount equal to the next installment then becoming due under the Term Note.

Section 1.5. Tax Payments. Any payments received by the Bank as amounts paid by the Lessees pursuant to the Leases in connection with the payment or reimbursement of taxes or other similar charges (hereinafter collectively referred to as "Tax Payments") promptly shall, so long as Borrower is not then in default of its obligations hereunder, be remitted to the Borrower.

Section 1.6. Evidence of Indebtedness. The Loan and the Borrower's obligation to repay the Loan with interest shall be evidenced by this Agreement, the records of the Bank and the Term Note.

## II. COLLATERAL

Section 2.1. Security for Loan Advances. As security for the payment by the Borrower to the Bank of all amounts payable hereunder and under the other Loan Documents, and for the performance by the Borrower of its obligations hereunder and under the other Loan Documents (all such obligations, the "Obligations"), the Borrower does hereby grant, bargain, sell, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and create in favor of the Bank a first priority chattel mortgage lien on and security interest in (the "Lien") the following described property, rights and privileges (which collectively, including all property hereafter specifically subjected to the Lien by the terms hereof or by any instrument supplemental hereto, are herein called the "Collateral"):

(1) the Equipment leased to the Lessees pursuant to the terms of the Leases and all accessions, improvements and attachments thereto and all substitutions, renewals or replacements thereof;

(2) all of the Borrower's right, title and interest as lessor in and to the Leases and all extensions or renewals thereof, and any and all leases hereafter entered into by Borrower with respect to the Equipment, including, without limitation, the right to receive all payments and other sums due thereunder, for or with respect to the Equipment (all such payments, "Rents");

(3) all of the Borrower's right, title and interest in and to the Cash Collateral Account and all monies now or hereafter comprising the Cash Collateral Account and all other transferable rights, powers and privileges incident thereto;

(4) all of the Borrower's right, title and interest in and to all cash and non-cash proceeds (including insurance proceeds and condemnation awards) of any of the foregoing; and

(5) all books and records relative thereto, whether or not in the Borrower's possession.

Notwithstanding the foregoing, there shall be excluded from the Lien the Borrower's right to receive all payments in the nature of personal indemnification or proceeds of liability insurance relating to the Equipment (all such payments "Excepted Payments").

The parties agree that, notwithstanding anything contained herein to the contrary, the Borrower shall continue to remain liable under the Leases and Borrower covenants and agrees that it shall perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Bank shall not be required or obligated in any manner to perform or fulfill any obligations of the Borrower under or pursuant to said Lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Borrower does hereby constitute the Bank as its true and lawful attorney irrevocably, with full power (such power coupled with an interest) in the name of the Borrower or otherwise to ask, require, demand, receive, and compound and give acquittance for any and all monies and claims for monies due and to become due under or arising out of the Leases (other than Excepted Payments), to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Bank alone may deem necessary or advisable in the premises; provided, however, that the Bank shall not exercise such power of attorney so long as the Borrower is not in default of its obligations hereunder. In addition, to the extent the Borrower receives any rents or other sums payable under the Leases or in connection with the Collateral (other than from the Cash Collateral Account pursuant to Section 1.4(b)(iv) and 1.4(d) hereof and pursuant to Section 1.5 hereof), the Borrower agrees to promptly remit it to the Bank.

The Borrower further agrees that the Bank shall have in respect of the Collateral all of the rights and remedies of a secured party under the applicable governing Uniform Commercial Codes ("UCC"). The Borrower covenants and agrees to execute and deliver such

instruments, documents, financing statements and other filings necessary in the opinion of the Bank to duly perfect such security interest and mortgage lien.

Upon payment and performance of all of Borrower's Obligations secured by the Leases, the security interest created hereby shall terminate and shall be of no further force or effect.

### III. CLOSINGS; CONDITIONS PRECEDENT.

Section 3.1 Closings. The Bank has agreed to make the Term Loan to the Borrower on the express condition that the Borrower secure its obligations hereunder by assigning to the Bank all of its right, title and interest in and to the Collateral. The Bank is not obligated to make the Term Loan in more than two advances pursuant to the conditions precedent herein.

The closings shall take place at the offices of Ober, Kaler, Grimes & Shriver, counsel to the Bank, at 120 E. Baltimore Street, Baltimore, Maryland 21202 or at such other place as the parties may designate, on such day or days as the parties shall specify at least three (3) Business Days prior to each closing.

#### Section 3.2 First Funding.

The obligation of the Bank to make an initial advance (the "First Funding") hereunder shall be subject to the Borrower's satisfaction, on or before December 15, 1990, of the following conditions precedent:

(a) Bank shall have received written evidence signed by authorized agents of the Lessees that the Lessees, in the aggregate, have accepted no less than forty (40) Items of the Equipment leased under the Leases, in the aggregate, pursuant to their respective Leases.

(b) Delivery to the Bank of a fully executed copy of each of the following documents:

(i) the Term Note,

(ii) each of the Notices of Assignment and Lessee's Consent and Agreement duly executed on behalf of RailTex, NSSC and Southern Railway, respectively, and the Conrail Notice,

(iii) Uniform Commercial Code financing statements in form acceptable to the Bank and its counsel,

(iv) the executed original of each of the Leases, together with evidence that each of the Leases or a memorandum of lease with respect to each of the Leases has been recorded with the Interstate Commerce Commission ("I.C.C.") pursuant to the

Interstate Commerce Act, 49 U.S.C. § 11303 and in accordance with 49 CFR Part 1177,

(v) Loan Agreement Supplement No. 1 (substantially in the form attached hereto as Exhibit D).

(c) Solely with respect to those Items of the Equipment which have then been accepted for purposes of the Leases by the Lessees (the "Accepted Equipment"), Borrower shall cause to be delivered to the Bank the following:

(i) certified invoices from the seller and/or rehabilitator (collectively, the "Provider") which confirm the cost/unit, the rehabilitation cost/unit and the total cost (the "Total Cost") of the Accepted Equipment, specified in the chart attached to the commitment letter from the Bank and accepted by the Borrower on October 25, 1990 (the "Commitment Letter"), together with:

(1) if the advance with respect to such invoice is to be made to the Borrower, a certification from the Provider that the amount of the invoice has been paid in full and no further amounts are payable to it with respect to the Accepted Equipment; or

(2) if the advance with respect to such invoice is to be made directly to the Provider, the Borrower's written authorization to disburse the advance to the Provider and a certification from the Provider that no further amounts are payable to it with respect to the Accepted Equipment,

(ii) an opinion of an independent qualified appraiser reasonably satisfactory in form and substance to the Bank, concluding that the fair market value of the Equipment after taking into consideration the rehabilitation of the Equipment as contemplated under the Leases is equal to or greater than the fair market value of the Equipment after taking into consideration the rehabilitation of the Equipment as contemplated under the Leases, as specified in the chart attached to the Commitment Letter, and

(iii) a certification in writing by the Mechanical Department of the Association of American Railroads ("AAR") that the Rule 88 work on a sample of each of the NSSC Cars, the RailTex Cars, and the Southern Railway Cars has been satisfactorily completed.

(d) All legal matters incident to the Loan and all documents necessary in the opinion of the Bank to the making of the Term Loan shall be satisfactory in all material respects to the Bank and its counsel.

(e) The Bank shall receive : (i) a certificate of the Secretary of the Borrower, in a form acceptable to the Bank in all

respects, dated as of the date hereof and certifying (1) that attached thereto is a true, complete and correct copy of resolutions adopted by the Board of Directors of the Borrower duly authorizing the execution, delivery and performance of this Agreement and the other Loan Documents, and the Obligations, and (2) as to the incumbency and specimen signature of each officer of the Borrower executing this Agreement and the other Loan Documents, and a certification by the President or any Vice President of the Borrower as to the incumbency and signature of the Secretary of the Borrower; (ii) such other documents as the Bank reasonably may require the Borrower to execute, in form and substance acceptable to the Bank; and (iii) such additional information and reports as the Bank reasonably may deem necessary.

(f) The Borrower shall have satisfied the Bank that any and all insurance required by Section 6.7 of this Agreement is in effect as of the date of this Agreement, and unless waived by the Bank in writing that the Bank has been named as an additional loss payee under each and every policy relating to the Collateral.

(g) This Agreement and Loan Supplement No. 1 shall have been duly recorded with the I.C.C. pursuant to 49 U.S.C. § 11303 and in accordance with 49 CFR Part 1177.

(h) Borrower shall have good and marketable title to all of the Accepted Equipment and the Leases, free and clear of all liens, encumbrances and interests of those claiming by, through or under the Borrower (except the Lien) and the Bank will have a first priority chattel mortgage lien on and security interest in all such Collateral.

(i) A signed opinion of counsel to the Borrower dated as of the date of such closing, substantially in the form of Exhibit E.

(j) The representations and warranties of Borrower contained herein and in any certificate delivered pursuant hereto shall be true and correct on and as of the date of such closing; on such closing date there shall be no default hereunder or under any of the Leases nor shall there have occurred any event which, but for the lapse of time or the giving of notice, or both, would be such a default.

The amount of funds to be advanced by the Bank to the Borrower in the First Funding shall be calculated as 77.6 percent of the Total Cost of the Accepted Equipment.

### Section 3.3 Second Funding.

The obligation of the Bank to make a second advance of funds (the "Second Funding") hereunder shall be subject to the fulfillment by the Borrower, on or before December 31, 1990, of the following conditions precedent:

(a) The provisions of Section 3.2 shall have been satisfied with respect to the First Funding.

(b) The provisions of Section 3.2(c) and (h) shall have been satisfied with respect to the additional Items of the Equipment which have been accepted for purposes of the Leases by the Lessees after the First Funding (the "Additional Accepted Equipment").

(c) Delivery to the Bank of a fully executed copy of Loan Agreement Supplement No. 2, in substantially the form attached hereto as Exhibit F.

(d) Loan Agreement Supplement No. 2 shall have been duly recorded with the I.C.C. pursuant to the Interstate Commerce Act, 49 U.S.C. § 11303 and in accordance with 49 C.F.R. § 1177.

(e) The representations and warranties of Borrower contained herein and in any certificate delivered pursuant hereto shall be true and correct on and as of the date of such closing; on such closing date there shall be no default hereunder or under any of the Leases nor shall there have occurred any event which, but for the lapse of time or the giving of notice, or both, would be such a default.

The amount of funds to be advanced by the Bank to the Borrower in the Second Funding shall be calculated as 77.6 percent of the Total Cost of the Additional Accepted Equipment (not to exceed \$900,000.00 in the aggregate as to the First Funding and the Second Funding); provided, however, that if the Accepted Equipment and the Additional Accepted Equipment comprises all eighty-three (83) Items of the Equipment, the amount of funds to be advanced by the Bank to the Borrower in the Second Funding shall be calculated as the difference between \$900,000.00 and the amount of funds advanced in the First Funding.

#### Section 3.4 Post-Closing.

As promptly as reasonably practicable after the Second Funding, the Borrower shall cause to be delivered to the Bank evidence reasonably satisfactory to the Bank and its counsel that the Car Construction Committee of the AAR has approved as having been satisfactorily performed the Rule 88 work with respect to the NSSC Cars, the RailTex Cars and the Southern Railway Cars. If the Car Construction Committee of the AAR does not approve the Rule 88 work with respect to an Item of the Equipment, at its own expense, the Borrower promptly shall cause to be taken all required corrective action; and, as promptly as reasonably practicable, shall cause to be delivered to the Bank evidence reasonably satisfactory to the Bank and its counsel that the Car Construction Committee of the AAR has approved as having been satisfactorily performed the Rule 88 work with respect to such Item of the Equipment.

#### IV. UNCONDITIONAL OBLIGATIONS

The payment and performance by the Borrower of the Obligations shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Bank, and the Borrower shall pay absolutely net during the term of the Term Loan all of the Obligations, free of any deductions and without abatement, diminution or set-off; and until payment in full of all of the Obligations, the Borrower: (a) will not suspend or discontinue any payments provided for in the Term Note, (b) will perform and observe all of its other agreements contained in this Agreement, including (without limitation) all payments required to be made to the Bank, and (c) will not terminate or attempt to terminate this Agreement for any cause.

#### V. REPRESENTATIONS AND WARRANTIES

To induce the Bank to make the Term Loan, the Borrower hereby represents and warrants to the Bank that:

Section 5.1 Good Standing. The Borrower (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, which is the state of the Borrower's incorporation, (b) has the full corporate power and authority to own and hold under lease its property and to carry on its business as now being conducted, and (c) is duly qualified and licensed to do business as a foreign corporation in good standing in each jurisdiction in which the character of its properties or the nature of its business makes such qualification necessary.

Section 5.2 Power and Authority. The Borrower has full corporate power and authority to execute and deliver this Agreement and each of the other Loan Documents, and the Borrower has the corporate power and authority to make the borrowings hereunder, and to incur the Obligations, all of which have been duly authorized by all proper and necessary corporate action. No consent or approval of stockholders or to the best of the Borrower's knowledge of any public authority or any other Person, is required as a condition to the execution, validity or enforceability of this Agreement or any of the other Loan Documents.

Section 5.3 Binding Agreements. Assuming due execution and delivery by the Bank, this Agreement and each of the other Loan Documents have been duly executed by the Borrower, constitute valid and legally binding obligations of the Borrower, enforceable against the Borrower in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 5.4 Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened before any court, arbitrator or administrative agency that could materially affect the financial condition or operations of the Borrower, the authority of the Borrower to enter into this Agreement or any of the other Loan Documents or its ability to perform hereunder and thereunder.

Section 5.5 No Conflicting Agreements. There is (a) no charter, by-law or preference stock provision of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or affecting Borrower's property, and (b) to the knowledge of the Borrower, no provision of law or order of court binding upon the Borrower which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or of any of the other Loan Documents or which would be violated as a result of such execution, delivery or performance.

Section 5.6 Financial Condition. The year-end internally prepared financial statements of the Borrower dated as of August 31, 1990, are complete and correct and fairly present the financial condition of the Borrower as of the dates and for the periods referred to therein. The Borrower's annual financial statements dated as of August 31, 1990, have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period involved. There are no liabilities in excess of \$100,000 in the aggregate, direct or indirect, fixed or contingent, of the Borrower as of the date of the most recent financial statements submitted to the Bank that are not reflected therein or in the notes thereto. There has been no material adverse change in the financial condition or operations of the Borrower since the date of the most recent financial statements submitted to the Bank (and to the knowledge of the Borrower no such adverse change is pending or threatened), and the Borrower has not guaranteed the obligations of, or made any investment in or advances to, any company, individual, or other entity except as disclosed in such financial statements.

Section 5.7 Taxes. The Borrower has filed all Federal, state and local tax returns that, to the knowledge of the Borrower, are required to be filed, and has paid all taxes as shown on such returns or on any assessment received by it, to the extent that such taxes have become due, unless and to the extent only that such taxes, assessments and governmental charges are currently being contested in good faith and by appropriate and diligent administrative and/or legal proceedings by the Borrower and adequate reserves therefor have been established as required under generally accepted accounting principles. To the extent the Borrower believes it advisable to do so, the Borrower has set up reserves that it believes to be adequate for the payment of additional taxes for years that have not been audited by the respective tax authorities.

Section 5.8 Compliance With Law. The Borrower is not in violation of any law, ordinance, governmental rule or regulation to which it is subject (the violation of which would materially and adversely affect the operations or financial condition of the Borrower), and the Borrower has obtained any and all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties and the conduct of its business (the failure to obtain which would materially and adversely affect the operations or financial condition of the Borrower), and for the performance of its obligations under the Loan Documents.

Section 5.9 Place(s) of Business and Location of Collateral. The address of the Borrower's chief executive offices is as specified in the preamble to this Agreement. Except for the "chattel paper" (as such item is defined in the UCC and interpretive case law persuasive in the courts of any applicable jurisdiction) copies of the Leases which will be turned over to the Bank pursuant to the terms hereof, all books and records pertaining to the Collateral are and will be located at the Borrower's chief executive offices. The Borrower will promptly advise the Bank in writing of the opening of any new place or places of business or the closing of any of its existing places of business, and of any change in the location of the place or places where the books and records concerning the Collateral, or any part thereof, are kept.

To the best of the Borrower's knowledge, the proper and only places to file the Agreement, the Leases, any financing statements and any other recordation documents or filings to perfect and otherwise give priority to the Lien on the Collateral is as follows: a copy of this Agreement shall be, and a recordation copy of the Leases, is now and shall be at all times until the Lien thereon is released by the Bank, filed with the I.C.C. in accordance with 49 U.S.C. §11303 and 49 CFR Part 1177 (and any successor laws and regulations); Uniform Commercial Code financing statements-Form UCC-1 evidencing the granting of the Lien shall be filed with the Clerk of the Superior Court for Fulton County, Georgia, the State Department of Assessments and Taxation of Maryland and the Clerk of the Circuit Court for Baltimore City, Maryland ("UCC-1s"); lease notice filings (as provided for under the UCC or under any other applicable version of such laws) evidencing the Borrower's interest as "Lessor" in the Equipment and any Collateral related thereto shall be filed with the Secretary of State of the State of Indiana, the Recorder's Office of Monroe County, Indiana, the Secretary of State of the State of Texas, the County Clerk for Bexar County, Texas, the State Corporation Commission of the Commonwealth of Virginia, the Clerk of the Circuit Court of Roanoke County, Virginia, the Secretary of the Commonwealth of Pennsylvania and the Prothonotary of Philadelphia County, Pennsylvania. To the best of the Borrower's knowledge, no other filings are necessary under any other applicable law for the purposes of securing or perfecting the Lien against the Collateral or causing it to have first priority status at all times until released by the Bank. To the best of the Borrower's knowledge, all

of the filings referenced above shall, when recorded in the appropriate offices or registries therefor, constitute a valid duly perfected first priority chattel mortgage lien on and security interest in the Collateral (subject only to the provisions of Section 6.17 of this Agreement).

Section 5.10 Title to Properties. The Borrower has good and marketable title to the Collateral. The Collateral is free and clear of any and all mortgages, pledges, liens, charges and other encumbrances (other than the Lien), of those claiming by, through and under the Borrower. The Borrower is not aware of any one claiming a lien or other interest in the Collateral by virtue of its dealings with the Lessee; and the Borrower has not heretofore assigned or pledged any of its right, title or interest in any of the Collateral, except as has been otherwise previously disclosed to the Bank in writing.

Section 5.11 Margin Stock. None of the proceeds from the Loan will be used, directly or indirectly, by the Borrower for the purpose of purchasing or carrying, or for the purpose of reducing or retiring any indebtedness that was originally incurred to purchase or carry any "margin security" within the meaning of Regulation G (12 CFR Part 207), or "margin stock" within the meaning of Regulation U (12 CFR Part 221), of the Board of Governors of the Federal Reserve System (herein called "margin security" and "margin stock") or for any other purpose that might make the transactions contemplated herein a "purpose credit" within the meaning of said Regulation G or Regulation U, or, to the best of the Borrower's knowledge, cause this Agreement to violate any other regulation of the Board of Governors of the Federal Reserve System or the Securities Exchange Act of 1934, as amended, or the Small Business Investment Act of 1958, as amended, or any rules or regulations promulgated under any of such statutes.

Section 5.12 ERISA. Except for the Borrower's 401(k) Plan, Cafeteria Plan (IRC § 125), and health and welfare benefit programs, the Borrower has no pension, profit sharing or other similar plan in effect and is not subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Section 5.13 Governmental Consents. Neither the nature of the Borrower or of its business or properties, nor any relationship between the Borrower and any other entity or person, nor any circumstance in connection with the making of the Term Loan, or the offer, issue, sale or delivery of the Term Note is such as to require the consent, approval or authorization of, or filing, registration or qualification with, any governmental authority, on the part of the Borrower, as a condition to the execution and delivery of this Agreement or any of the other Loan Documents, the borrowings hereunder, the offer, issue, sale or delivery of the Term Note.

Section 5.14 Full Disclosure. The financial statements referred to in this Article V do not, nor does this Agreement, nor do any written statements furnished by the Borrower or any other person to the Bank in connection with the making of the Loan, contain any untrue statement of fact or omit a fact necessary to make the statements contained therein or herein not misleading. There is no fact the Borrower is aware of that the Borrower has not disclosed to the Bank in writing which materially affects or, will or could prove to materially affect the properties, business, prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to perform its obligations under this Agreement.

Section 5.15 No Default. There is no Event of Default (as hereinafter defined) which has not otherwise been waived by the Bank and no event has occurred and no condition exists that with the giving of notice or the passage of time, or both, would constitute an Event of Default. The Borrower is not in default under the terms of any other agreement or instrument to which it is a party or by which it, the Collateral or any of its property may be bound or subject, with respect to any evidence of indebtedness or liability for borrowed money.

Section 5.16 Recitals. The Recitals to this Agreement are true and accurate in each and every respect and are all incorporated by reference herein.

Section 5.17 The Leases. Each of the Leases constitutes the legal, valid and binding obligations of each of the parties thereto, is enforceable by such parties in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law) and is in full force and effect; no event of default, or event which with the giving of notice or passing of time, or both, would constitute an event of default has occurred under any of the Leases and there are no matured but unsatisfied claims against the Borrower in favor of any of the Lessees which could be set off against the payments due and to become due under the Leases. The Borrower is lawfully entitled to receive payment of all monies and other sums due and to become due under the Leases, free and clear of any and all liens, encumbrances and other adverse rights whatsoever, except for the Lien. The Leases contain no prohibition against assignment and by their terms permit the Borrower to assign its rights to all payments due thereunder to the Bank.

## VI. AFFIRMATIVE COVENANTS OF BORROWER

Until payment in full and the performance of all of the Obligations hereunder, the Borrower shall:

### Section 6.1 Financial Statements. Furnish to the Bank:

(a) Annual Statements and Certificates. As soon as available but in no event more than one hundred twenty (120) days after the close of each of the Borrower's fiscal years, (i) a copy of the financial statement in reasonable detail satisfactory to the Bank relating to the Borrower, prepared in accordance with generally accepted accounting principles and reviewed by an independent certified public accountant, which financial statement shall include a balance sheet as at the end of such fiscal year, profit and loss statement and a statement of cash flows.

(b) Annual Certificate of Chief Financial Officer. As soon as available but in no event more than one hundred twenty (120) days after the close of each of the Borrower's fiscal years, a certificate of the chief financial officer of the Borrower stating whether any event has occurred that constitutes an Event of Default or that would constitute an Event of Default with the giving of notice or the lapse of time, or both, and, if so, stating the facts with respect thereto.

(c) Semi-Annual Statements and Certificates. As soon as available but in no event more than sixty (60) days after the close of the Borrower's second fiscal quarter, the internally prepared balance sheet and income statements of the Borrower for the six month period then ended, certified by the chief financial officer of the Borrower, and accompanied by a certificate of that officer stating whether any event has occurred that constitutes an Event of Default or that would constitute an Event of Default with the giving of notice or the lapse of time, or both, and, if so, stating the facts with respect thereto.

(d) Additional Reports and Information. With reasonable promptness, such additional information, reports or statements as the Bank may from time to time reasonably request.

Section 6.2 Taxes and Claims. Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or any of its income or properties prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any of its properties; provided, however, the Borrower shall not be required to pay any such tax, assessment, charge, levy or claim, the payment of which is being contested in good faith and by appropriate and diligent administrative and/or legal proceedings.

Section 6.3 Corporate Existence. Maintain its corporate existence in good standing in the jurisdiction in which it is

incorporated and in each jurisdiction where it is required to register or qualify to do business, or to perform its obligations under the Loan Documents.

Section 6.4 Compliance with Laws Generally. Comply with all applicable Federal (including those of the United States and Canada), state and local laws, rules and regulations.

Section 6.5 Governmental Regulation. Promptly notify the Bank in writing in the event that the Borrower receives any notice, claim or demand from any governmental agency that alleges that the Borrower is in violation of any of the terms of, or has failed to comply with any applicable order issued pursuant to, any Federal or state statute regulating its operation and business, including, but not limited to, the Occupational Safety and Health Act and the Environmental Protection Act.

Section 6.6 Litigation. Give prompt notice in writing, with a full description to the Bank, of all litigation and of all proceedings before any court or any governmental or regulatory agency affecting the Borrower which, if adversely decided, would materially affect the conduct of the Borrower's business, the financial condition of the Borrower or in any manner affect the Collateral or the Borrower's performance of its obligations under the Loan Documents.

Section 6.7 Insurance. Cause to be carried and maintained casualty insurance and public liability insurance in respect of the Equipment in the amounts and against such risks as the lessor is obligated to carry and maintain under its Lease; all policies with respect to such insurance shall name the Bank as an additional insured and loss payee (for all policies insuring against loss or damage), as its interests may appear, shall provide for at least thirty (30) days' prior written notice by the insurance carrier to the Bank in the event of cancellation, modification or expiration and shall include waivers by the insurer of all claims for premiums against the Bank and a standard mortgagee waiver in favor of the Bank. In the event that the Borrower and/or the Lessee shall fail to maintain insurance as herein provided, the Bank may (at its sole option) provide such insurance and in such event the Borrower shall be liable to the Bank for the cost thereof together with interest on the amount of such cost from the date of the Bank's payment thereof until the Bank is fully reimbursed therefor at the rate of interest provided in Section 9.2 of this Agreement; and so long as no Event of Default has occurred and is continuing, any insurance proceeds received by the Bank shall be distributed in accordance with the Leases and Article I hereof. Notwithstanding the foregoing, the Bank agrees that so long as the Leases remain in effect, the Borrower and/or the Lessees may self insure for physical damage to the Equipment and for public liability up to a limit of \$5,000,000 per occurrence.

Section 6.8 Maintenance of Properties. Keep and maintain, or cause the Lessee thereof to keep and maintain, the Equipment in good operating condition; make, or cause the Lessee thereof to make, all proper repairs, renewals, replacements, additions and improvements thereto needed to maintain such properties in good operating condition; and comply and cause each Lessee to comply with all laws, rules, regulations and orders applicable to the Collateral or any part thereof.

Section 6.9 Maintenance of the Collateral. Not permit anything to be done to the Collateral that may impair the value thereof. The Bank, or an agent designated by the Bank, shall be permitted to enter the premises of the Borrower, the Lessees and other person in possession thereof, and examine, audit and inspect the Collateral at any reasonable time and from time to time without notice. The Bank shall not have any duty to, and the Borrower hereby releases the Bank from all claims of loss or damage caused by the delay or failure to collect any payment due under or enforce any term of the Leases or to preserve any rights against any other party with an interest in the Collateral.

Section 6.10 Other Liens, Security Interests, etc. Keep the Collateral free from all liens, security interests and claims of every kind and nature, other than those in favor of the Bank.

Section 6.11 Defense of Title and Further Assurances. At its expense defend the title to the Collateral (or any part thereof), and promptly upon request execute, acknowledge and deliver any financing statement, renewal, affidavit, deed, assignment, continuation statement, security agreement, certificate or other document the Bank may reasonably require in order to perfect, preserve, maintain, protect, continue and/or extend the Lien and its priority or to obtain the full benefits of the assignment hereunder and of the rights, powers and benefits granted in this Agreement. The Borrower shall be solely liable for and pay to the Bank on demand all taxes, costs and expenses reasonably and actually incurred by the Bank in connection with the preparation, execution, recording and filing of any such document or instrument.

Section 6.12 Enforcement of Lease Covenants. Cause the Lessees to comply with each and every agreement and obligation to be performed by them under the respective Leases.

Section 6.13 Books and Records. (a) Keep and maintain accurate books and records, (b) make entries on such books and records disclosing the Bank's assignment of, and security interest in and lien on, the Collateral and all collections received by the Borrower pursuant to the Leases, (c) furnish to the Bank promptly upon request such information, reports, contracts and other data concerning the Lessees and the Collateral and all contracts and collection(s) relating thereto as the Bank reasonably may from time to time specify, (d) unless the Bank shall otherwise consent in writing, keep and maintain all such books and records mentioned in

(a) above at its chief executive offices, and (e) permit any person designated by the Bank to enter the premises of the Borrower and examine, audit and inspect the books and records at any reasonable time and from time to time without notice.

Section 6.14 Deposit of Lease and Collateral Payments. Promptly upon receipt, deposit all moneys and items of payment constituting Collateral into the Cash Collateral Account in the original form received by the Borrower (except for the endorsement of the Borrower where necessary, which endorsement the Borrower agrees to make, and the Bank, by its duly authorized officers or nominee, may also make such endorsement on the Borrower's behalf pursuant to the power of attorney granted to the Bank in Section 2.1 of this Agreement). Pending deposit thereof to the Cash Collateral Account, the Borrower shall not commingle any such moneys or items of payment with any of its other funds or property but will hold them separate and apart therefrom in trust and for the account of the Bank until deposit into the Cash Collateral Account or other delivery thereof is made to the Bank.

Section 6.15 Business Names. Promptly notify the Bank of any change in the name under which it or any Lessee conducts its or their respective business.

Section 6.16 Use and Possession of the Equipment. The Equipment will be used by the Borrower, the Lessees or any affiliate thereof, upon lines of railroad owned or operated by them or upon lines of railroad over which either of them has trackage or other operating rights or over which railroad equipment of the Borrower, the Lessees or any affiliate, is regularly operated pursuant to contract, and may be used by connecting or other carriers in the usual interchange of traffic but only upon and subject to the terms and conditions of this Agreement and the Leases; provided, however, that neither Borrower nor any Lessee or affiliate thereof shall use or permit the use of any Item of Equipment outside of the United States of America.

Section 6.17 Identification Marks. The Borrower will cause the Items of Equipment to be numbered with the respective identification numbers set forth in Schedules I, II, III and IV hereto, and will cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Equipment, in letters not less than one inch in height, the words "Ownership Subject to Documents Filed with the Interstate Commerce Commission", with appropriate changes thereof as from time to time may be required by law, or reasonably required in the opinion of the Bank, in order to protect the Lien on and the Borrower's interest in such Item of Equipment and the rights of the Borrower under the Lease thereof and the rights of the Bank under the Loan Documents. The Borrower will not permit or suffer any Item of Equipment to be placed into operation or the exercise of any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be

removed, defaced, obliterated or destroyed. The Borrower will not suffer or permit any changes to the identification number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Bank and duly filed and deposited by the Borrower or a Lessee in all public offices where the subject Lease and this Agreement shall have been filed and deposited and (ii) the written representation of the Borrower or the Lessee shall have been furnished to the Bank to the effect that such statement has been so filed and deposited, and that, to the best of the Borrower's knowledge, no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Bank and the Borrower in such Item of Equipment.

Except as provided in the immediately preceding paragraph, the Borrower will not allow the name of any Person to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that an Item of Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates.

Section 6.18 Notice of Casualty or Default. The Borrower further covenants and agrees that it will give the Bank prompt written notice of any event or condition constituting an event of default or casualty under any Lease, upon a responsible officer of the Borrower having actual knowledge of such event or condition providing the details of the occurrence thereof. For purposes of this Section 6.18 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Borrower in this Agreement contained, any corporate officer of the Borrower who, in the normal performance of his operational responsibilities, would have knowledge of such event or condition and the requirements of this Agreement with respect thereto. The Borrower further agrees that such written notice shall certify to the existence of such an occurrence; and, in the case of an event of default, whether or not the Lessee has undertaken to cure or has cured such default; and in the case of a casualty, (a) whether or not the Lessee has repaired or replaced the Item or Items of Equipment affected thereby, or (b) the amount which the Lessee shall be obligated to pay as a result of such casualty under the terms of the Lease and any adjustments to Lessee's rental obligations under the Lease as a result of such payment. Such written notice shall be provided to the Bank within fifteen (15) business days of the Borrower's having actual knowledge of such event, and shall be signed by a duly authorized officer of the Lessee.

## VII. NEGATIVE COVENANTS OF BORROWER

Until payment in full and the performance of all of the Obligations, without the prior written consent of the Bank, the Borrower will not directly or indirectly:

Section 7.1 Mortgages and Pledges. Create, incur, assume or suffer to exist any assignment of, any mortgage, pledge, lien or other encumbrance of any kind upon, and any security interest in, any of the Collateral whether now owned or hereafter acquired, except (a) liens for taxes not delinquent and being contested in good faith by appropriate and diligent administrative and/or legal proceedings, and (b) mechanics', workmen's, materialmen's, landlords', carriers', or other like liens arising in the ordinary course of business with respect to obligations that are not due or that are being contested in good faith, and (c) the Lien.

Section 7.2 Merger, Acquisition or Sale of Assets. Enter into any merger or consolidation or acquire all or substantially all the assets of any person, firm, partnership, joint venture or corporation, or sell, lease or otherwise dispose of any material portion of its assets (except assets sold, leased or disposed of in the ordinary course of business); provided, however, that this Section 7.2 shall in no way restrict the Borrower from forming a subsidiary entity or participating in a joint venture and transferring assets other than the Collateral to such entity or joint venture for the purpose of acquiring and/or refurbishing rolling stock for lease, sale or other disposition; and provided further, that this Section 7.2 shall in no way restrict the Borrower from acquiring railroad rolling stock solely because such railroad rolling stock constitutes all or substantially all of the assets of the selling party; provided, however that in all events the Borrower shall maintain a net worth not less than \$700,000.

Section 7.3 Location of Collateral. Except as contemplated hereunder, transfer, or permit the transfer, to another location of any of the Collateral (other than the Equipment Collateral) without the Bank's prior written consent; provided, however, that the Borrower may transfer the Collateral or the books and records related thereto to another location if the Borrower shall have provided to the Bank prior to such transfer an opinion of counsel or written representation of the Borrower acceptable to the Bank addressed to the Bank to the effect that the Bank's perfected security interest shall not be affected by such move or if it shall be affected, setting forth the steps necessary to continue the Bank's perfected security interest together with the commencement of such steps by the Borrower at its expense.

Section 7.4 The Leases. Except as expressly permitted hereunder, it will not assign or pledge, any of its right, title or interest hereby assigned, to anyone other than the Bank, and the Borrower will not, except as provided in or permitted by this Agreement, accept any payment from any Lessee, acquiesce to, permit, enter into any agreement providing for, or suffer to occur, any amendment, supplement, modification or termination (other than by its terms) of any Lease, execute any waiver or modification of, or consent under, settle or compromise any claim against any Lessee arising under the Leases or submit or consent to the submission of any dispute, difference or other matter arising under or in respect

of the Leases to arbitration thereunder, or fail to comply in any material respect with all of its obligations under such Leases.

Section 7.5 ERISA. Set up or establish any pension, profit sharing or other similar plan; provided, however, that this Section 7.5 shall in no way limit or impair the continued operation and maintenance of any existing ERISA plan maintained by the Borrower.

#### VIII. EVENTS OF DEFAULT

The occurrence of one or more of the following events shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

Section 8.1 Failure to Pay the Obligations. The Borrower shall fail to make any payment of principal of or interest on the Term Note or otherwise pay any of the Obligations within five (5) days after the later of (a) the date of receipt of written notice that the same is due and payable, or (b) the date on which same is due and payable.

Section 8.2 Breach of Representations and Warranties. Any representation or warranty made herein or in any report, certificate, opinion (including any opinion of counsel for the Borrower), financial statement or other instrument furnished in connection with the Obligations or with the execution and delivery of any of the Loan Documents shall prove to have been false or misleading in any material respect when made; provided, however, that if the representation or warranty is made in Section 5.10, the Borrower does not cure any defect in title or cause to be released any encumbrance on title (to the reasonable satisfaction of the Bank) within sixty (60) days after notice thereof to the Borrower from the Bank (or if the Borrower (a) commences appropriate efforts to so cure or release within such sixty (60) day period, and (b) diligently pursues such efforts, and (c) sets aside such reserves [in such amount and in a manner satisfactory to the Bank] as may be required by the Bank, then the Borrower shall have such additional time as reasonably may be required to effect such cure or obtain such release).

Section 8.3 Failure to Perform the Obligations. The Borrower shall default in the due observance and performance of any covenant, condition, obligation or agreement contained in this Agreement and such default shall continue unremedied for a period of thirty (30) days after written notice to the Borrower from the Bank.

Section 8.4 Default Under The Leases. An event of default shall occur under any of the Leases, and (a) such event of default is not cured by the Borrower or the Lessee (it being expressly

understood that the Borrower may cure an event of default by the Lessee as to the Bank) within forty-five (45) days after written notice thereof to the Borrower from the Bank, or (b) within forty-five (45) days after notice thereof to the Borrower from the Bank, the Borrower does not release the Items of the Equipment covered by such defaulted Lease(s) to another lessee or lessees on terms and conditions substantially similar to those of the defaulted Lease(s), provided, however, that the Bank is reasonably satisfied (at its sole discretion) as to the credit-worthiness of such new lessee or lessees:

Section 8.5 Receiver; Bankruptcy of Borrower. The Borrower shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its property, (b) admit in writing its inability to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) be adjudicated a bankrupt or insolvent, (e) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by the Borrower for the purposes of effecting any of the foregoing, (f) by any act indicating its consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for any of its property, or suffer any such receivership, trusteeship or proceeding which continues undischarged for a period of sixty (60) days.

Section 8.6 Receiver; Bankruptcy of Lessee. Any Lessee shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its property, (b) admit in writing its inability to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) be adjudicated a bankrupt or insolvent, (e) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by any Lessee for the purposes of effecting any of the foregoing, (f) by any act indicating its consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for any of its property, the obligations of the Lessee under the Lease shall not have been duly assumed in writing pursuant to a court order or decree and all defaults, if any, cured, within sixty (60) days after the occurrence of any of the foregoing events, and the Borrower does not re-lease the Items of the Equipment covered by such Lease(s) to another lessee or lessees on terms and conditions substantially similar to those of such Lease(s), provided, however, that the Bank is reasonably satisfied (at its sole

discretion) as to the creditworthiness of such new lessee or lessees.

Section 8.7 Judgment. Unless adequately insured in the opinion of the Bank, the entry of a final judgment for the payment of money involving more than \$50,000 against the Borrower or NSSC and the failure by the Borrower or NSSC to discharge the same, or cause it to be discharged, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered, or to secure a stay of execution pending appeal of such judgment.

Section 8.8 Execution; Attachment. Any execution or attachment shall be levied against the Collateral, or any part thereof, and such execution or attachment shall not be set aside, discharged or stayed within thirty (30) days after the same shall have been levied.

Section 8.9 Default Under Other Borrowings. Default shall be made by the Borrower with respect to any evidence of indebtedness or liability for borrowed money exceeding \$100,000 in the aggregate (other than the Loan) if the effect of such default is to accelerate the maturity of such evidence of indebtedness or liability or to permit the holder or obligee thereof to cause any indebtedness to become due prior to its stated maturity.

Section 8.10 Change in Management. Any change in the management of the Borrower such that Wilds Pierce is no longer the chief operating officer and chief executive officer of the Borrower unless due to death or disability.

## IX. RIGHTS AND REMEDIES UPON DEFAULT

Section 9.1 Remedies. Upon the occurrence of an Event of Default, and in every such event and at any time thereafter (unless the Bank has waived the Event of Default or accepted the Borrower's cure thereof, in either case as evidenced in a writing signed by the Bank), the Bank shall have, among other things, the rights, options, duties and remedies of a secured party, and the Borrower shall have the rights and duties of a debtor, under the UCC (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) and without limiting the generality of the foregoing, the Bank may exercise any one or more or all, and in any order, of the remedies hereinafter set forth:

(a) The Bank may declare the Obligations immediately due and payable, both as to principal and interest, without presentment, demand, protest, or any notice of any kind, all of which are hereby expressly waived, anything contained herein or in any of the other Loan Documents to the contrary notwithstanding.

(b) The Borrower shall, at the request of the Bank, promptly execute and deliver to the Bank such instruments of title or other documents as the Bank reasonably may deem necessary or advisable to enable the Bank or an agent or representative designated by the Bank, at such time or times and place or places as the Bank may specify, to obtain possession of all or any part of the Collateral. If Borrower shall for any reason fail to execute and deliver such instruments and documents after such request by the Bank the Bank shall be entitled in a proceeding to which the Borrower shall be a necessary party, to a judgment for specific performance of the covenants contained in the foregoing sentence, conferring upon the Bank the right to immediate possession and requiring the Borrower to execute and deliver such instruments and documents to the Bank. Subject to the rights of the Lessees, if any, under the Leases, the Bank shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Borrower or any other person in possession thereof, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold.

The Bank may, but shall not be obligated to, from time to time, at the expense of the Borrower, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Collateral, as it reasonably may deem proper. In each such case, the Bank shall have the right to use, operate, store, lease, control or manage the Collateral and to exercise all rights and powers of the Borrower relating to the Collateral as the Bank shall deem appropriate, including the right to enter into any and all such agreements with respects to the use, operation, storage, leasing, control or management of the Collateral or any part thereof; and the Bank shall be entitled to collect and receive directly all tolls, rents, issues, profits, products, revenues and other income of the Collateral and every part thereof, without prejudice, however, to any other right of the Bank under any provision of this Agreement to collect and receive all cash and other moneys held by, or required to be deposited with the Bank hereunder. In accordance with the terms of this Section 9.1(b), such tolls, rents, issues, profits, products, revenues and other income shall be applied to pay the expenses of using, operating, storing, leasing, controlling or managing the Collateral and of all maintenance, insurance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Bank may be required or reasonably may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Collateral or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Borrower in accordance with this Section 9.1(b)), and all other payments which the Bank may be required or authorized to make under any provision of this Agreement, including this

Section 9.1(b), as well as just and reasonable compensation for the services of all persons properly engaged and employed by the Bank for the purposes hereof.

(c) Subject to the rights of the Lessees, if any, under the Leases, the Bank may either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Borrower and the Lessee thereof at least ten (10) days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Collateral, or any part thereof, at public auction to the highest bidder or, unless prohibited under applicable law, at private sale, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Bank alone may determine in good faith to be commercially reasonable, and at any place (whether or not the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Bank or the Borrower may bid and become the purchaser at any such sale.

The Borrower hereby irrevocably constitutes the Bank the true and lawful attorney-in-fact of the Borrower (in the name of the Borrower or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for enforcement of the Lien whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Bank may consider necessary or appropriate, with full power of substitution, the Borrower hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Bank or any purchaser, the Borrower shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Bank or such purchaser all bills of sale or other title documents, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request. The Bank agrees that the Borrower shall have the rights of a "debtor" under Section 9-505(2) of the Uniform Commercial Code and shall be entitled to receive the notice referred to therein.

(d) Subject to the rights of the Lessees, if any, under the Leases, the Bank may proceed to protect and enforce its rights under this Agreement and the other Loan Documents by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the

enforcement of any other proper, legal or equitable remedy available under applicable law.

(e) Subject to the rights of the Lessees, if any, under the Leases, the Bank may proceed to exercise, using ordinary care, all rights, privileges and remedies of the Borrower under the Leases, and may exercise all such rights and remedies either in the name of the Bank or in the name of the Borrower for the use and benefit of the Bank.

(f) Each and every right, power and remedy herein given to the Bank specifically or otherwise in this Agreement shall be cumulative and shall be in addition to every, other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often in such order as may be deemed expedient by the Bank and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Bank in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Borrower or any Lessee or to be in acquiescence therein.

Section 9.2 Expenses. If the Borrower shall fail to pay the Obligations or otherwise fail to perform, observe or comply with any of the conditions, covenants, terms, stipulations or agreements contained in this Agreement or any of the other Loan Documents, the Bank without notice to or demand upon the Borrower and without waiving or releasing any of the Obligations or any Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Borrower (the "Expense Payments"), and may enter upon the premises of the Borrower for that purpose and take all such action thereon as the Bank may reasonably and in good faith consider necessary or appropriate for such purpose. All sums so paid or advanced by the Bank and all reasonable and actual costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith together with interest thereon at the rate of 2% per annum in excess of the then current interest rate payable on the Term Note from the date of payment until paid in full, shall be paid by the Borrower to the Bank on demand and shall constitute and become a part of the Obligations.

Section 9.3 Notice and Liquidation Costs. Any written notice of the sale, disposition or other intended action by the Bank with respect to the Collateral that is sent by first class mail, postage prepaid, to the Borrower at the address set forth in Part X hereof, or such other address of the Borrower that may from time to time be shown on the Bank's records, at least ten (10) days prior to such

sale, disposition or other action, shall constitute reasonable notice to the Borrower. The Borrower shall be liable for all costs and expenses, including, without limitation, attorney's fees and expenses, actually and reasonably incurred by or on behalf of the Bank in preparing for sale or other disposition, selling, managing, collecting or otherwise disposing of, the Collateral. All of such costs and expenses (the "Liquidation Costs") together with interest thereon from the date incurred until paid in full at a per annum rate of interest that is equal to the rate of interest set forth in the Term Note plus 2% per annum, shall be paid by the Borrower to the Bank on demand and shall constitute and become a part of the Obligations. Any proceeds of sale or other disposition of the Collateral will be applied by the Bank to the payment of the Liquidation Costs and Expense Payments, and any balance of such proceeds will be applied by the Bank to the payment of the balance of the Obligations in such order and manner of application as the Bank may from time to time in its sole discretion determine. After such application of the proceeds, any balance shall be paid to the Borrower or to any other party entitled thereto.

Section 9.4 Waiver of Borrower. To the extent now or at any time hereafter enforceable under applicable law, the Borrower covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension of law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Borrower acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Bank but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. Notwithstanding the foregoing, the provisions of this Section 9.4 shall be enforceable only to the extent permitted by law; and furthermore, nothing contained herein shall be deemed to constitute a waiver by the Borrower of its right to insist upon the Bank's disposition of the Collateral in a commercially reasonable manner following the occurrence of any Event of Default hereunder.

Section 9.5 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand

whatsoever, either at law or in equity, of the Borrower in and to the property sold, shall be a perpetual bar, both at law and in equity, against the Borrower, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Borrower, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessees under the Leases).

Section 9.6 Discontinuance of Remedies. In case the Bank shall have proceeded to enforce any right under the Loan Documents by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case the Borrower and the Bank shall be restored to their former position and rights hereunder with respect to the Collateral.

#### X. MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be deemed given when delivered by hand or courier, or three (3) days following the date when mailed by certified mail, postage prepaid, return-receipt requested (other than notices pursuant to Section 8.1, which may be sent by regular United States mail, postage prepaid), addressed as follows:

if to the Bank:           THE FIRST NATIONAL BANK OF MARYLAND  
                                  25 South Charles Street  
                                  Baltimore, Maryland 21201  
                                  Attention: Transportation Division

if to the                   RAILCAR, LTD.  
Borrower:                 1819 Peachtree Road, N.E.,  
                                  Suite 303  
                                  Atlanta, Georgia 30309-1847  
                                  Attention: Wilds Pierce, President

Section 10.2 Consents and Approvals. If any consent, approval, or authorization of any state, municipal or other governmental department, agency or authority or of any person, corporation, partnership or other entity having any interest therein, should be necessary to effectuate any sale or other disposition of the Collateral, the Borrower agrees to execute all such applications and other instruments, and to take all other action, as may be reasonably required in connection with securing any such consent, approval or authorization.

Section 10.3 Remedies, etc. Cumulative. Each right, power and remedy of the Bank as provided for in this Agreement or in any of the other Loan Documents or in the Leases or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or in any of

the other Loan Documents or in the Leases or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise or beginning of the exercise by the Bank of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Bank of any or all such other rights, powers or remedies. In order to entitle the Bank to exercise any remedy reserved to it herein, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

Section 10.4 No Waiver of Rights by the Bank. No failure or delay by the Bank to insist upon the strict performance of any term, condition, covenant or agreement of this Agreement or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant or agreement or of any such breach or preclude the Bank from exercising any such right, power or remedy at any later time or times. By accepting payment of any amount payable under this Agreement or under any of the other Loan Documents after the same is due and payable (and any applicable grace period with respect thereto has expired), the Bank shall not be deemed to waive the right either to require prompt payment when due of all other amounts payable under this Agreement or under any of the other Loan Documents, or to declare a default for failure to effect such prompt payment of any such other amount.

Section 10.5 Entire Agreement. This Agreement and the other Loan Documents shall completely and fully supersede all other prior agreements, both written and oral, between the Bank and the Borrower relating to the Obligations. Neither the Bank nor the Borrower shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the other Loan Documents for definition and determination of all of their respective rights, liabilities and responsibilities relating to the Obligations.

Section 10.6 Survival of Agreement; Successors and Assigns. All covenants, agreements, representations and warranties made by the Borrower herein and in any certificate, in the Loan Documents and in any other instruments or documents delivered pursuant hereto shall survive the making by the Bank of the Loan and the execution and delivery of the Term Note, and shall continue in full force and effect so long as any of the Obligations are outstanding and unpaid. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements by or on behalf of the Borrower, which are contained in this Agreement, shall inure to the benefit of the successors and assigns of the Bank, and all covenants, promises and agreements by or on behalf of the Bank, which are contained in this Agreement, shall inure to the benefit of the permitted successors and permitted assigns of the Borrower, but this Agreement may not be

assigned by the Borrower without the prior written consent of the Bank, which shall not be unreasonably withheld.

Section 10.7 Expenses. The Borrower agrees to pay all reasonable and actual out-of-pocket expenses of the Bank (including the fees and expenses of its legal counsel) in connection with the preparation of this Agreement and the Loan Documents, the recordation of this Agreement, the Leases, all UCC-1s and UCC-3s, and all financing statements and such other documents, amendments, instruments continuation statements or other filings as may reasonably be required by the Bank at the time of, or subsequent to, the execution of this Agreement to secure the Obligations (including any and all recordation tax and other costs and taxes incident to recording), the enforcement of any provision of this Agreement and the collection of the Obligations. The Borrower agrees to indemnify and save harmless the Bank for and from any liability resulting from the Borrower's failure to pay any required recordation tax, transfer taxes, recording costs or any other expenses incurred by the Bank in connection with the Obligations. The provisions of this Section shall survive the execution and delivery of this Agreement and the repayment of the Obligations. The Borrower further agrees to reimburse the Bank upon demand for all out-of-pocket expenses (including reasonable attorneys' fees and legal expenses) incurred by the Bank after the occurrence of an Event of Default and in connection therewith in enforcing any of the Obligations or any security therefor, which agreement shall survive the termination of this Agreement and the repayment of the Obligations.

Section 10.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

Section 10.9 Maryland Law Governs. This Agreement and all other related instruments and documents and the rights and obligations of the parties hereunder and thereunder shall, in all respects, be governed by, and construed in accordance with, the laws of the United States of America and to the extent applicable to the State of Maryland, including all matters of construction, validity and performance.

Section 10.10 Modifications. No modification or waiver of any provision of this Agreement or of any of the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstance.

Section 10.11 Illegality. If fulfillment of any provision hereof or any transaction related hereto or to any of the other

Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provisions herein contained other than the provisions hereof pertaining to repayment of the Obligations operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be void, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect; and if such provision pertains to repayment of the Obligations, then, if the Loan Documents cannot in good faith be amended by the parties to negate such invalidity and at the same time preserve repayment of the Obligations, at the option of the Bank, all of the Obligations of the Borrower to the Bank shall become immediately due and payable.

Section 10.12 Extension of Maturity. Should the principal of or interest on the Term Note become due and payable on other than a Banking Day, the maturity thereof shall be extended to the next succeeding Banking Day and in the case of principal, interest shall be payable thereon at the rate per annum specified in the Term Note during such extension.

Section "10.13 Gender, etc. Whenever used herein, the singular number shall include the plural, the plural the singular and the use of the masculine, feminine or neuter gender shall include all genders.

Section 10.14 Headings. The headings in this Agreement are for convenience only and shall not limit or otherwise affect any of the terms hereof.

## XI. DEFINITIONS

For the purposes hereof:

(a) Each accounting term not defined herein shall have the meaning given to it under generally accepted accounting principles as applied to the Borrower on a consistent basis by the Borrower's accountants in the preparation of its previous annual financial statements.

(b) "Banking Day" shall mean any day that is not a Saturday, Sunday or bank holiday in the State of Maryland.

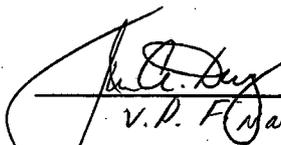
(c) "Person" shall include natural persons, corporations (which shall be deemed to include business trusts), associations, companies, partnerships and joint ventures.

(d) "Loan Documents" shall be the Loan Agreement, Chattel Mortgage and Security Agreement, the Term Note and all other documents executed by the Borrower or any other person at any time in connection with the Term Loan.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, under seal, as of the day and year first above written.

ATTEST:

RAILCAR, LTD.

  
\_\_\_\_\_  
J. P. Day  
V.P. Finance

By:  (SEAL)

ATTEST:

THE FIRST NATIONAL BANK OF MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
George Wood  
Senior Vice President

(d) "Loan Documents" shall be the Loan Agreement, Chattel Mortgage and Security Agreement, the Term Note and all other documents executed by the Borrower or any other person at any time in connection with the Term Loan.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, under seal, as of the day and year first above written.

ATTEST:

RAILCAR, LTD.

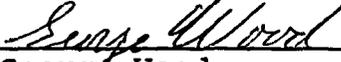
\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

ATTEST:

THE FIRST NATIONAL BANK OF MARYLAND

  
\_\_\_\_\_

By:  \_\_\_\_\_ (SEAL)  
George Wood  
Senior Vice President

EXHIBITS

- A. Term Note
- B. Notice of Assignment and Lessee's Consent and Agreement
- C. Conrail Notice
- D. Loan Agreement Supplement No. 1
- E. Opinion
- F. Loan Agreement Supplement No. 2



State of Maryland)  
*County* ) ss:  
~~City~~ of Baltimore)

On this 29 day of November, 1990, before me personally appeared George Wood, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE FIRST NATIONAL BANK OF MARYLAND, a national banking association, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[seal]

*Dorothy M. Smith*  
Notary Public

My Commission expires 12-1-94

Schedule I

Thirty-five (35) Plate B, 52 foot, 70 ton RBL boxcars with Dual Air-Pak Bulkheads subject to a letter agreement dated February 28, 1990 by Railcar, Ltd. and accepted and agreed to on April 27, 1990, by Consolidated Rail Corporation. The reporting numbers and marks of the 35 boxcars are LW 10000 through 10034.

Schedule II

Twelve (12) 100-ton former bulkhead flatcars with a minimum length between end sills of 64'6" to be subject to a lease dated September 10, 1990, by and between Railcar, Ltd. and RailTex, Inc. The reporting numbers and marks of the 12 flatcars are SCRF 301 through 312.

Schedule III

Thirty (30) 60-foot, 100-ton boxcars with 16 foot wide doors to be subject to a lease dated September 19, 1990, by and between Railcar, Ltd. and National Salvage & Service Corp. The reporting numbers and marks of the boxcars are NSSX 12000 through 12029.

Schedule IV

Six (6) rebuilt 100 ton, 83' centerbeam bulkhead flatcars (AAR car type F284) with an extreme height of 18'5" to be subject to a lease dated October 1, 1990, by and between Railcar, Ltd. and Southern Railway Company. The reporting numbers and marks of the flatcars are SOU 118330 through 118335.

EXHIBIT A  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

TERM NOTE

\$900,000.00

Baltimore, Maryland  
\_\_\_\_\_, 1990

FOR VALUE RECEIVED, RAILCAR, LTD., a Georgia corporation (the "Borrower"), hereby promises to pay to the order of THE FIRST NATIONAL BANK OF MARYLAND (together with its successors and assigns, the "Bank) the principal sum of NINE HUNDRED THOUSAND and 00/100 DOLLARS (\$900,000.00), or so much thereof as shall have been actually advanced (the "Principal Amount") by the Bank to the Borrower pursuant to that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of \_\_\_\_\_, 1990, between the Bank and the Borrower (the "Loan Agreement"), together with interest thereon from the date hereof until paid in full, as provided below. Capitalized terms not defined herein have the respective meanings given to them in the Loan Agreement.

Principal and interest shall be payable as follows:

(a) Interest only shall be payable on the Principal Amount, at the Interest Rate, from the date hereof until the earlier of the Second Funding or December 31, 1990 (the "Commencement Date").

(b) Sixty (60) consecutive monthly installments of principal and interest; payable in arrears; the first such installment being due thirty (30) days after the Commencement Date and continuing on the same day of each month thereafter; the first thirty-six (36) installments each being in the amount of \$21,500.00 and the next twenty-four (24) installments each being in the amount of \$15,749.00.

(c) The balance of any unpaid Principal Amount, together with all accrued but unpaid interest and all other sums then due under the Loan Documents (as defined in the Loan Agreement) shall be due and payable in full concurrently with the final installment of principal and interest.

(d) Interest shall be payable on the Principal Amount from the date hereof until paid in full at an annual rate equal to eleven percent (11%) per annum (the "Interest Rate") and after maturity or demand following the occurrence of an Event of Default (as defined therein) under the Loan Agreement at a rate which is five percent (5%) in excess of the Interest Rate (in no event shall

either such rate exceed the maximum rate allowed by law). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

Notwithstanding the foregoing, any amounts received from time to time by the Bank which constitute payment for a casualty to an Item of Equipment shall be applied by the Bank in accordance with the provisions of Section 1.4(b) of the Loan Agreement.

All payments of principal and interest shall be payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

Except as otherwise provided above with respect to a casualty to an item of Equipment, the Borrower shall have the right to prepay the Term Note in whole on any principal installment due date after giving thirty (30) days prior written notice to the Bank of the Borrower's intention to make such prepayment, by paying, in addition to such prepayment, all accrued but unpaid interest and all other sums due under the Term Note, together with a Prepayment Premium. The "Prepayment Premium" shall be calculated as the following specified percentage of the then outstanding principal balance due hereunder:

<u>Prepayment Date by Months</u>	<u>Percentage</u>
1-12	3%
13-24	2%
25-36	1%
37-60	0%

All payments received hereunder shall be applied in accordance with the provisions of Section 1.4 of the Loan Agreement, unless otherwise agreed to by the Bank.

This Term Note is the Term Note referred to in the Loan Agreement and is secured by a grant of security made by the Borrower to the Bank pursuant to the Loan Agreement. Reference is hereby made to the Loan Agreement for description of the property assigned, the nature and extent of the security and the rights of the Bank in respect of such security.

The Borrower shall also pay prior to judgment, costs of collection, including a reasonable attorney's fee actually incurred, if this Term Note is referred to an attorney for collection following default.

This Term Note, having been executed by the Borrower and delivered to the Bank in the State of Maryland, is to be governed by, construed under and enforced in all respects according to, the laws of the State of Maryland. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent

jurisdiction in the State of Maryland, and the Borrower submits to the jurisdiction of such courts.

Payments of principal and interest shall be made by check or wire transfer at 25 S. Charles, Street, Baltimore, Maryland 21201 or in such other manner and/or at such other address as the holder hereof shall have designated to the Borrower in writing; and shall be effective upon receipt.

In the event of the declaration by the Bank of an Event of Default (as defined therein) under the Loan Agreement, then this Term Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued but unpaid interest thereon, shall become immediately due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit.

The rights and remedies of the holder of this Term Note, as provided herein, shall be cumulative and concurrent and may be pursued singularly, successively or together at the sole discretion of the holder, and may be exercised as often as occasion therefor shall occur, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

In the event that any one or more of the provisions (or any part of any provision) of this Term Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, or in the event that any one or more of the provisions of this Term Note operates or would prospectively operate to invalidate this Term Note, then and in either of those events, such provision or provisions only shall be deemed null and void and shall not affect any other provisions (or remaining part of the affected provision) of this Term Note and the remaining provisions (or remaining part of the affected provision) of this Term Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

The Borrower hereby waives presentment, protest and demand, notice of protest, notice of demand and of dishonor and non-payment of this Term Note, and expressly agrees that this Term Note or any payment hereunder may be extended from time to time without in any way affecting the liability of the Borrower.

IN WITNESS WHEREOF, the Borrower has caused this Term Note to be duly executed, under seal, effective as of the day and year first above written.

ATTEST:

RAILCAR, LTD.

By: \_\_\_\_\_ (SEAL)

EXHIBIT B  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

NOTICE OF ASSIGNMENT  
AND  
LESSEE'S CONSENT AND AGREEMENT

Pursuant to Section 19 of that certain Lease Agreement dated as of \_\_\_\_\_, 1990 (the "Lease"), between Railcar, Ltd. (the "Lessor") and \_\_\_\_\_ (the "Lessee"), Lessor hereby gives notice that Lessor has assigned to The First National Bank of Maryland (the "Lender") all of its right, title and interest (but not its obligations) in and to the Lease and all equipment leased thereunder, including, without limitation, the right to receive all rent and other payments due and to become due and payable thereunder. Accordingly, Lessor hereby instructs Lessee to make all future payments directly to Lender via wire transfer at 25 South Charles Street, Baltimore, Maryland 21201, Attn: Transportation Division or at such other address as Lender shall designate from time to time in writing to Lessee. Payments should continue to be made to Lender until such time as Lender shall advise you otherwise in writing, or until no further payments are required to be made pursuant to the terms of the Lease.

Lessee hereby acknowledges receipt of notice of such assignment and agrees as follows:

(1) subject to the terms and conditions of the Lease, to pay all payments due and to become due to the Lessor under the Lease directly to The First National Bank of Maryland, by wire transfer or other immediately available funds, at 25 South Charles Street, Baltimore, Maryland 21201, Attn: Transportation Division, or to such other address as may be furnished in writing to the Lessee by the Lender;

(2) agrees that the Lender shall be entitled to all of the benefits of, and to receive and enforce performance of, the terms, conditions, agreements and covenants of the Lessee under the Lease as though the Lender were named therein as the Lessor and that it will not assert against the Lender any claim or defense the Lessee may have and/or assert against the Lessor under the Lease;

(3) agrees that the Lender shall not, by virtue of the Lease or this Notice of Assignment and Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(4) agrees that the Lease shall not, without the prior written consent of the Lender, be amended, terminated or modified, or any action be taken or omitted to be taken by the Lessee, the taking or omission of which might result in any alteration or impairment of the obligations of the Lessee hereunder or under the Lease or of any of the rights created by any thereof; and

(5) agrees that the Lessee's only interest under the Lease is that of a lessee and that the Lessee maintains no ownership or other interest in the Equipment except its leasehold interest as a lessee under the Lease.

Terms used and not otherwise defined herein shall have the meaning set forth in the Lease.

In connection herewith, Lessee hereby represents and warrants to Lender that:

(1) the Lease is in full force and effect and Lessee is not in default of any of the terms or provisions thereof;

(2) all rents due under the Lease prior to the date hereof have been fully paid to Lessor by Lessee;

(3) there are no liens, judgments, suits or proceedings, pending or threatened, against Lessee which if adversely determined could materially adversely affect the Lessee's financial condition or its ability to perform its obligations under the Lease; and

(4) to the best of its knowledge, Lessor is not in default of any of its obligations to Lessee under the Lease.

This Notice of Assignment and Lessee's Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Notice of Assignment and Lessee's Consent and Agreement to be duly executed, under seal, as of the date indicated below.

Dated: \_\_\_\_\_, 1990

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)

RAILCAR LTD.

By: \_\_\_\_\_ (SEAL)

Accepted:

THE FIRST NATIONAL BANK OF MARYLAND

By: \_\_\_\_\_ (SEAL)

EXHIBIT C  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

NOTICE OF ASSIGNMENT  
AND  
LESSEE'S CONSENT AND AGREEMENT

Pursuant to \_\_\_\_\_ of that certain [Lease Agreement] dated as of \_\_\_\_\_ (the "Lease"), between Railcar, Ltd. (the "Lessor") and Consolidated Rail Corporation (the "Lessee"), Lessor hereby gives notice that Lessor has assigned to The First National Bank of Maryland (the "Lender") all of its right, title and interest (but not its obligations) in and to the Lease and all equipment leased thereunder, including, without limitation, the right to receive all rent and other payments due and to become due and payable thereunder. Notwithstanding such assignment, payments should continue to be made to Lessor until such time as Lessor shall advise you otherwise in writing, or until no further payments are required to be made pursuant to the terms of the Lease.

Lessee hereby acknowledges receipt of notice of such assignment and agrees as follows:

(1) subject to the terms and conditions of the Lease, upon receipt of written instructions from Lender, to pay all payments due and to become due to the Lessor under the Lease directly to The First National Bank of Maryland, by wire transfer or other immediately available funds, at 25 South Charles Street, Baltimore, Maryland 21201, Attn: Transportation Division, or to such other address as may be furnished in writing to the Lessee by the Lender;

(2) agrees that the Lender shall be entitled to all of the benefits of, and to receive and enforce performance of, the terms, conditions, agreements and covenants of the Lessee under the Lease as though the Lender were named therein as the Lessor and that it will not assert against the Lender any claim or defense the Lessee may have and/or assert against the Lessor under the Lease;

(3) agrees that the Lender shall not, by virtue of the Lease or this Notice of Assignment and Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(4) agrees that the Lease shall not, without the prior written consent of the Lender, be amended, terminated or modified, or any action be taken or omitted to be taken by the Lessee, the taking or omission of which might result in any

alteration or impairment of the obligations of the Lessee hereunder or under the Lease or of any of the rights created by any thereof; and

(5) agrees that the Lessee's only interest under the Lease is that of a lessee and that the Lessee maintains no ownership or other interest in the Equipment except its leasehold interest as a lessee under the Lease.

Terms used and not otherwise defined herein shall have the meaning set forth in the Lease.

In connection herewith, Lessee hereby represents and warrants to Lender that:

(1) the Lease is in full force and effect and Lessee is not in default of any of the terms or provisions thereof;

(2) all rents due under the Lease prior to the date hereof have been fully paid to Lessor by Lessee;

(3) there are no liens, judgments, suits or proceedings, pending or threatened, against Lessee which if adversely determined could materially adversely affect the Lessee's financial condition or its ability to perform its obligations under the Lease; and

(4) to the best of its knowledge, Lessor is not in default of any of its obligations to Lessee under the Lease.

This Notice of Assignment and Lessee's Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Notice of Assignment and Lessee's Consent and Agreement to be duly executed, under seal, as of the date indicated below.

Dated: \_\_\_\_\_, 1990

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_ (SEAL)

RAILCAR LTD.

By: \_\_\_\_\_ (SEAL)

Accepted:

THE FIRST NATIONAL BANK OF MARYLAND

By: \_\_\_\_\_ (SEAL)

EXHIBIT D  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

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LOAN AGREEMENT SUPPLEMENT NO. 1

Dated as of \_\_\_\_\_, 1990

between

THE FIRST NATIONAL BANK OF MARYLAND

and

RAILCAR, LTD.

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Covering

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Filed and recorded with the Interstate Commerce Commission  
pursuant to the Interstate Commerce Act, 49 U.S.C.. §11303 on the  
\_\_\_\_ day of \_\_\_\_\_, 1990, recordation no. \_\_\_\_\_.

LOAN AGREEMENT  
SUPPLEMENT NO. 1

THIS LOAN AGREEMENT SUPPLEMENT NO. 1 (this "Supplement") is made as of \_\_\_\_\_, 1990, by and between THE FIRST NATIONAL BANK OF MARYLAND, a national banking association (the "Lender") and RAILCAR, LTD., a Georgia corporation (the "Owner").

RECITALS

A. Lender and Owner have heretofore entered into a certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of \_\_\_\_\_, 1990, (the "Loan Agreement") pursuant to which the Lender has agreed to make a term loan to the Owner to be secured by various items of railroad equipment and leases of railroad equipment. Capitalized terms not defined herein have the respective meanings given to them in the Loan Agreement. On \_\_\_\_\_, 1990, the Owner granted to the Lender a chattel mortgage lien on and security interest in the Leases and the Equipment leased pursuant thereto. The Loan Agreement was filed and recorded with the Interstate Commerce Commission ("I.C.C.") pursuant to the Interstate Commerce Act, 49 U.S.C. §11301, on \_\_\_\_\_, 1990 at \_\_\_\_\_ p.m., recordation number \_\_\_\_\_.

B. The Loan Agreement currently provides for the execution and delivery of a Loan Agreement Supplement No. 1, substantially in the form hereof, pursuant to which Owner is to grant to Lender a first priority chattel mortgage lien on and security interest in each of the Leases, between the Owner, as lessor, and each of the Lessees, as lessee, and in the Equipment which has been accepted by the Lessees pursuant to each of the Leases (such accepted Equipment is listed on Schedule A attached hereto and is hereinafter referred to as the "Loan Supplement No. 1 Cars").

C. Each of the Leases is currently on file with the I.C.C. and bears the following recordation numbers:

D. The parties intend that a counterpart copy of this Supplement be filed with the I.C.C. which, together with the Loan Agreement, shall create a chattel mortgage lien on and security interest in the Loan Supplement No. 1 Cars described therein.

Accordingly, the parties hereto agree as follows:

1. Security Interest. Owner, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, and in order to secure the Obligations (as such term is defined in the Loan Agreement), has granted and does

hereby grant a first priority chattel mortgage lien on and security interest in, with full power of sale, the Loan Supplement No. 1 Cars, forever, for the security and benefit of the Lender, its successors and assigns. The Owner does hereby pledge and assign to the Lender, and herewith delivers to the Lender, the original counterpart copy of each of the Leases.

TO HAVE AND TO HOLD the aforesaid property, subject to the terms and conditions set forth in the Loan Agreement with the same attendant rights and privileges granted to Lender with respect to each of the Leases.

This Supplement shall be construed as supplemental to the Loan Agreement and shall form a part thereof and the Loan Agreement is hereby ratified, approved and confirmed.

2. Counterparts. This Supplement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but altogether only one Supplement.

3. Governing Law. This Supplement shall be governed by, and construed in accordance with, the laws of the State of Maryland.

4. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for the convenience of reference and shall not constitute a part of this Supplement nor shall they shall affect its meaning, construction or effect.

IN WITNESS WHEREOF, Owner has caused this Supplement to be duly executed and under seal as of the date first above written.

RAILCAR, LTD.

By: \_\_\_\_\_ (SEAL)

THE FIRST NATIONAL BANK OF MARYLAND

By: \_\_\_\_\_ (SEAL)

State of                    )  
                              ) ss:  
County of                    )

On this \_\_\_\_ day of \_\_\_\_\_, 1990, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of RAILCAR, LTD., that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

State of )  
 ) ss:  
City of )

On this \_\_\_\_ day of \_\_\_\_\_, 1990, before me personally appeared George Wood, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE FIRST NATIONAL BANK OF MARYLAND, a national banking association, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

\_\_\_\_\_  
Notary Public

[Seal]

My Commission expires \_\_\_\_\_

EXHIBIT E  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

Suggested Form of Opinion Letter

\_\_\_\_\_, 1990

The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

Attn: Mr. George Wood  
Senior Vice President

Re: Proposed Five-Year Term Loan Between  
The First National Bank of Maryland and  
Railcar, Ltd.

Gentlemen:

As counsel for Railcar, Ltd. (the "Borrower"), we are furnishing this opinion pursuant to Section 3.2 of that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of \_\_\_\_\_, 1990 (the "Agreement"), between The First National Bank of Maryland, as lender (the "Lender"), and Borrower, as borrower.

All terms used herein which are defined in the Agreement shall have the meanings given them therein, unless the terms are specifically defined herein.

The opinions hereinafter set forth are provided for the benefit of the Lender and may be relied upon only by it and may not be relied upon, quoted, referred to or filed with any other person or entity without our prior written permission, except that reference may be made to the opinions in any list of closing documents pursuant to the Agreement.

We have reviewed originals or copies, certified or otherwise identified to our satisfaction, of the Agreement, the Term Note, the charter, bylaws and records of corporate proceedings of the Borrower, and such additional documents, and we have obtained such other certificates, affidavits and advices from officers of the Borrower or from public officials, as we have deemed necessary or appropriate for the purposes of this opinion. In making all of our examinations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to

us as copies, the authority and capacity of the person or persons who executed each of such documents on behalf of any person or entity (other than the person or persons who, on behalf of the Borrower, executed the Agreement, the Term Note, the exhibits thereto and the other documents and agreements referred to therein), the correctness and accuracy of the representations made in the Agreement and exhibits thereto and in the other documents and agreements referred to therein, the correctness and accuracy of all certificates of the Borrower's officers and the correctness and accuracy of all certificates of various public officials.

The members of this firm are admitted to the Bar of the State of Georgia and are duly qualified to practice law in that State. We do not herein express any opinion concerning any matter respecting or affected by any laws other than the laws of the State of Georgia and the federal laws of the United States of America that are now in effect and that, in our experience, are normally applicable to transactions of the type contemplated by the Agreement. We expressly disclaim any undertaking to advise you of changes to such pertinent laws that may hereafter come to our attention. Any opinion below qualified by the phrase "insofar as we are aware" sets forth our belief only that such opinion is not inconsistent with facts actually in our possession without having made any inquiry whatsoever therein.

On the basis of the foregoing and on the basis of our consideration of such facts and laws as we have deemed necessary in the premises, we are of the opinion that:

a. The Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, the state of its incorporation, (ii) has the full corporate power and authority to own and hold under lease its property and to carry on its business as now being conducted, and (iii) is, insofar as we are aware, duly licensed to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of the Borrower's properties or in which the transaction of its business is such that the failure to be so licensed would have a material adverse effect on the Borrower.

b. The Borrower has the full corporate power and authority to execute and deliver the Agreement and each of the other Loan Documents executed and delivered by it, and the Borrower has the corporate power and authority to make the borrowings hereunder, and to incur the Obligations, all of which have been duly authorized by all proper and necessary corporate action. No consent or approval of stockholders or, insofar as we are aware, of any public authority is required as a condition to the execution, validity or enforceability of the Agreement or any of the other Loan Documents executed and delivered by the Borrower.

c. Assuming due execution and delivery by the Bank, the Agreement and each of the other Loan Documents executed and

delivered by the Borrower have been duly executed by the parties thereto, constitute the valid and legally binding obligations of the parties thereto enforceable against them in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally, and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law. Although the Loan Documents are expressed to be governed by the laws of the State of Maryland, we have assumed for the purpose of the opinion set forth in this paragraph that the laws of the State of Georgia are applicable to and govern the Agreement and the other Loan Documents.

d. There are no proceedings pending or, insofar as we are aware, threatened before any court, arbitrator or administrative agency that could materially affect the financial condition or operations of the Borrower, or the authority of the Borrower to enter into the Agreement or any of the other Loan Documents or the ability of the Borrower to perform its obligations thereunder.

e. There is (i) no charter, by-law or preference stock provision of the Borrower and, insofar as we are aware, no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or affecting the Borrower's property, and (ii) insofar as we are aware, no provision of law or order of court binding upon the Borrower which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Agreement or of any of the other Loan Documents executed and delivered by the Borrower or which would be violated as a result of such execution, delivery or performance.

f. The Borrower, insofar as we are aware, is not in violation of any law, ordinance, governmental rule or regulation to which it is subject which violation would have a material adverse effect on the Borrower, and the Borrower, insofar as we are aware, has obtained all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties and the conduct of its business, and for the performance of its obligations under the Loan Documents, such that the failure to have so obtained such licenses, permits, franchises or other governmental authorizations would have a material adverse effect on the Borrower.

g. The address of the Borrower's chief executive office is as specified in the first paragraph on the first page of the Agreement.

h. Insofar as we are aware, neither the nature of the Borrower or of its business or properties, nor any relationship between the Borrower and any other entity or person, nor any

circumstance in connection with the making of the Loan, or the offer, issue, sale or delivery of the Term Note is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority, on the part of the Borrower, as a condition to the execution and delivery of the Agreement or any of the other Loan Documents, the borrowings hereunder, or the offer, issue, sale or delivery of the Term Note.

i. Each of the Leases constitutes the legal, valid and binding obligations of the parties thereto, is enforceable by such parties in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy, regardless of whether such enforceability is considered in a proceeding in equity or at law) and is in full force and effect; insofar as we are aware, no event of default, or event which with the giving of notice or passing of time, or both, would constitute an event of default has occurred under any of the Leases and, insofar as we are aware, there are no matured but unsatisfied claims against the Borrower in favor of any of the Lessees which could be setoff against the payments due and to become due under any of the Leases. Insofar as we are aware, the Borrower is lawfully entitled to receive payment of all monies and other sums due and to become due under any of the Leases, free and clear of any and all liens, encumbrances and other adverse rights whatsoever. The Leases contain no prohibition against assignment and by their terms permit the Borrower to assign its rights to all payments due and to become due thereunder to the Lender.

Sincerely yours,

EXHIBIT F  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of \_\_\_\_\_, 1990

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LOAN AGREEMENT SUPPLEMENT NO. 2

Dated as of \_\_\_\_\_, 1990

between

THE FIRST NATIONAL BANK OF MARYLAND

and

RAILCAR, LTD.

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Covering

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Filed and recorded with the Interstate Commerce Commission  
pursuant to the Interstate Commerce Act, 49 U.S.C.. §11303 on the  
\_\_\_\_ day of \_\_\_\_\_, 1990, recordation no. \_\_\_\_\_.

LOAN AGREEMENT  
SUPPLEMENT NO. 2

THIS LOAN AGREEMENT SUPPLEMENT NO. 2 (this "Supplement") is made as of \_\_\_\_\_, 1990, by and between THE FIRST NATIONAL BANK OF MARYLAND, a national banking association (the "Lender") and RAILCAR, LTD., a Georgia corporation (the "Owner").

RECITALS

A. Lender and Owner have heretofore entered into a certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of \_\_\_\_\_, 1990, (the "Loan Agreement") pursuant to which the Lender has agreed to make a term loan to the Owner to be secured by various items of railroad equipment and leases of railroad equipment. Capitalized terms not defined herein have the respective meanings given to them in the Loan Agreement. On \_\_\_\_\_, 1990, the Owner granted to the Lender a chattel mortgage lien on and security interest in the Leases and the Equipment leased pursuant thereto. The Loan Agreement was filed and recorded with the Interstate Commerce Commission ("I.C.C.") pursuant to the Interstate Commerce Act, 49 U.S.C. §11301, on \_\_\_\_\_, 1990 at \_\_\_\_\_ p.m., recordation number \_\_\_\_\_.

B. Pursuant to the Loan Agreement, the Owner agreed to execute and deliver the Loan Agreement Supplement No. 1. The Loan Agreement Supplement No. 1 granted the Lender a first priority chattel mortgage lien on and security interest in each of the Leases between the Owner, as lessor, and each of the Lessees, as lessee, and in the Equipment accepted by the Lessees pursuant to each of the Leases at or before the time of the First Funding. The Loan Supplement No. 1 was filed and recorded with the I.C.C. (pursuant to the Interstate Commerce Act, 49 U.S.C. § 11301, on \_\_\_\_\_, 1990, at \_\_\_\_\_ p.m., recordation number \_\_\_\_\_).

C. The Loan Agreement currently provides for the execution and delivery of a Loan Agreement Supplement No. 2, substantially in the form hereof, pursuant to which Owner is to grant to Lender a first priority chattel mortgage lien on and security interest in each of the Leases, between the Owner, as lessor, and each of the Lessees, as lessee, and in Equipment which has been accepted by the Lessees pursuant to each of the Leases after the First Funding (such accepted Equipment is listed on Schedule A attached hereto and is hereinafter referred to as the "Loan Supplement No. 2 Cars").

D. Each of the Leases is currently on file with the I.C.C. and bears the following recordation numbers:

E. The parties intend that a counterpart copy of this Supplement be filed with the I.C.C. which, together with the Loan

Agreement, shall create a chattel mortgage lien on and security interest in the Loan Supplement No. 2 Cars described therein.

Accordingly, the parties hereto agree as follows:

1. Security Interest. Owner, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, and in order to secure the Obligations (as such term is defined in the Loan Agreement), has granted and does hereby grant a first priority chattel mortgage lien on and security interest in, with full power of sale, the Loan Supplement No. 2 Cars, forever, for the security and benefit of the Lender, its successors and assigns. The Owner does hereby pledge and assign to the Lender, and herewith delivers to the Lender, the original counterpart copy of each of the Leases.

TO HAVE AND TO HOLD the aforesaid property, subject to the terms and conditions set forth in the Loan Agreement with the same attendant rights and privileges granted to Lender with respect to each of the Leases.

This Supplement shall be construed as supplemental to the Loan Agreement and shall form a part thereof and the Loan Agreement is hereby ratified, approved and confirmed.

2. Counterparts. This Supplement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but altogether only one Supplement.

3. Governing Law. This Supplement shall be governed by, and construed in accordance with, the laws of the State of Maryland.

4. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for the convenience of reference and shall not constitute a part of this Supplement nor shall they shall affect its meaning, construction or effect.

IN WITNESS WHEREOF, Owner has caused this Supplement to be duly executed and under seal as of the date first above written.

RAILCAR, LTD.

By: \_\_\_\_\_ (SEAL)

THE FIRST NATIONAL BANK OF MARYLAND

By: \_\_\_\_\_ (SEAL)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )      ss:

On this \_\_\_\_ day of \_\_\_\_\_, 1990, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of RAILCAR, LTD., that the seal 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 that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

State of \_\_\_\_\_ )  
City of \_\_\_\_\_ )      ss:

On this \_\_\_\_ day of \_\_\_\_\_, 1990, before me personally appeared George Wood, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of THE FIRST NATIONAL BANK OF MARYLAND, a national banking association, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

SCHEDULE A