



INTERNATIONAL METALS & MACHINES, INC.

INTERNATIONAL HEADQUARTERS

2200 EAST DEVON AVENUE • SUITE 220 • DES PLAINES, ILLINOIS 60018
(312) 297-0808 • CHICAGO (312) 694-4292 TELEX 72-0437 • CABLE MONICO

RECORDATION NO. 13423 Filed 1425

January 7, 1982

JAN 8 - 1982 - 2 30 PM

Interstate Commerce Commission
12th and Constitutional Avenue, N.W.
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION No. 13423
Date JAN 8 1982
Fee \$ 60.00
RECORDATION NO. 13423 Filed 1425

Attention: Secretary

JAN 8 - 1982 - 2 30 PM Washington, D. C.

Dear Sir:

Herewith are three (3) ~~sets~~ ^{copies} of the documents described below of which the undersigned executive officer has personal knowledge of the matters set forth therein. It is hereby respectfully requested that such documents be recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act:

1. Chattel Mortgage and Security Agreement, dated as of December 31, 1981.

Mortgagor: International Metals & Machines, Inc.
2200 E. Devon Avenue, Suite 220
Des Plaines, Illinois 60018

Mortgagee: First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670

2. Collateral Assignment of Lease, dated as of December 31, 1981.

Assignor (Lessor): International Metals and Machines, Inc.
2200 E. Devon Avenue, Suite 220
Des Plaines, Illinois 60618

Assignee: The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670

International Metals & Machines, Inc., as Lessor, has leased the Equipment to Missouri-Kansas-Texas Railroad Company, a Delaware corporation (hereinafter called the "Lessee"), as Lessee, pursuant to a Railroad Equipment Lease dated as of December 16, 1981 (hereinafter called the "Lease"), which Lease was filed with the Commission on December 21, 1981 at 3:00 p.m., Recordation No. 13372.

General Description of the Equipment covered by (1) Chattel Mortgage and Security Agreement and (2) the Lease and Lease Agreement:

Lowery

C. Dewey

INTERNATIONAL METALS & MACHINES, INC.

January 7, 1982

Page 2

Eight (8) 3000 H.P. Model SD40-2 Diesel Electric Locomotives manufactured by General Motors Corporation (Electro-Motive Division), manufacturers serial numbers 806049-1, 806049-2, 806049-3, 806049-4, 806049-5, 806049-6, 806049-7 and 806049-8, bearing Missouri-Kansas-Texas Railroad Company road numbers 629 through 636.

Recordation Fees:

Two checks in the amounts of \$50.00 and \$10.00, respectively, payable to the Commission are enclosed herewith pursuant to Section 1116.3(d) of the regulations of the Interstate Commerce Act, in payment of the recordation fees for the above documents.

Very truly yours,

International Metals & Machines, Inc.


President

2200 E. Devon Avenue, Suite 220
Des Plaines, Illinois 60018

Dated: January 7, 1982

Interstate Commerce Commission
Washington, D.C. 20423

1/8/82

OFFICE OF THE SECRETARY

George E. MCKewor
International Metals & Machines, Inc.
2200 East Devon Avenue Suite 220
Des Plaines, Illinois 60018

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 **1/8/82** at **2:30pm**, and assigned re-
recording number(s).

13423 & 13423-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

13423
RECORDATION NO. Filed 1425

JAN 8 - 1982 - 2 30 PM

INTERSTATE COMMERCE COMMISSION

CHATTEL MORTGAGE AND SECURITY AGREEMENT

Dated as of December 31, 1981

between

INTERNATIONAL METALS & MACHINES, INC.,

(Mortgagor)

and

THE FIRST NATIONAL BANK OF CHICAGO

(Mortgagee)

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CHattel MORTGAGE AND SECURITY AGREEMENT

THIS CHATTEL MORTGAGE AND SECURITY AGREEMENT dated as of December 31, 1981, between **INTERNATIONAL METALS & MACHINES, INC.**, a Delaware corporation (hereinafter called "Mortgagor") and **THE FIRST NATIONAL BANK OF CHICAGO**, a national banking association (hereinafter called the "Mortgagee");

W I T N E S S E T H:

WHEREAS, the Mortgagor purchased on December 31, 1981 the equipment described in Annex A hereto (hereinafter called the "Equipment") which Equipment is intended for a use related to interstate commerce;

WHEREAS, the Mortgagor has leased the Equipment to Missouri-Kansas-Texas Railroad Company, a Delaware corporation (hereinafter called the "Lessee"), pursuant to a Railroad Equipment Lease dated as of December 16, 1981 (hereinafter called the "Lease");

WHEREAS, in order to finance a portion of the purchase price of the Equipment, the Mortgagor and the Mortgagee entered into a Security Agreement-Chattel Mortgage, dated December 31, 1981 (hereinafter called the "Security Agreement"), pursuant to which the Mortgagor on December 31, 1981 borrowed the sum of \$5,400,000 from the Mortgagee and issued its Secured Note (hereinafter called the "Note") in such principal amount, payable to the order of the Mortgagee, a copy of which Note is attached hereto as Annex B;

WHEREAS, this Agreement is being entered into pursuant to the Security Agreement;

WHEREAS, the interest of the Mortgagor in the Equipment and in the Lease is to be assigned and granted to and retained by the Mortgagee as security for the obligations of the Mortgagor hereunder and under the Note, in accordance with the terms hereof, of the Note, and of the Collateral Assignment of Lease dated as of the date hereof (hereinafter called the "Lease Assignment"), all as contemplated by the Security Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions. The following terms shall have the following meanings for all purposes of this Agreement and the Note and shall include the plural as well as the singular:

Casualty Value shall mean any amounts payable under the Lease due to an Event of Loss, whether or not such amount shall be called the "Casualty Value" therein.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would become an Event of Default.

Estate shall mean all of the properties, claims, rights and things granted or assigned to the Mortgagee pursuant to section 2.1 hereof.

Event of Default shall have the meaning established in section 6.1.

Event of Loss shall mean the loss, destruction, unfitness for use, requisition, condemnation or other event which shall cause the Lease to be terminated in respect of any unit of the Equipment and require the Lessee to make payment in respect thereof, whether or not such event shall be called an "Event of Loss" in the Lease.

Lessor's Cost with respect to the Equipment, shall mean the cost thereof as evidenced by an invoice of the vendor thereof or such other evidence of the cost as shall be stipulated in the Lease.

ARTICLE II

SECURITY

SECTION 2.1. Grant of Mortgage and Security Interests. As security for the due and punctual payment of the principal of and interest on the Note and the performance and observance by the Mortgagor of all the covenants made by it and the conditions contained in this Agreement and the Security Agreement, the Mortgagor does hereby grant, bargain, sell, convey, assign, mortgage, transfer, set over, grant a security interest in and confirm unto the Mortgagee the following: (A) all of the Mortgagor's right, title and interest in and to the Equipment, and all cash and non-cash proceeds therefrom; and (B) all of the Mortgagor's right, title and interest in and to the Lease and all payments, including, without limitation,

all payments of rent, due or to become due thereunder, but excluding amounts payable to the Mortgagor as indemnity for the Mortgagor's losses under Section Seven and Section 11.2 of the Lease.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Mortgagee, its successors and assigns forever, for the use and purposes and with the power and authority and subject to the terms and conditions set forth in this Agreement.

SECTION 2.2. Filing with Interstate Commerce Commission, etc. This Agreement, the Lease and the Lease Assignment or counterparts or copies thereof shall be filed with the Interstate Commerce Commission pursuant to Section 11303 of the Interstate Commerce Act and may be filed or recorded in any other public office as may be necessary or appropriate to protect the interests of the Mortgagee. The Mortgagor and the Mortgagee will execute and file such financing statements and instruments and such continuation statements with respect to statements and instruments previously filed relating to the interests created or assigned under this Agreement in the Estate as may be specified from time to time in written instructions of the Mortgagee (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such statement or instrument or such continuation statement so to be filed).

SECTION 2.3. Power of Attorney. The Mortgagor hereby appoints the Mortgagee the Mortgagor's attorney, irrevocably, with full power of substitution, to collect all payments due and to become due under or arising out of the Lease (other than payments to the Mortgagor for indemnification under Section Seven and Section 11.2 of the Lease, or any payments under Section 6.3 of the Lease in excess of any amounts payable under Section 4.1 hereof), to enforce compliance by the Lessee with all the terms and provisions of the Lease, and to take any action or institute any proceedings which the Mortgagee may deem to be necessary or appropriate to protect and preserve the interest of the Mortgagee in the Estate.

SECTION 2.4. Payment. The Mortgagor agrees that upon the request of the Mortgagee, at any time, it will direct the Lessee to make all payments to be made by it under the Lease (other than payments to the Mortgagor for indemnification under Section Seven and Section 11.2 of the Lease) directly to the Mortgagee or in accordance with the Mortgagee's instructions until such time as the obligations of the Mortgagor hereunder and under the Note have been discharged; **provided, however,** that in the event any payment under Section 6.3 of the Lease shall be paid directly to the Mortgagee pursuant to this Section 2.4, the Mortgagee shall forthwith remit to the Mortgagor any excess over the amount required to be prepaid under Section 4.1 of this Agreement. The Mortgagor agrees that should it receive any such payments directed to be made to the Mortgagee or any proceeds for or with respect to the Estate or as the result of the sale or other

disposition thereof, it will promptly forward such payments to the Mortgagee or in accordance with the Mortgagee's instructions; provided, however, that the Mortgagor shall not be required to forward the amount of any such payment in excess of the liability of the Mortgagor hereunder. The Mortgagee agrees to apply amounts from time to time received by it (from the Lessee, the Mortgagor or otherwise) with respect to the Lease or the Equipment to the payment of the principal of and interest on the Note then due and to the payment of any other amounts then due and payable under this Agreement and, if no Event of Default hereunder shall have occurred and be continuing, to pay any balance to the Mortgagor.

SECTION 2.5. Release of Security Interests. After all payments due and to become due hereunder and under the Note shall have been made and the Mortgagor shall have performed all of its obligations hereunder, the security interests and all other estate and rights therein granted by this Agreement shall cease and become null and void and all of the property, rights and interests granted as security for the Note shall revert to and revest in the Mortgagor without any other act or formality whatsoever.

Upon receiving evidence satisfactory to it that the Mortgagor has fully performed and observed its covenants and obligations contained in this Agreement, the Mortgagee shall, at the request and at the expense of the Mortgagor, execute and deliver to the Mortgagor such termination statements, discharges, releases or other instruments as shall be necessary and appropriate to evidence the satisfaction and discharge of this Agreement and the security interests hereby created.

ARTICLE III

ISSUANCE OF NOTE

SECTION 3.1. Characteristics of the Note. The Note shall bear interest at such rate, be payable as to principal and interest on such date or dates, and shall contain such other terms and provisions as are reflected in the Note set forth in Annex B hereto.

All interest payable on the Note shall be computed for actual days elapsed on a 365 or, when applicable, 366 day-year basis. In the event that the date for payment of principal of or interest on the Note is not a business day, then such payments shall be made on the next succeeding business day with the same effect as if made on the nominal payment date and no interest shall be paid in respect of such delay.

In the event that any unit of the Equipment shall suffer an Event of Loss, the Note shall be subject to prepayment in whole or in part as more fully set forth in Article IV hereof but not otherwise.

In the event of any prepayment of the principal amount of the Note pursuant to this Agreement, the amount of each payment of such Note becoming due after application of such prepayment shall, to the extent appropriate, be adjusted so that the principal paid on each date for an installment of principal shall bear the same proportion to the original amount payable on such date as the total unpaid balance bears to the original balance unpaid on such date but for such prepayment and that, upon the due payment of all payments thereafter, the entire unpaid principal amount of and interest on such Note shall have been paid in full.

SECTION 3.2. Home Office Payment. The principal of and interest on the Note shall be payable at the principal office of the Mortgagee in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE IV

PREPAYMENT

SECTION 4.1. Prepayment as Result of Event of Loss. In the event that any unit of the Equipment shall suffer an Event of Loss, the Mortgagor shall immediately notify the Mortgagee of such occurrence and the Note shall be prepaid, on the date for payment of principal of and interest on the Note next following such notice, or the date specified in Section 6.3 of the Lease for the making of any Casualty Value payment by the Lessee to the Mortgagor (as Lessor), whichever date is later, in an amount equal to the unpaid principal amount of the Note multiplied by a fraction, (x) the numerator of which shall be the aggregate amount of the Lessor's Cost of the Equipment which shall have suffered an Event of Loss and (y) the denominator of which shall be the aggregate amount of Lessor's Cost of all Equipment immediately prior to such date.

ARTICLE V

COVENANTS AND REPRESENTATIONS OF MORTGAGOR

SECTION 5.1. Covenants of Mortgagor. The Mortgagor hereby covenants and agrees as follows:

(a) the Mortgagor will duly and punctually pay to the Mortgagee the principal of and interest on the Note in accordance with the terms of such Note and this Agreement when such payments shall become due, including, but not limited to, any prepayments in respect of Events of Loss;

(b) the Mortgagor will not directly or indirectly create or suffer to exist any lien, encumbrance, or security interest on or with respect to any of the Estate resulting from the acts of the Mortgagor or resulting from the nonpayment of any tax except as may be created by this Agreement, the Lease, or the Lease Assignment or resulting from the nonpayment of any such tax which the Lessee has agreed in the Lease to pay or reimburse;

(c) the Mortgagor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Mortgagor;

(d) without the written consent of the Mortgagee, the Mortgagor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee which are intended to satisfy the obligations of the Mortgagor under this Agreement and the Note or to preserve and protect the interest of the Mortgagee in the Lease and the Equipment, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein, or enter into any agreement or take any action the result of which would be to amend, modify or terminate the Lease or the obligations of the Lessee thereunder;

(e) except as provided herein or in the Lease, the Mortgagor will not sell, assign or transfer its rights under this Agreement or the Lease or transfer the right to possession of any unit of the Equipment;

(f) the Mortgagor will not without the consent of the Mortgagee amend or supplement the Lease in any manner which would have a material adverse effect on any right of the Mortgagee;

(g) the Mortgagor will promptly notify the Mortgagee of any Event of Default hereunder or under the Lease or any event which, with the giving of notice or the lapse of time or both, would become such an Event of Default, of which the Mortgagor shall have knowledge;

(h) unless and until the obligations of the Mortgagor hereunder have been discharged, the Mortgagor, without the consent of the Mortgagee, shall not terminate the Lease or otherwise exercise the remedies available under the Lease against the Equipment; provided, however, that the Mortgagor, without the consent of the Mortgagee, may seek

payments with respect to any rights of the Mortgagor that are excluded from the Estate by demand upon the Lessee and by an action in damages against the Lessee; and

(i) So long as the Note shall remain outstanding and be held by The First National Bank of Chicago, the Mortgagor will comply with all covenants and other agreements contained in the Revolving Credit and Term Loan Agreement, dated as of December 19, 1977, between the Mortgagor and Mortgagee, as presently in effect, whether or not said Revolving Credit Agreement shall remain in effect or any indebtedness shall at any time be outstanding thereunder.

SECTION 5.2. Representations and Warranties. The Mortgagor hereby represents and warrants that:

(a) The Mortgagor is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware, and has the corporate power and authority to own its property and to conduct its business, as presently owned and conducted, and to enter into and perform its obligations under this Agreement, the Note, the Lease and the Lease Assignment.

(b) This Agreement, the Note, the Lease and the Lease Assignment have been duly authorized, executed, and delivered by the Mortgagor and, assuming due authorization, execution, and delivery by the other parties thereto, are legal, valid, and binding obligations of the Mortgagor enforceable against the Mortgagor in accordance with their respective terms.

(c) The execution and delivery by the Mortgagor of this Agreement, the Note, the Lease and the Lease Agreement are not, and the performance by the Mortgagor of its obligations under each instrument will not be, inconsistent with its certificate of incorporation or by-laws, does not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Mortgagor, and does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Mortgagor is a party or by which it or its property is bound.

(d) The consent or approval of, or giving of notice to, registration with, or taking of any action in respect of or by, any federal, state, or local government body is not required with respect to the execution, delivery, and performance by the Mortgagor of the Note, this Agreement, the Lease and the Lease Agreement, except for the filing

and recording thereof (other than the Note) pursuant to 49 USCA 11303 in order to perfect the security interest granted herein by the Mortgagor to the Mortgagee;

(e) There are no actions, suits, or proceedings pending or, to the knowledge of the Mortgagor, threatened against or affecting the Mortgagor in any court or before any governmental body that, if adversely determined would have a material adverse effect on the ability of the Mortgagor to perform its obligations under this Agreement, the Note, the Lease and the Lease Agreement.

(f) The Mortgagor is not in default under any obligation for the payment of borrowed money, the deferred purchase price of property, or rent under any lease of real or personal property which, if adversely determined, would have a material adverse effect on the ability of the Mortgagor to perform its obligations hereunder, and no event that, with the lapse of time or the giving of notice or both, would constitute a material default under any thereof, has occurred and is continuing.

(g) Each unit of Equipment is free of liens, security interests and encumbrances resulting from claims against the Mortgagor other than liens created or granted by the Mortgagor by this Agreement, the Security Agreement and the Lease Assignment, and the rights of the Lessee under the Lease, which Lease was filed with the Interstate Commerce Commission pursuant to 49 USCA 11303 on December 21, 1981. Except as aforesaid, there is no filing with the Interstate Commerce Commission with respect to the Equipment or the Lease, nor is there any financing statement or similar notice covering the Equipment or the Lease or any proceeds thereof on file in any public office.

SECTION 5.3. Further Assurances. The Mortgagor covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Mortgagee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE VI

EVENTS OF DEFAULT; REMEDIES

SECTION 6.1. Events of Default. The Mortgagor covenants and agrees that in case any of the following events (each such event being herein sometimes called an Event of Default) shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any default by the Lessee shall have occurred under the Lease and shall not have been cured within any applicable grace period; or

(b) any default by the Mortgagor shall have occurred under the Revolving Credit and Term Loan Agreement referred to in Section 5.1(i) hereof, and shall not have been cured within any applicable grace period;

(c) any payment of principal of or interest on the Note due on June 30, 1984 (the stated maturity of the Note) shall not be paid when due;

(d) any payment of principal of or interest on the Note (other than any payment referred to in subsection (c) above), including prepayments required by Article IV hereof, shall not be paid when due, and such default shall continue for more than ten days thereafter; or

(e) the Mortgagor shall breach or fail to observe or perform any covenant, agreement or warranty on its part made in subsections (b) (other than a breach or failure resulting from nonpayment of a tax which the Lessee has agreed to pay or reimburse), (d), (e), (f), (h) or (i) of Section 5.1 hereof;

(f) the Mortgagor shall breach or fail to observe or perform any covenant, agreement or warranty on its part made in this Agreement (other than as provided in subsection (e) above), the Lease or the Lease Assignment, and such breach or failure shall continue for a period of 30 days after notice thereof shall have been given to the Lessee and the Mortgagor by the Mortgagee; or

(g) any representation or warranty made or given by the Mortgagor herein, or in any document, certificate or instrument furnished in connection herewith shall prove to be inaccurate in any material respect; or

(h) any proceeding shall be commenced by or against the Mortgagor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Mortgagor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Mortgagor, or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then and in every such case the Mortgagee may, by notice in writing to the Mortgagor, declare the unpaid principal amount of the Note with accrued interest thereon to be due and payable. Thereupon the entire amount of such principal and accrued interest, and the entire amount due hereunder, shall become due and payable immediately without further demand.

The Mortgagee shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the amounts so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Mortgagor and collect in the manner provided by law out of the Estate, wherever situated, the moneys adjudged or decreed to be payable.

SECTION 6.2. Specific Remedies. Upon the occurrence and during the continuance of a Event of Default the Mortgagee may exercise any or all of the following additional remedies:

(a) If the Lessee shall be in default under the Lease, the Mortgagee may exercise any of the remedies available to the Mortgagor as lessor thereunder.

(b) Subject to the rights of the Lessee under the Lease (if the Lease shall not then be in default), the Mortgagee may recover possession of the Equipment and the Estate. If requested by the Mortgagee, the Mortgagor shall

cause the Equipment and the Estate to be assembled and delivered to the location specified by the Mortgagee. The Mortgagee shall be entitled to a judgment conferring upon the Mortgagee the immediate right to such possession and to a decree of specific performance requiring the delivery of the Equipment and the Estate as aforesaid.

(c) The Mortgagee may collect and receive any and all rents, revenues and other cash and non-cash proceeds from the Equipment and the Estate.

(d) Subject to the rights of the Lessee under the Lease (if the Lease shall not then be in default), the Mortgagee may with or without retaking possession sell all or any part of the Estate, free from any and all claims of the Mortgagor, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion. Upon any such public sale, the Mortgagee may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Mortgagee may specify, or as may be required by law, and without gathering at the place of sale the Equipment or the Estate to be sold, and in general in such manner as the Mortgagee may determine; provided, however, that any sale is held in a commercially reasonable manner and the Mortgagor has received ten days' notice by telegram, telex or registered mail of and has a reasonable opportunity to bid at any such sale.

If, prior to such sale or lease or the making of a contract therefor, or within 10 days after the Mortgagee shall have notified the Mortgagor of its intention to take possession of or sell the Equipment, whichever is later, the Mortgagor should tender full payment of the total unpaid principal of the Note, together with interest thereon accrued and unpaid and all other amounts due under this Agreement as well as all proper expenses of the Mortgagee incurred in taking possession of, storing, preparing the Equipment for, and otherwise arranging for, the sale or leasing of the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Mortgagee.

Upon such taking possession or sale of the Estate, the Mortgagor shall cease to have any rights in respect of the Estate hereunder, but all such rights shall be deemed thenceforth to have been waived and surrendered by the Mortgagor, and no payments therefor made by the Mortgagor in respect of the Estate or any of it shall give to the Mortgagor any legal or equitable interest or title in or to the Estate or any of it or any cause or right of action at law or in equity in respect of the Estate against the Mortgagee. No such taking possession or sale of the Estate or any of it by the Mortgagee shall be a bar to the recovery by the Mortgagee from the

Mortgagor of payments then or thereafter due and payable, and the Mortgagor shall be and remain liable for the same until such sums shall have been received by the Mortgagee as, with the proceeds of the sale of the Estate, shall be sufficient for the discharge and payment in full of all the obligations of the Mortgagor hereunder (other than interest not then accrued), whether or not they shall have then matured.

SECTION 6.3. Application of Proceeds. If an Event of Default shall occur and be continuing and the Mortgagee shall exercise any of the powers conferred upon it by Sections 6.1 and 6.2 hereof, all payments made by the Mortgagor to the Mortgagee hereunder after such Event of Default, and the proceeds of any judgment collected hereunder from the Mortgagor by the Mortgagee, and the proceeds of every sale by the Mortgagee of any of the Estate, together with any other sums which may then be held by the Mortgagee under any of the provisions hereof, shall be applied by the Mortgagee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Mortgagee in discharge of its duties hereunder, (b) of the interest then due on the Note, and (c) of the principal of the Note, with interest thereon from the date to which interest has been paid under clause (b) above at the rate provided in the Note, whether such Note shall have then matured by its terms or not.

If after applying all such sums of money realized by the Mortgagee as aforesaid there shall remain any amount due to the Mortgagee under the provisions hereof, the Mortgagor agrees to pay the amount of such deficit to the Mortgagee. If after applying as aforesaid the sums of money realized by the Mortgagee there shall remain a surplus in the possession of the Mortgagee, such surplus shall be paid to the Mortgagor.

SECTION 6.4. Rights and Remedies Cumulative; No Waiver. Each and every right, power and remedy herein specifically given to the Mortgagee under 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 and in such order as may be deemed expedient by the Mortgagee, 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 Mortgagee 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 Mortgagor or the Lessee or to be an acquiescence therein. No waiver in respect of any Event of Default shall extend to any subsequent or other Event of Default.

SECTION 6.5. Restoration of Rights and Remedies. In case the Mortgagee shall have proceeded to enforce any right, power and remedy under this Agreement by foreclosure, repossession or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Mortgagor, the Mortgagee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Estate, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

SECTION 6.6. Rescission and Annulment. If at any time after the principal of the Note shall have become so due and payable by declaration by the Mortgagee, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all arrears of interest upon the Note and all other sums payable under the Note (except the principal of the Note which by such declaration shall have become payable), shall have been duly paid, and every other Default and Event of Default with respect to any covenant or provision of this Agreement shall have been made good or cured, then and in every such case the Mortgagee's declaration and its consequences shall be rescinded and annulled; but no such rescission or annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereon.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail with proper postage for first-class mail, prepaid, addressed as follows:

- (i) if to the Mortgagor, at 2200 East Devon Avenue, Suite 220, Des Plaines, Illinois 60018, attention George E. McKewen, President,
- (ii) if to the Mortgagee at One First National Plaza, Chicago, Illinois 60670, attention of Midwest Division, and
- (iii) if to the Lessee, at its address set forth in the Lease;

or to such other address as the Mortgagor, the Mortgagee or the Lessee, or its successors or assigns, may from time to time designate by notice duly given in accordance with this section to each other party.

SECTION 7.2. Law Governing; Severability. This Agreement shall be governed by the laws of the State of Illinois and of the United States. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 7.3. Benefit of Parties, Successors and Assigns. All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Mortgagee and its successors and assigns.

SECTION 7.4. Survival of Representations and Warranties. All representations and warranties shall survive the execution and delivery of this Agreement and the issue, sale and delivery of the Note and shall continue in effect so long as the Note is outstanding and unpaid.

SECTION 7.5. Counterpart Execution. This instrument and any amendment or supplement to this instrument may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 7.6. Dating of Agreement. Although this instrument is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Mortgagor and the Mortgagee are the respective dates set forth under their signatures, and this instrument shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

INTERNATIONAL METALS &
MACHINES, INC.

George C. McKeown
President

Dated: JANUARY 7, 1982

THE FIRST NATIONAL BANK OF
CHICAGO

James W. Bell
Vice President

Dated: January 7, 1982

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this *17th* day of January, 1982, before me personally appeared *Thomas A. Berton*, to me personally known, who, by me being duly sworn, says that he is the *Vice President* of THE FIRST NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

Harry Deven

Notary Public

My Commission expires: *October, 1983*

STATE OF ILLINOIS)
) SS:
COUNTY OF ~~COOK~~ *LAKE*)

On this *7th* day of January, 1982, before me personally appeared *George E. McKenna* to me personally known, who by me being duly sworn, says that he is the *President* of International Metals & Machines, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Arthur E. Miller

Notary Public

My Commission expires: *3/10/85*

ANNEX A

EQUIPMENT

Eight (8) 3000 H.P. Model SD40-2 Diesel Electric Locomotives manufactured by General Motors Corporation (Electro-Motive Division), manufacturer's serial numbers 806049-1, 806049-2, 806049-3, 806049-4, 806049-5, 806049-6, 806049-7 and 806049-8, bearing Missouri-Kansas-Texas Railroad Company road numbers 629 through 636

ANNEX B

SECURED NOTE

\$5,400,000.00

December 31, 1981

FOR VALUE RECEIVED, the undersigned, INTERNATIONAL METALS & MACHINES, INC., a Delaware corporation (herein called the "Company"), promises to pay to the order of THE FIRST NATIONAL BANK OF CHICAGO (hereinafter called the "Bank"), the principal sum of Five Million Four Hundred Thousand and no/100 Dollars (\$5,400,000.00) payable in lawful money of the United States of America at the office of the payee at One First National Plaza, Chicago, Illinois in immediately available funds on or before June 30, 1984, together with interest (computed for actual days on a 365 or, when applicable, 366 day-year basis) on the unpaid balance of this Note from the date hereof until maturity at a rate equal to the Corporate Base Rate, such rate of interest to change when and as such Corporate Base Rate shall change, payable at the office of the payee in immediately available funds on the 25th day of each January, April, July and October hereafter and at maturity, and with interest on the unpaid balance after the expressed or any accelerated maturity hereof at a rate per annum equal to the corporate Base Rate, plus two percent (2%) per annum, such rate of interest to change when and as said Corporate Base Rate shall change. "Corporate Base Rate" as used herein shall mean the corporate base rate of interest announced by the Bank from time to time.

If any payment of principal or interest on this Note shall become due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Illinois, such payment shall be made on the next succeeding business day in Illinois and such extended time of the payment of principal shall be included in computing interest at the rate this Note bears in connection with such payment.

The Company expressly waives any presentment, demand, protest or notice in connection with this Note now, or hereafter, required by applicable law.

Payment of the principal of and interest on this Note is secured by a security interest on certain locomotives and other property as more fully set forth in a security agreement of even date herewith (the "Security Agreement"). The Company and the Bank are parties to a Revolving Credit and Term Loan Agreement dated as of December 19, 1977 (the "Loan Agreement"). The Company agrees to perform, comply with and observe its agreements contained in the Security Agreement and in Section 5 of the Loan Agreement and agrees that the Bank may declare all principal of and interest on this Note to be immediately due and payable, without notice, upon the

occurrence of any default under the Loan Agreement or the Security Agreement. For purposes hereof, the provisions of the Loan Agreement, as amended from time to time with the consent of the Bank, together with related definitions and ancillary provisions, are incorporated herein by reference and shall continue in effect for the benefit of the Bank, whether or not the Loan Agreement is terminated or the obligations thereunder paid.

INTERNATIONAL METALS &
MACHINES, INC.

By _____

Title _____

By _____

Title _____