

BRUNO & DURMER

ATTORNEYS AT LAW

GEORGE BRUNO  
795 ELM STREET  
MANCHESTER, NEW HAMPSHIRE 03101

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RECORDATION NO. 1 5187 Filed & Recorded

MAR 23 1987 2-05 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 5187 Filed & Recorded

MAR 23 1987 2-05 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission

12th & Constitution Ave., NW

Washington, D.C. 20423

Attn: Ms. Mildred Lee Recordation Dept.

Room 2303

RECORDATION NO. 1 5187 Filed & Recorded

MAR 23 1987 2-05 PM

INTERSTATE COMMERCE COMMISSION

March 20, 1987

KRIS E. DURMER

127 MAIN STREET

NASHUA, NEW HAMPSHIRE 03060

TELEPHONE (603) 883-4700

3/23/87  
Date  
Fee \$ 30.00  
CC Washington, D.C.

Re: Rail Systems, Inc. and First N.H. Merchants National Bank

Dear Ms. Lee

Pursuant to Section 20(C) of the Interstate Commerce Act (40 U.S.C. Subsec. 20(C)), enclosed please find the following documents:

1. Original and one notarized executed copy of a Loan and Security Agreement
2. Original and one notarized executed copy of an Assignment of Rents and Leases.
3. Financing Statement with attachment

Rail Systems, Inc., (Borrower/Debtor)

364 Pine Hill Rd.,

Hollis, N.H. 03049 telephone # 882-9145 (Michael Smith, Cynthia O'Connor)

First N.H. Merchants National Bank (Lender/Secured Party)

business address: One Hampshire Plaza, Manchester, N.H.

Branch office relating to this transaction, 407 Amherst St.,

Nashua, N.H. telephone #886-9120 (Paul Ferguson or David Major)

Please record and index these documents and return the originals to my office. Enclosed please find our check in the sum of \$30.00 for the recording fees.

Thanking you in advance, I remain,

Very truly yours,

Kris E. Durmer

KED:ej

encs.

cc: David Major, Merchants National Bank

# Interstate Commerce Commission

Washington, D.C. 20423

3/24/87

OFFICE OF THE SECRETARY

Kris E. Durmer  
Bruno & Durmer  
127 Main Street  
Nashua, New Hampshire 03060

Dear  
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/23/87 at 2:05pm, and assigned re-  
recording number(s). 15187, 15187-A 15187-B

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

LOAN AND SECURITY AGREEMENT

MAR 23 1987 2:05 PM

INTERSTATE COMMERCE COMMISSION

(To be used for equipment, inventory and Accounts Receivable financing)

Article I. PARTIES TO AGREEMENT

This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ by and between Rail Systems, Inc. a New Hampshire corporation having its usual place of business at 264 Pine Hill Road, Hollis, New Hampshire 03049 ("Borrower") and Merchants National Bank of Manchester, having its principal office at One Hampshire Plaza, Manchester, NH ("Bank").

Article II. BASIC TERMS.

Bank agrees to lend the Borrower, and Borrower may borrow up to the maximum, principal sum provided for in a Promissory Note (the "Note") dated \_\_\_\_\_ in accordance with the subject to the terms and conditions of this Agreement and the Note.

Article III. USE OF LOAN PROCEEDS

All proceeds of loans extended under the terms and provisions of this Agreement shall be used for the following purposes: To provide working capital to support accounts receivable.

Borrower may, at any time, prepay its principal indebtedness hereunder in whole, or in part, upon not less than thirty ( 30 ) business days written notice to Bank, to the extent of N/A dollars or whole number multiples thereof without premium or penalty; provided, however, that in the event the loan referred to herein is prepaid in whole or in part through proceeds obtained from financing with a lender other than Bank, a penalty charge of N/A ( N/A %) percent of that portion of the loan which is so prepaid shall be due and payable to Bank at the time of such prepayment. All prepayment shall be applied to installments in the inverse order of maturity (and shall be accompanied by payment of interest on the foregoing amount so prepaid accrued to the date of prepayment). Notwithstanding the foregoing, the provisions of this Article III shall not apply to loans evidenced by Revolving Credit Promissory Notes.

Article IV. COMPENSATING BALANCES

A. Borrower hereby agrees to:

1. Maintain daily average collected demand deposits in its demand deposit account with Bank of not less than N/A %.

N/A a. The daily average outstanding principal balances of the loan from Bank, or

N/A b. The daily average unused portion of Borrower's line of credit for Bank.

2. Pay an additional interest fee as follows: for any calendar quarter that said average demand deposit is less than the percentage specified in item (1) above, Borrower will pay to Bank an additional fee of N/A of N/A % per annum, for each N/A % of dollar balance deficiency, payable at the end of the quarter.

Article V. SECURITY INTEREST

A. Granting of Security Interest.

Borrower hereby grants to Bank a security interest in the following property, and any and all additions, accessions and substitutions thereto or therefor and any and all proceeds and products therefore (including, without limitation, cash and cash equivalents, tax refunds and the proceeds of insurance policies providing coverage against the loss or destruction of or damage to any of the following property); to secure performance and payment of any and all indebtedness and liabilities and Borrower(s) to Bank:

- XX 1. All machinery, equipment, furniture, fixtures and other goods (as defined in Article 9 of the Uniform Commercial Code), whether now owned or hereafter acquired by Borrower, wherever located, and all replacements and substitutions thereof or accessions thereto;
- XX 2. All inventory of Borrower wherever located, including goods, merchandise and other personal property, now owned or hereafter acquired by Borrower, held for sale or lease or furnished or to be furnished under a contract or service, or constituting raw materials, work in process or materials used or consumed in Borrower's business.
- XX 3. All accounts of Borrower, including accounts receivable, notes, drafts, acceptances, instruments, documents, chattel paper and other forms of obligations, and all rights of Borrower, earned or to be earned, under contracts to sell goods or render services, all of which now belong, have belonged, or will belong to Borrower for goods sold by it or for services rendered by it, together with all guaranties and securities, therefore, all right, title and interest of Borrower in the merchandise giving rise thereto, including the right of stoppage in transit, and all goods subsequently acquired by Borrower by way of substitution, replacement, return, repossession of otherwise; and
- XX 4. All general intangibles.
- XX 5. An Assignment of Rents and Leases on three(3) CF-7 1,500 h.p. Diesel Locomotives, Unit #'s 2417, 2425, and 2426, an unsigned copy of which is attached and by reference is hereby incorporated into this loan and security agreement. (Exhibit B)

V

B. Purpose.

The purpose of this Agreement is to make Bank a secured party and provide it with a continuing security interest under the Uniform Commercial Code of the State of New Hampshire in property of Borrower, as more particularly described above, and subject to the terms and conditions herein set forth. Borrower agrees to sign and deliver to Bank such documents and agreements and to pay such filing fees required to Bank to make effective such security interest including financing statements. Also, to conform with 49 U.S.C. Sec. 20(C) (Interstate Commerce Act).

C. Future Advances

Borrower agrees that the security interest herein granted shall, in addition to securing and loan, advance or indebtedness which may be made contemporaneously with the execution of this Agreement, also secure all future advances, loans and extensions of credit of every nature made by Bank and indebtedness of Borrower of Bank, whether dependent upon or independent of this transaction.

Article VI. CONDITIONS OF BORROWING

A. Initial Borrowing

To borrow initially under this Agreement, Borrower shall have delivered to Bank an executed Promissory Note of even date herewith, a copy of which shall be annexed hereto as Exhibit A.

B. Approval of Bank Counsel

All legal matters incident to this Agreement and the transactions contemplated hereby shall be satisfactory to counsel for Bank.

C. Compliance

At the time of initial borrowing under this Agreement.

1. Borrower shall have complied, and shall then be in compliance with, all the terms, covenants and conditions of this Agreement that are binding upon it.
2. There shall exist no event of default as defined in this Agreement and no event which, with the giving of notice or the lapse of time, or both, would constitute such an event of default.
3. The representative and warranties contained in Article VIII of this Agreement shall be true and correct, and Bank shall have recovered a certificate to this effect dated the date of initial borrowing and signed by an authorized officer of Borrower.

D. Evidence of Corporate Action

Bank shall have received certified copies of instruments evidencing all corporate action by Borrower to authorize this Agreement, the borrowing

hereunder, and the execution and delivery of this Agreement and the note and such other papers as Bank shall reasonably require.

E. Opinion Of Borrower's Counsel

Bank shall have received a written opinion of N/A, counsel for Borrower, satisfactory in forms and substance to Bank relating to the matters referred to in Paragraphs A, B, C, and E of Article VII hereof.

F. Other

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Article VII. REPRESENTATIONS AND WARRANTIES

A. Good Standing

Borrower is a corporation duly organized and existing, in good standing, under the laws of its state of incorporation and has the corporate power to own its property and to carry on its business as it is now being conducted. Borrower is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

B. Corporate Authority

Borrower has full power and authority to enter into this Agreement and to borrow hereunder, to execute and deliver the Note and to incur the obligations provided herein, all of which have been duly authorized by all property and necessary corporate action. Any consent or approval of stockholders or of any public authority required as a condition to legal validity of this Agreement or the Note has been obtained.

C. Binding Agreement

This agreement and the Note constitute and the loan documents will constitute, the valid and legally binding obligations of Borrower and enforceable in accordance with their respective terms.

D. Litigation

There are no suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower which have not been disclosed in writing to Bank. There are no proceedings by or before any governmental, commission, board, bureau or other administrative agency pending or, to the knowledge of Borrower, threatened against the which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower and which have not been disclosed in writing to Bank.

E. Conflicting Agreements

There is no charter, by-laws or preference stock provision(s) of Borrower and no provision(s) of any existing mortgage, indenture, contract or agreement binding on Borrower or affecting its property, which would conflict with or in any way prevent the execution, delivery or carrying out of the terms of the Note.

F. Financial Condition

The balance sheet of Borrower as of December 31, 1985 together with statements of income, changes in shareholders' equity and changes in financial position for the period then ended, prepared by Peat, Marwick, Mitchell & Co., CPA's, heretofore delivered to Bank, are complete and correct and fairly present the financial condition of Borrower and the results of its operations as of the date and for the period referred to and have been prepared in accordance with generally accepted accounting principles applied to a consistent basis through the period involved. There are no liabilities, direct or indirect, fixed or contingent, of Borrower as of the date of such balance sheet which are not reflected therein or in the notes thereto. There has been no material adverse change in financial condition or operations of Borrower since the date of said balance sheet. Borrower's assets are free of encumbrances of any nature, except those disclosed in the aforementioned balance sheet, liens in favor of Bank and liens permitted under this Agreement.

G. Other

N/A

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Article VIII. AFFIRMATIVE COVENANTS

Until payment in full of the indebtedness now existing or hereafter incurred under this Agreement and the performance of all its obligations, hereunder, Borrower agrees that, unless Bank shall otherwise consent, in writing, it will:

A. Prompt Payment

Pay promptly when due all amounts due and owing to Bank.

B. Financial Statements

Furnish Bank within 90 days after the end of the fiscal year of Borrower, the balance sheet of Borrower as of the close of such fiscal year together with statements of income, changes in shareholders' equity and changes in financial position of Borrower for such year, which are complete and correct and fairly present the financial condition of

Borrower and the results of its operations as of the date and period covered by such statements, all prepared in accordance with generally accepted principles and practices of accounting applied on a basis consistent with the accounting practices reflected in Borrower's financial statements for the fiscal year ending December 31. In addition, Borrower will furnish Bank within 30 days after the close of each quarter of Borrower a balance sheet, together with a profit and loss statement and surplus reconciliation of Borrower in reasonable detail, signed by the financial officer of Borrower and accompanied by a certificate from the financial officer indicating no knowledge of any default as defined in this Agreement, or if such default exists, specifying the nature thereof.

C. Additional Information

Furnish Bank, within 10 days after the end of each fiscal month of Borrower, accounts receivable agings.

D. Maintenance of Corporate Existence

Take all necessary action to maintain its corporate existence (including the filing of financial reports and tax returns with the Secretary of State and with the appropriate authorities in any other state where required).

E. Maintenance of Property, Plant and Equipment

Maintain its property, plant and equipment in good working order, subject only to normal wear and tear and make all necessary repairs and replacements thereto (so that operations may be properly conducted in accordance with prudent business management).

F. Maintenance of Insurance

Maintain insurance of its property (including real estate, machinery and equipment and inventory) and other related insurance satisfactory to Bank; such insurance shall be payable to Bank as its interest may appear. All policies of insurance shall provide for not less than 10 days' written notice of cancellation to Bank.

G. Inspection By Bank

Permit any person designated by Bank to inspect any of the properties of Borrower including its books, records, inventory and accounts (and including the making of copies thereof and extracts therefrom).

H. Authorization to Consult with Auditors

Authorize Bank at its request to discuss Borrower's financial statements and financial affairs at any time with Borrower's independent auditors and further authorize and request any representative of such auditor to participate in such discussions.

I. Maintenance of Working Capital

Maintain at all times working capital as defined in Paragraph L. of Article XI of this Agreement of at least \$ 60,000.00.

J. Maintenance of Net Worth

Maintain at all times tangible net worth of \$ 100,000.00.

K. Maintenance of Selected Financial Ratios

Maintain at all times the following ratios:

1. Current ratio -- the ratio of current assets to current liabilities at not less than 1.3:1. The ratio will be computed in accordance with generally accepted accounting principles.
2. Debt/worth the ratio of total liabilities to tangible net worth at not more than 3:1.

L. Prompt Payment of Taxes

Accrue its tax liability in accordance with usual accounting practice and pay or discharge (or cause to be paid or discharged) as they become due all taxes, assessments, and government charges upon it property, operations, income and products (as well as claims for labor, materials or supplies), which, if unpaid, might become a lien upon any of its property.

M. Notification of Default Under This and Other Loan or Financing Arrangements.

Promptly notify Bank in writing of the occurrence of any event or default under this Agreement or any other loan or financing arrangement.

N. Notification of Litigation

Promptly notify Bank in writing of any litigation that has been instituted or is pending or threatened involving aggregate amounts of \$ 5,000.00 or more, the outcome of which might have a serious adverse effect on its continued operations or financial condition.

O. Notification of Governmental Action

Promptly notify Bank in writing of any governmental investigation or proceeding that has been instituted or is pending or threatened, including without limitation, matters relating to the federal or state tax returns of Borrower, compliance with the Occupational Safety and Health Act, or proceedings by the Treasury Department, Labor Department, or Pension Benefit Guaranty Corporation with respect to matters affecting employee welfare, benefit or retirement programs.

P. Preservation of Collateral

Take all necessary steps to preserve, protect and defend the Collateral to keep its goods in good operating condition and repair and free of liens, give Bank access to and permit it to inspect the Collateral during all business hours and other reasonable times, and will not move the Collateral to another state without the prior consent of Bank; and regardless of any action taken by Bank to protest such Collateral, there shall be no like duty upon Bank in this respect.

Q. Payment of Expenses

Pay or reimburse Bank for all expenses of every nature, including but not limited to, reasonable attorney's fees and costs which Bank may incur in connection with the execution or carrying out of this Agreement, or its rights hereunder; and Bank may pay any or all such expenses and add the amount thereof to the indebtedness secured hereby.

R. Other

N/A

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Article IX. NEGATIVE COVENANTS

Until payment in full of the indebtedness now existing or hereafter incurred under this Agreement and the performance of all of its obligations hereunder, Borrower will not, without the express prior written consent of Bank:

A. Nature and Scope of Business

Enter into any type of business other than that in which it is presently engaged, or otherwise significantly change the scope or nature of its business.

B. Additional Borrowings

Incur (or permit any of its subsidiaries to incur) indebtedness for borrowed money (or insure or sell any of its bonds, debentures, notes or similar obligations) except (unless):

1. Borrowing under this Agreement.
2. Borrowings in the ordinary course of business not to exceed \$75,000.00.
3. Other obligations to Bank.
4. Proceeds are used to prepay in full borrowings under this Agreement.
5. Proceeds are used to prepay in full borrowings under this Agreement and to all other loans extended by Bank.

6. Debt which, on the date of this agreement, was already outstanding or was expected to be outstanding, up to \$ 175,000.00

C. Merger or Consolidation

Be a party to any merger or consolidation.

D. Acquisition of Borrower's Stock

Purchase, redeem or otherwise acquire for value any of its outstanding capital stock.

E. Payment of Cash Dividend

Declare or pay any cash dividend except as follows:

N/A

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F. Lease and Rental Obligations

Permit aggregate rental payments and lease payments to exceed in any fiscal year \$ 30,000.00 without the prior written consent of Bank.

G. Guaranties, Endorsement and Contingent Liabilities

Guaranties, endorse or otherwise become absolutely or contingently liable for the obligation of any other person, partnership, corporation or other entity except as customarily required in the ordinary course of business.

H. Capital Expenditures

Make expenditures or commitments for fixed or capital assets exceeding in any fiscal year the sum of \$ 75,000.00

I. Investments, Advances and Acquisitions

Make any investments in or advances to any person, partnership, corporation or other entity except as follows:

N/A

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J. Liens and Mortgages

Incur, create, assume or suffer to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets, now or hereafter owned, other than (a) the security interest granted herein to Bank; (b) deposits under Workman's Compensation, Unemployment Insurance and Social Security laws; (c) liens imposed by law, such as carriers, warehousemen's or mechanic's liens incurred in

good faith in the ordinary course of business and liens arising out of a judgment or award not exceeding \$ 5,000.00 with respect to which an appeal is being prosecuted, a stay of execution pending such appeal having been secured; (d)

K. Sale or Disposition of Assets

Sell, lease, transfer or otherwise dispose of all or, in the sole opinion of Bank, a substantial portion of its assets and properties, except in the ordinary course of business.

L. Executive Compensation

Pay to the officers and/or employees who are stockholders and/or the spouses, parents, children and grandchildren of officers and/or stockholders who are employees, total compensation including fringe benefits and contributions to retirement plans in the aggregate in any one year exceeding \$ 100,000.00.

M. Other

N/A

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Article X. SUBSIDIARIES

Wherever the Agreement refers to "Borrower", such a term shall also be construed to include subsidiaries of Borrower, if any, where applicable.

Article XI. DEFINITIONS

A. Account

The term "account" includes accounts receivables, notes, drafts, acceptances, instruments and chattel paper and other forms of obligations and receivables and all rights of borrower, earned or to be earned, under contracts to sell goods or render services, and all of which now belong, or have belonged or will belong to Borrower for goods sold by it or for services rendered by it, together with all guaranties and securities therefor, all right, title and interest of Borrower in the merchandise which gave rise thereto, including the right of stoppage in transit, and also goods subsequently acquired by Borrower by way of substitution, replacement, return, repossession or otherwise.

B. Agreement

The term "agreement", as used herein, shall include not only this Agreement, but also each security agreement, assignments, pledge mortgage or other document given by Borrower to Bank in connection with the collateral.

C. Collateral

The term "collateral" means all property from time to time subject to a security interest, assignment, pledge or mortgage granted pursuant hereto.

D. Equipment

The term "equipment" includes all machinery, equipment, furniture, fixtures and other goods (as defined in Article 9 of the Uniform Commercial Code) which are used or bought for use primarily in the business of Borrower, whether now owned or hereafter acquired by Borrower, wherever located, and all replacements and substitutions therefor or accessions thereto.

E. Insolvency

The term "insolvency" of Borrower or of any other person means that there shall have occurred with respect to Borrower or that person one or more of the following events: death, dissolution, termination of existence, insolvency, business failure, the application for the appointment of receiver of any part of the property of Borrower or other person; or the commencement by or against Borrower or any other person of any proceedings under any bankruptcy arrangement, reorganization, insolvency or similar law for the relief of debtors; or the service of any warrant, attachment, levy or similar process in relation to a tax lien or assessment.

F. Inventory

The term "inventory" means good, merchandise or any other personal property, now owned or hereafter acquired by Borrower, which are held for sale or lease or are furnished or to be furnished under a contract or contracts of service, or are raw materials, work in process, or material used or consumed or to be used or consumed in Borrower's business; and without limiting the foregoing definition, the term "inventory" includes all of Borrower's inventory of N/A.

G. Liabilities

The term "liabilities" means any and all liabilities of Borrower to Bank of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, regardless of how they arise or by what agreement or instrument they may be evidenced, or whether evidenced by any agreement or instrument and whether several, joint, or joint and several. "Liabilities" include obligations to perform acts and refrain from taking action as well as obligations to pay money.

H. Loan Documents

The term "loan documents" means all instruments (and each one thereof) given by Borrower to Bank to evidence any security interest, assignment, pledge or mortgage granted by Borrower to Bank.

I. Net Earnings

The term "net earnings" is defined as the net income or net deficit of Borrower determined for a specific period of time, all in accordance with generally acceptance accounting principles consistently applied, after deducting from gross revenues all operating expense, charges and income taxes (including non-cash expenditures). The computation of Net Earnings shall include all income tax credits resulting from operating losses. Gains or losses from discontinued operations or from the sale of capital assets other than in the ordinary course of business, proceeds from life insurance policies, reversals of contingency reserves, and all other items of extraordinary nature shall be excluded from the computations of Net Earnings.

J. Subsidiary

The term "subsidiary" shall mean any corporation, firm association or trust of which Borrower shall at the time own directly, or indirectly through one or more subsidiaries, more than 50% of the outstanding shares of capital stock of share of beneficial interest having ordinary voting power for the election of directors.

K. Tangible Net Worth

The term "tangible net worth" is defined as the excess of the aggregate assets of Borrower after excluding all intangible assets, and the book value of any write-up assets over the aggregate indebtedness of Borrower, all as determined in accordance with generally accepted accounting principles.

L. Working Capital

The term "working capital" is defined as the net difference of current asset less current liabilities as determined by generally accepted accounting principles consistently applied.

Article XII. EVENTS OF DEFAULT; ACCELERATION

The occurrence of any one or more of the following events shall constitute a default by Borrower under this Agreement.;

- A. If any statement, representation or warranty made by Borrower in this Agreement or in connection therewith or any financial statement, report, schedule, or certificate furnished by Borrower or any of its officers or accountants to Bank during the term of this Agreement shall prove to have been materially incorrect as to the date thereof.
- B. Default by Borrower in payment on its due date of principal or interest called for under this Agreement, provided each default continues for a period of ten (10) days after the due date.
- C. Default by Borrower in the performance or observance of any of the provisions, terms, conditions, warranties or covenants of this Agreement, other than under Article XII of this Agreement, if such defaults remains unremedied for ten (10) days.
- D. Default by Borrower in the payment or performance of any other obligations due Bank, whether created prior to, concurrent with, or subsequent to obligations arising out of this Agreement.

- E. Default by Borrower in any other obligation for borrowed money.
- F. Death, dissolution or termination of Borrower's corporate existence.
- G. Any action by or against Borrower, either voluntary or otherwise under any state or federal bankruptcy or insolvency laws.
- H. The ordering, appointment or election of a receiver, assignee or trust mortgagee for all or substantially all of Borrower's property.
- I. Commission by Borrower, either voluntary or otherwise, of an act of Bankruptcy as defined in the Federal Bankruptcy Act as amended.
- J. Commencement by or against Borrower of any proceedings, judicial or otherwise, intended for the relief of debtors, including but not limited to, extensions, compositions, or partial liquidations.
- K. The occurrence of such a change in the condition or affairs (financial or otherwise) of Borrower which, in the opinion of Bank, impairs Bank's security or increases its risk.
- L. Final judgment for the payment of money in excess of \$5,000.00 shall be rendered against Borrower and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed.
- M. The occurrence of any of the events of default contained in Article XII sub-sections A, E, F, G, H, I, and/or J of this Agreement by or against any guarantor or endorser of any indebtedness of Borrower to Bank.
- N. Other:

N/A

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Upon the occurrence of any event of default, Bank's obligation to make further loans under this Agreement or any other agreement with Borrower will immediately cease and terminate and all of the obligations of Borrower to Bank, either under this Agreement or otherwise, will immediately become due and payable without demand, notice or protest, all of which are hereby expressly waived. Thereafter, Bank may proceed to protect and enforce its rights, at law, in equity, or otherwise, against Borrower and any endorser or guarantor of Borrower's obligations, either jointly or severally, and may proceed to liquidate and realize upon any of its collateral in accordance with the rights of secured party under the Uniform Commercial Code or any other applicable law, or agreement between Borrower and Bank or agreement between any guarantor or endorser of Borrower's obligations and Bank.

### Article XIII. MISCELLANEOUS PROVISIONS

#### A. Entire Agreement and Waivers

This Agreement and note or notes evidencing borrowings thereunder together constitute the entire Agreement between Borrower and Bank and no covenant, term, condition or other provision thereof nor any default in connection therewith may be waived except by an instrument in writing signed by Bank and delivered by mail to Borrower. Bank's failure to exercise or enforce any of its rights, powers or privileges under this Agreement and note or notes shall not operate as waiver thereof.

#### B. Remedies Cumulative

All remedies provided under this Agreement, note or notes afforded by law shall be cumulative and available to Bank until all of Borrower's obligations to Bank have been paid in full.

#### C. Survival of Covenants

All covenants, agreements, representations and warranties made herein and in certificates delivered in connection herewith shall be deemed material and relied on by Bank or in its behalf, and shall survive the execution and delivery of this Agreement and the note or notes evidencing thereunder. All such covenants, agreements, representations and warranties shall bind and insure to the benefit of Borrower's and Bank's successors and assign, whether so expressed or not.

#### D. Governing Law

This agreement and note or notes shall be construed and their provisions interpreted under and in accordance with the laws of the State of New Hampshire.

#### E. Assurance of Execution and Delivery of Additional Instruments

Borrower agrees to execute and deliver, or to cause to be executed and delivered, to Bank all such further instruments, and to do or cause to be done all such further acts and things, as Bank may request or as may be necessary or desirable to effect further the purpose of this Agreement and the collection of the note or notes and any security therefor.

#### F. Rate of Interest After Due Date

Anything in this Agreement to the contrary notwithstanding any principal sums and any obligations respecting interest remaining unpaid subsequent to the date when they are due and payable or may become or be declared due and payable pursuant to this Agreement shall bear interest at the rate stated in Article IV of this Agreement.

G. Waivers and Assents by Borrower

Borrower and each guarantor or endorser of Borrower's obligations to Bank hereby waive demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demand and notices of description with respect both to liabilities and collateral. Borrower assents to any extension or postponement of the time of payment or any other indulgence of release of any party or person primarily or secondarily, liable to the acceptance or partial payments thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Bank may deem advisable. Any demand upon or notice to Borrower that Bank may elect to give shall be effective when deposited in the United States Mail addressed to Borrower at its address set forth at the beginning of the Agreement or when delivered to a telegraph company addressed to Borrower at its address set forth in the beginning of this Agreement.

H. No Duty of Bank with Respect to Collateral

Bank shall have no duty to the collection or protection of collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto, beyond the safe custody thereof.

I. Election of Bank

Bank may exercise its rights with respect to any collateral without regard to other collateral, guarantors or endorsers or other source's of reimbursement.

J. Assignment by Bank

If at any time, by assignment or otherwise, Bank transfers any liabilities and collateral therefor, such transfers shall carry with it the powers and rights of Bank under this Agreement with respect to the liabilities and the collateral so transferred and the transferee shall become vested with such powers and rights, whether or not they are specifically referred to in the instrument evidencing the transfer. If, and to the extent that, Bank retains liabilities and collateral, Bank shall continue to have the rights and powers herein set forth with respect thereto.

K. Rights and Obligations of Successors and Assigns

This agreement shall be binding upon and insure to the benefit of Bank and Borrower, their successors, assigns, heirs and personal representatives; provided, however, the rights of Borrower hereunder are not assignable or transferable without the consent of Bank. All of the rights of Bank hereunder shall insure to the benefit of any participating bank or banks and its or their successor and assigns.

L. Survival of Provisions of Accompanying Note

Notwithstanding anything contained in this Agreement, if, in connection with any borrowing made hereunder or any liability of Borrower to Bank, Borrower has executed a demand promissory note, nothing contained in this Agreement shall be deemed to waive the demand character to such note.

H. Expenses; Proceeds of Collateral

Borrower covenants and agrees that it shall pay to bank, on demand, any and all expenses, including reasonable attorney's fees incurred or paid by Bank in protesting or enforcing its rights under this agreement, including the cost of preparation of this Agreement and its supporting documents including all filing and appraisal fees. After deducting all of said expenses and the reasonable expenses of retaking, holding, preparing for sale, selling and the like, the residue of any proceeds of collections or sale of collateral shall be applied to the payment of principal of or interest on liabilities of Borrower to Bank in such order or preference as Bank may determine, proper allowance for interest on liabilities not then due being made and any excess shall be return to Borrower (subject to the provision; of Section 9-504 of the Uniform Commercial Code) and Borrower shall remain liable for any deficiency.

N. Bank's Right of Offset

Any deposits or other sums at any time credited or due from Bank to Borrower, and any securities or other property of Borrower which at any time are in the possession of Bank, may at all times be held and treated as collateral security for the payment of the liabilities of Borrower to Bank. Bank may apply or set off such deposits or other sums against liabilities at any time, whether or not the liabilities are then due or the collateral is considered by Bank to be adequate. Borrower expressly grants to Bank the right to set off and apply such deposits and sums without having recourse to any other collateral in which Bank has a security interest.

O. Unenforceable Provisions

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, Bank and Borrower have executed this Agreement by their duly authorized officers.

Witness

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Merchants National Bank  
of Manchester

\_\_\_\_\_  
Gary K. Kneen AVP

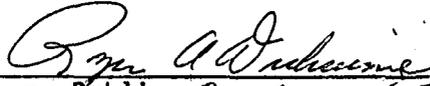
Rail Systems, Inc.

By: \_\_\_\_\_  
Michael V. Smith, President

The State of New Hampshire  
Hillsborough, ss.

Personally appeared, before me, the undersigned officer, the above name Nancy P. Linnell, duly authorized signatory for the Merchants National Bank, known to me (or satisfactorily proven to be as the person whose name is subscribed to this document and made oath that he executed the same for the purposes therein contained and as his own free deed.

Date: 3/20/87

  
Notary Public *My Comm. Exp. 3/1/89*

The State of New Hampshire  
Hillsborough, ss.

Personally appeared, before me, the undersigned officer, the above named MICHAEL SMITH, duly authorized signatory for TRAIL SYSTEMS, Inc., known to me (or satisfactorily proven to be) as the person whose name is subscribed to this document and made oath that he executed the same for the purposes therein contained and as his own free act and deed.

Dated: 3/27/87

  
Notary Public

KATH E. BURNER, Notary Public  
My Commission Expires February 8, 1989

0500L