

INTERIM SECURITY AGREEMENT RECORDATION NO. \_\_\_\_\_ Filed & Rec

APR 12 1974 -1 50 PM

INTERSTATE COMMERCE COMMISS.

INTERIM SECURITY AGREEMENT dated April 15, 1974 from The First National Bank of Chicago, as Trustee under Trust Agreement dated as of March 15, 1974 and known as AMAX Trust No. 1 (the "Debtor" to The First National Bank of Chicago (the "Secured Party")).

The Secured Party has agreed to make loans to the Debtor not exceeding \$2,000,000 in aggregate principal amount to be evidenced by the notes (the "Notes") of the Debtor payable to the order of the Secured Party and expressed to mature on or before May 31, 1974. The Notes and any and all extensions or renewals thereof in whole or in part and all other sums at any time due or owing from the Debtor to the Secured Party under the terms hereof are hereinafter referred to as the "secured indebtedness."

In order to secure the payment of the secured indebtedness, the Debtor mortgages and pledges to the Secured Party, and grants the Secured Party a security interest in, the following:

(a) The 80 hopper railroad cars, two diesel locomotives and one caboose described in Schedules A-1, A-2 and A-3 hereof being all of the railroad equipment leased and delivered or to be delivered under the Equipment Lease (the "Lease") dated as of March 15, 1974 between the Debtor as Lessor and the American Metal Climax, Inc. (AMAX Coal Company Division), as Lessee (the "Lessee"), and all substitutions or replacements of any of such railroad equipment and all accessories, attachments and accessions for equipment now or hereafter attached to such railroad cars or used in connection therewith, and

(b) All right, title and interest of the Debtor as Lessor in, under and to the Lease and all rents and other sums due and to become due thereunder, and

(c) All right, title and interest of the Debtor in, under and to the Agreement to Acquire and Lease (the "Agreement to Acquire and Lease") dated as of March 15, 1974 and all sums due and to become due thereunder, including without limitation all sums which may become payable pursuant to Section 7 of the Agreement to Acquire and Lease.

SUBJECT, HOWEVER, to (i) the right, title and interest of the Lessor under the Lease and (ii) the lien of current taxes and assessments not in default or, if delinquent the validity of which is being tested in good faith.

All of the railroad equipment, accessories, accessions and attachments described or referred to in item (a) above are hereinafter sometimes referred to as "Equipment" and all of the rentals and other sums and proceeds described or referred to in items (b) and (c) above are hereinafter sometimes collectively referred to as "proceeds, and such Equipment and proceeds are hereinafter sometimes collectively referred to as "collateral."

**The Debtor warrants and agrees:**

1. Except for the security interest granted herein and the right of the Lessee to the use and possession of the Equipment under the Lease, the Debtor is the owner of the collateral free from any liens, security interests, encumbrances or other right, title or interest of any other person, firm or corporation.

2. The Debtor will do and perform such other acts and things and execute and deliver such further instruments as may be deemed necessary or appropriate by the Secured Party to preserve, protect and renew the security interest herein provided, including any notices to any person owing or obligated in respect of any proceeds subject hereto.

3. The Debtor hereby irrevocably constitutes and appoints the Secured Party as the true and lawful attorney, with full power of substitution, for the Debtor and in the name of the Debtor and in place and stead of Debtor to make, collect, sue for, receive, receipt for, compound and give acquittance for any and all rents and other sums due and to become due under the Lease or Agreement to Acquire and Lease and for all other proceeds, with full power to settle, adjust or compromise any claim therefor as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof in its discretion to file any claim or to take any action or proceeding in the name of the Debtor or its own name or otherwise which the Secured Party may deem necessary or appropriate to collect any and all sums which may become due or payable under the Lease or which may

be necessary or appropriate to protect and preserve the security interest of the Secured Party hereunder in and to such proceeds and the Equipment. The Secured Party may, whether before or after any default hereunder, notify the Lessee or any other person owing or obligated in respect of any proceeds of the security interest of the Secured Party hereunder. The Secured Party may, whether before or after any default hereunder, apply any and all sums from time to time received by it pursuant to the Lease, whether collected pursuant to actions authorized by this paragraph or otherwise, first to accrued and unpaid interest on the secured indebtedness and then to the payment or prepayment of the principal.

of the secured indebtedness.

4. The Debtor will promptly pay the indebtedness hereby secured as and when the same or any part thereof becomes due (whether by lapse of time, declaration, demand or otherwise).

5. It shall be lawful for the Debtor to retain possession of the Equipment, and at its own expense to keep and use the same, until an event of default shall occur hereunder as hereinafter defined.

6. The Debtor will not sell, transfer, assign, part with the possession of, mortgage, hypothecate, or in any way encumber the Equipment, either directly or indirectly, without the written consent of the Secured Party; provided, however, that nothing herein contained shall be deemed to prevent the lease of the Equipment or any part thereof by Debtor to the Lessee under the Lease.

7. If the Debtor shall fail to observe and perform any of the covenants set forth herein, the Secured Party may advance sums to, and may, perform the same and all advances made by the Secured Party shall, with interest thereon at 11% per annum, constitute part of the indebtedness hereby secured and shall be payable forthwith; but no such act or expenditure by the Secured Party shall relieve the Debtor from the consequences of any default.

8. Any one of the following shall constitute an event of default for the purposes hereof:

(a) Default in the payment of interest on any Note or in the payment of principal of any Note when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise; or

(b) Default in the due observance or performance by the Debtor of any other covenant, condition or agreement required to be observed or performed by the Debtor by the terms of any Note, or this Security Agreement, and such default shall continue for 10 days after written notice thereof to the Debtor by the Secured Party; or

(c) Default in the due observance or performance by the Lessee of any covenant, condition or agreement required to be observed or performed by the Lessee under the terms of the Lease and such default shall continue for a period of time sufficient to permit the Lessor thereunder to

exercise any one or more of the remedies of the Lessor set forth in the Lease; or

(d) Any representation or warranty made by the Debtor to the Secured Party in writing herein, or in any statement or certificate furnished by the Debtor to the Secured Party pursuant to any terms of this Security Agreement or in connection with the creation of the indebtedness evidenced by said Note, proves untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within 10 days after notice thereof to the Debtor by the Secured Party; or

(e) The Debtor becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies or consents to the appointment of a trustee or receiver for the Debtor or for the major part of its property; or

(f) A trustee or receiver is appointed for the Debtor or for the major part of its property; or

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Debtor.

9. When any such event of default has happened and is continuing, the Secured Party may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Secured Party may, by notice in writing to the Debtor, declare the entire unpaid balance of the secured indebtedness to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) Subject always to the then existing rights, if any of said Lessee under said Lease, the Secured Party, personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal

requirements) to take immediate possession of the Equipment, 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 Debtor, 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 the same until sold; it being understood, without limiting the foregoing, that the Secured Party may and is hereby given the right and authority to, keep and store said Equipment, or any part thereof, on the premises of the Debtor, and that the Secured Party shall not thereby be deemed to have surrendered, or to have failed to take, possession of such Equipment;

(c) Subject always to then existing rights, if any, of the Lessee under said Lease, the Secured Party may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, 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 Debtor once at least 10 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of said Equipment, or any part thereof, at public auction or private sale to the highest bidder, in one lot as an entirety or in separate lots and either for cash or on credit and on such terms as the Secured Party may determine, and at any place (whether or not it be the location of the Equipment 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 public notice; and the Secured Party or the holder or holders of secured indebtedness, or of any interest therein, may bid and become the purchaser at any such sale;

(d) The Secured Party may proceed to protect and enforce this Security Agreement and the secured indebtedness by suit or suits or proceedings in equity, at law or in pending 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 appointment of a receiver or receivers for the Equipment or any part thereof, or for the recovery of judgment for, or for the enforcement of any other proper legal or equitable remedy available under applicable law. The Secured Party shall at all times with regard to the collateral have the rights provided by law from time to time to the holder of a security interest.

10. The purchase money proceeds and avails of any sale of the Equipment or any part thereof, and the proceeds and avails any other remedy hereunder, or other realization of the security hereby given, shall be applied:

(a) First, to the payment of the cost and expenses of the sale, proceeding or other realization, including all costs and expenses and charges for pursuing, searching for taking, removing, keeping, storing, advertising and selling the Equipment, the reasonable fees and expenses of the attorneys and agents of the Secured Party in connection therewith, and to the payment of all taxes, assessments, or similar liens on the Equipment which may at that time be superior to this Security Agreement (unless such sale or other realization is subject to any such superior lien);

(b) Second, to the payment of all advances made hereunder by the Secured Party pursuant to paragraph 7 hereof, together with all interest therefor;

(c) Third, to the payment of the whole amount remaining unpaid on the Notes, both for principal and interest, and to the payment of any other secured indebtedness, so far as such proceeds may reach;

(d) Fourth, to the payment of the surplus, if any, to the Debtor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

If there be a deficiency, the Debtor shall remain liable therefor and shall forthwith pay the amount of any such deficiency to the Secured Party.

11. Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Debtor of all right title, interest, claim and demand whatsoever, either at law or in equity, of, in and to the Equipment so sold, and shall be free and clear of any and all rights of redemption by, through or under the Debtor, the Debtor hereby covenanting and agreeing that it will not at any time insist upon or plead, or take the benefit or advantage of or from, any law now or hereafter in force providing for a valuation of appraisement of the Equipment prior to any sale or sales thereof or providing for any right to redeem the Equipment or any part thereof. The receipt by the Secured Party, or by any person authorized under any judicial proceeding to make any such sale, shall be a sufficient discharge to any purchaser of the





SCHEDULE A-1

MANUFACTURER: General Motors Corporation  
(Electro-Motive Division)

PLANT OF MANUFACTURER: Mc Cook, Illinois

DESCRIPTION OF EQUIPMENT: Two (2) 2000 H.P. Model GP38-4  
Diesel Electric Locomotives

ROAD OR CAR NUMBERS: WG-1 and WG-2

ESTIMATED INVOICE COST: \$267,039.00

TOTAL ESTIMATED INVOICE COST: \$534,078.00\*

OUTSIDE DELIVERY DATE: May 31, 1974

DELIVER TO: Gibson, Indiana  
AMERICAN METAL CLIMAX, INC.  
(AMAX Coal Company Division)

FIXED RENTAL PAYMENTS: Sixty (60) quarterly rental  
payments in arrears each in an  
amount equal to 2.4037% of the  
Invoice Cost of each Item of  
Equipment.

LESSEE: American Metal Climax, Inc.  
(AMAX Coal Company Division)

TRUSTOR: Circle Equity Leasing Corp.

\* Exclusive of freight - F.O.B.  
McCook, Ill.

SCHEDULE A-2

MANUFACTURER: Ortner Freight Car Company

PLANT OF MANUFACTURER:

DESCRIPTION OF EQUIPMENT: Eighty 100-ton hopper cars

ROAD OR CAR NUMBERS: AMAX 201 to 280, both inclusive

ESTIMATED INVOICE COST: \$21,950.99 per unit

TOTAL ESTIMATED INVOICE COST: \$1,756,079.20

OUTSIDE DELIVERY DATE: May 31, 1974

DELIVER TO:

FIXED RENTAL PAYMENTS: Sixty (60) quarterly rental payments in arrears each in an amount equal to 2.4037 % of the Invoice Cost of each Item of Equipment.

LESSEE: American Metal Climax, Inc.  
(AMAX Coal Company Division)

TRUSTOR: Circle Equity Leasing Corp.

SCHEDULE A-3

MANUFACTURER: International Ramco, Inc.  
(International Car Company Divis

PLANT OF MANUFACTURER:

DESCRIPTION OF EQUIPMENT: One 50-ton bay window caboose

ROAD OR CAR NUMBERS: AMAX 900

ESTIMATED INVOICE COST: \$35,231.45

TOTAL ESTIMATED INVOICE COST: \$35,231.45

OUTSIDE DELIVERY DATE: May 31, 1974

DELIVER TO:

FIXED RENTAL PAYMENTS: Sixty (60) quarterly rental payments in arrears each in an amount equal to  $2.4237\%$  of the Invoice Cost of each Item of Equipment.

LESSEE: American Metal Climax, Inc.  
(AMAX Coal Company Division)

TRUSTOR: Circle Equity Leasing Corp.