$13

NEW NO

(3)

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD+
CARL C. DAVIS*
CHARLES T. KAPPLER
JOHN H. DOYLE#
GEORGE JOHN KETO°
MILTON C. GRACE*
JAMES C. MARTIN, JR.#

*NOT A MEMBER OF D.C. BAR
+ALSO ADMITTED IN NEW YORK
°ALSO ADMITTED IN OHIO
#ALSO ADMITTED IN MARYLAND

LAW OFFICES
ALVORD AND ALVORD
200 WORLD CENTER BUILDING
918 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-2973

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
0367 A AND A

RECORDATION NO. 15847 FILED 1425

OCT 5 1988 12 23 PM

INTERSTATE COMMERCE COMMISSION

ICC OFFICE OF THE SECRETARY
OCT 5 11 52 AM '88
MOTOR OPERATING UNIT

October 5, 1988

No. 8-279A014
Date OCT 5 1988
Fee $ 13.00
ICC Washington, D.C.

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

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two copies of a Security Agreement (Equipment Mortgage and Assignment of Leases) dated as of October 5, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents.

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

Borrower: Temperance Yard Corporation
121 South Walnut Street
Howell, Michigan 48844

Secured Party: Irving Trust Company
One Wall Street
New York, New York 10015

The enclosed document covers all after acquired railroad rolling stock.

Also enclosed is a check in the amount of $13 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

C.T. Kappler

Courtesy

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

> Security Agreement (Equipment Mortgage and Assignment of Leases) dated as of October 5, 1988 between Temperance Yard Corporation, Borrower, and Irving Trust Corporation, Secured Party, covering after acquired railroad rolling stock .

Very truly yours,

Charles T. Kappler

Enclosures

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OCT 5 1988 12 05 PM
INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT (EQUIPMENT MORTGAGE AND ASSIGNMENT OF LEASES)

THIS SECURITY AGREEMENT (EQUIPMENT MORTGAGE AND ASSIGNMENT OF LEASES) (the "Mortgage") dated as of October 5, 1988, made by TEMPERANCE YARD CORPORATION, an Ohio corporation (the "Grantor"), in favor of IRVING TRUST COMPANY, a New York bank (the "Bank").

WHEREAS, the ANN ARBOR ACQUISITION CORPORATION, a Michigan railroad corporation ("AAAC"), and the Bank have entered into that certain Credit Agreement dated October 5, 1988 (the "Credit Agreement");

WHEREAS, the Grantor is a wholly-owned subsidiary of OLD POST OFFICE, INC., a Michigan corporation and wholly-owned subsidiary of AAAC;

WHEREAS, pursuant to the Credit Agreement, the Grantor has executed that certain Guaranty dated October 5, 1988 (the "Guaranty"), evidencing the Grantor's unconditional guaranty of those loans made to AAAC by the Bank pursuant to the Credit Agreement;

WHEREAS, the Bank has required, as a condition to its extension of loans under the Credit Agreement, that the Grantor execute and deliver this Mortgage to the Bank.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereto hereby agrees with the Bank as follows:

Section 1. Collateral.

Section 1.1 Grant of Security Interest. As security for the Grantor's payment and performance obligations hereunder and under the Guaranty and the obligations of AAAC guaranteed by Grantor under the Guaranty (such obligations being hereinafter collectively referred to as the "Liabilities"), the Grantor hereby grants to the Bank a security interest in and chattel mortgage on the following:

(a) All of the Grantor's now owned and hereafter acquired railroad cars, locomotives and work equipment, together with all accessories, equipment, parts and appurtenances appertaining or attached thereto, and all additions, improvements, accessions and accumulations to any and all of said equipment, and all substitutions, renewals or replacements of any of the foregoing, together with all the rents, issues, income, proceeds and avails therefrom (collectively, the "Equipment");

(b) All proceeds (including, without limitation, insurance and indemnity payments) from the sale or loss or other disposition of the Equipment or the "Leases" (as hereinafter defined); and

(c) All of the Grantor's leases (the "Leases"), whether now or hereafter existing, of railroad cars and locomotives and all additions, improvements, substitutions, renewals or replacements to such railroad cars and locomotives (collectively, the "Leased Equipment") between the Grantor as lessee and other lessors (the "Lessors"), including, without limitation, (ii) all claims for damages arising out of the breach of any Lease, (ii) the right, if any, to terminate any Lease, to perform thereunder and to compel performance of the terms thereof, (iii) the right to take possession of the Leased Equipment, subject to the rights of the Lessors, (iv) the right to make all waivers and agreements and to enter into any amendments relating to any Lease or any provision thereof, (v) the right to take such action upon the occurrence of an event of default under any Lease, including, without limitation, the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by any Lease or by law, and (vi) all other rights, claims, causes of action, if any, which the Grantor may have against any Lessor.

All such Equipment, Leases, rights, claims and causes of action described in the immediately preceding clauses (a), (b) and (c) and proceeds with respect thereto are herein collectively referred to as the "Collateral."

Section 1.2. Representations and Warranties of the Grantor. The Grantor represents and warrants:

(i) That as of the date hereof, all of the Equipment consisting of railcars and locomotives owned by the Grantor is identified by serial, running or other identifying number on Attachment I hereto.

(ii) That all of the Leased Equipment is identified by serial, running or other identifying number on Attachment I hereto.

(iii) That except as otherwise permitted in the Credit Agreement and the Guaranty, it is the sole owner of all of the Equipment, that there are no encumbrances or liens of any kind or character against any of the Equipment or any Lease and that it has good right and lawful authority to assign, pledge, mortgage, and grant a security interest in the Leases and the Equipment.

(iv) That except as otherwise permitted in the Credit Agreement and the Guaranty, it has not assigned, pledged or mortgaged, and hereby covenants that it will not assign, pledge or mortgage, so long as this Mortgage shall remain in effect, the whole or any part of the rights or interests hereby assigned, pledged, mortgaged, and granted by it hereunder to anyone other than the Bank and its successors and assigns.

(v) The Grantor agrees to warrant and defend the rights and interests of the Bank in and to the Equipment and the Leases against the rights or claims of any persons.

(vi) The Grantor is not, as of the date hereof, in default under any of the provisions of any of the Leases.

Section 1.3. Maintenance and Repair. The Grantor agrees that, at its own cost and expense, it will maintain and keep all the Equipment and the Leased Equipment in good order and repair in accordance with industry standards and with the Interchange Rules of the Association of American Railroads and in full compliance with any applicable law, rules, regulations or standards which may be promulgated by the Department of Transportation, Federal Railway Administration, the Interstate Commerce Commission ("ICC") or any other applicable regulatory body or any successor agency or party thereto.

Section 1.4. Inspections. The Bank shall have the right to inspect the Equipment, the Leased Equipment and the Grantor's records with respect to the Equipment, the Leased Equipment and the Leases at such reasonable times as the Bank may request.

Section 1.5. Use of Equipment. The Grantor agrees that the Equipment shall at all times remain in the United States; provided that the Equipment may be used in Canada if, prior to such use, the Grantor executes and delivers to the Bank Canadian Equipment Mortgages in form and substance satisfactory to the Bank.

Section 1.6. Marking of Equipment. The Grantor will keep and maintain, or cause to be kept and maintained at all times plainly, distinctly, permanently and conspicuously marked on each item of Equipment and Leased Equipment in letters not less than seven-sixteenths of an inch in height:

"OWNERSHIP SUBJECT TO CHATTEL MORTGAGE
AND SECURITY AGREEMENT AS SET FORTH IN AN
EQUIPMENT MORTGAGE AND ASSIGNMENT OF
LEASES FILED WITH THE INTERSTATE
COMMERCE COMMISSION."

or other appropriate words designated by the Bank with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interests of the Bank in the Equipment, the Leases and its rights hereunder. The Grantor will not place any item of Equipment or Leased Equipment in operation or exercise any control or dominion over any item of Equipment or Leased Equipment unless and until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Grantor will cause the Equipment and the Leased Equipment to be kept numbered with the respective serial, running and other identifying numbers set forth in Attachment I hereto. The Grantor will not (a) change or authorize to be changed such serial, running or other identifying numbers or (b) place any item of Equipment or Leased Equipment in service or otherwise exercise any control or dominion over any item of Equipment or Leased Equipment if the serial, running or other identifying number of such item of Equipment or Leased Equipment is not contained in Attachment I hereto, unless and until an amendment to this Mortgage shall have been filed and recorded by the Grantor with the ICC, and the Grantor shall have furnished to the Bank a legal opinion to the effect that (i) such amendment has been so filed and recorded, (ii) such filing and recordation will protect the Bank's security interest and chattel mortgage in the Equipment and the Leases, and (iii) no other filing or recording with or to any other federal, state or local government or agency thereof is necessary to protect the security interest of the Bank in the Equipment and the Leases in the United States. If the Grantor fails to take any action specified in the immediately preceding sentence, the Grantor hereby authorizes the Bank to modify this Mortgage by amending Attachment I hereto as applicable, to reflect such changes or additions to the serial, running or other identifying numbers contained therein and to record the same with the ICC.

Section 1.7. Destruction of Equipment and Leased Equipment. The Grantor will bear the responsibility for and risk of, and shall not be released from the Liabilities in the event of, any damage to or the destruction or loss of any or all of the Equipment or any or all of the Leased Equipment.

Section 1.8. The Grantor's Agreements with Respect to the Leases. To protect the grant of the security interest to the Bank in the Leases, the Grantor hereby agrees as follows:

(a) The Grantor shall faithfully abide by, perform and discharge each and every material obligation, covenant, condition, duty and agreement

which the Leases provide are to be performed by the Grantor.

(b) Without the prior written consent of the Bank, the Grantor shall not amend, modify or otherwise change in any material respect or terminate any of the Leases. Any attempts at amendment, modification, other change or termination of the Leases made in violation of the provisions of this Section 1.8(b) shall be void.

(c) At the Grantor's sole cost and expense, the Grantor will appear in and defend any action or proceedings arising under, growing out of or in any manner connected with the obligations, covenants, conditions, charters, agreements or liabilities of the Grantor under any and all of the Leases.

(d) Without the prior written consent of the Bank, the Grantor shall not commence or compromise any action, suit, proceeding or case or file any application or make any motion affecting any of the Leases in any bankruptcy proceeding other than a proceeding in which the Grantor is the debtor.

Section 2. Defaults.

Section 2.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) There shall occur an "Event of Default" (as defined in the Credit Agreement);

(b) The Grantor shall fail to perform any of its obligations under this Mortgage and the grace periods provided in Section 8.01(d) of the Credit Agreement shall have expired; or

(c) Any representation made to the Bank in this Mortgage shall prove to be false or misleading at the time in any material respect when made.

Section 3. Remedies.

Section 3.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Bank may do any one or more of the following acts (but shall be under no obligation to do so) regarding the Collateral, or any portion thereof:

(a) perform or discharge any obligation or duty of the Grantor under any of the Leases to such extent as the Bank may deem necessary or advisable to protect the security provided hereunder;

(b) exercise all the rights and remedies in foreclosure and otherwise granted to secured parties under the provisions of applicable laws;

(c) institute legal proceedings for the specific performance of any covenant or agreement herein undertaken by the Grantor or for aid in the execution of any power or remedy herein granted;

(d) institute legal proceedings to foreclose upon and against the security interest and the chattel mortgage in the Equipment and the security interest in the Leases granted in and by this Mortgage, to recover judgment for all amounts then due and owing as Liabilities, and to collect the same out of any sale of the Collateral;

(e) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any Collateral;

(f) demand, collect, and retain all hire, earnings and other sums due and to become due to the Grantor in respect of the Equipment, the Leases and the Leased Equipment from any party whomsoever, accounting only for the net earnings arising from such use, if any, after charging against any receipts from the use of the same and from any subsequent sale thereof all costs and expenses of and damages or losses by reason of, such use or sale;

(g) enter upon the Grantor's premises or right of way where the Collateral is located (or is believed to be located), without any obligation to pay rent to the Grantor, or any other place or places where the Collateral is believed to be located and kept, and prevent the Grantor or any other person, subject to rights of Lessors under Leases, from using the Collateral or remove the Collateral therefrom to the premises of the Bank or any agent of the Bank, for such time as the Bank may desire, in order to effectively collect or liquidate the Collateral;

(h) sell or dispose of all or any part of the Collateral, free from any and all claims of the Grantor or of any other party claiming by, through, or under the Grantor, at law, in equity, or otherwise, subject to rights of Lessors under Leases, at one or more public or private sales, in such place or places, at such time or times, and upon such terms as the Bank may determine, in its sole and complete discretion, with or without previous demand on or notice to the Grantor or advertisement of any such sale or other disposal, except

as may be required by law; and for the aforesaid purposes, all notices of sale, advertisements, and demands and any rights or equities of redemption otherwise required or available to the Grantor under applicable law are hereby waived by the Grantor to the fullest extent permitted by applicable law. The power of sale hereunder shall not be exhausted by one or more sales, and the Bank from time to time may adjourn any sale to be made pursuant to this Section 3.1; or

(i) assign its rights and interests in any and all of the Leases, without the Grantor's consent, to any successor or assignee of the Bank or to any other third party.

Section 3.2. Sale; Proceeds of Sale. Any sale of the Collateral may be in one lot as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Bank may determine. The Bank may bid for and become the purchaser of the Collateral, or any portion thereof, so offered for sale. In the event that the Bank shall be the purchaser thereof, it shall not be accountable to the Grantor upon a subsequent disposition of such property. All cash proceeds received by the Bank in respect of any sale of, collection from or other realization upon all or any part of the Collateral may, in the discretion of the Bank, be applied in whole or in part by the Bank against, all or any part of the Liabilities. Any surplus of such cash or cash proceeds held by the Bank and remaining after payment in full of all the Liabilities shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive such surplus.

Section 3.3. Assembly of Equipment. Upon the occurrence of an Event of Default, the Bank may designate some premises for the delivery of the Equipment and the Leased Equipment to the Bank, which premises may include premises owned, leased or under the control of the Grantor, without any obligation to pay rent to the Grantor, and the Grantor shall, at its own expense, arrange for such Equipment and Leased Equipment to be delivered to the Bank at such premises. This agreement to deliver the Equipment and the Leased Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court having jurisdiction in the premises, the Bank shall be entitled to a decree against the Grantor requiring specific performance hereof. The Grantor further agrees to store such Equipment and such Leased Equipment, at the Grantor's expense, pending the Bank's disposition thereof for a period not in excess of six months. The Grantor hereby expressly waives any and all claims against the Bank or its agents for damages of whatever nature in

connection with any lawful retaking of any item of Equipment or Leased Equipment pursuant to the terms hereof.

Section 3.4. Waiver by the Grantor. To the extent permitted by law, the Grantor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Grantor acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Mortgage, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Bank, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

Section 4. General.

Section 4.1. Rights Cumulative. Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Grantor shall not otherwise alter or affect the Bank's rights or the Liabilities. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Liabilities or the Bank's rights hereunder with respect to any subsequent payments or default therein.

Section 4.2. Waiver. Except as otherwise provided in this Mortgage, the Grantor, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or the Leased Equipment or to transfer or assign the Leases, and any other requirements as to the time, place and terms of the sale, lease, transfer or assignment thereof, any other requirements with respect to the enforcement of the Bank's rights under this Mortgage and any and all rights of redemption.

Section 4.3. Satisfaction of Mortgage and Termination of Mortgage. When all the Liabilities have been paid in full and the Credit Agreement has been terminated, the Bank shall release the lien of this Mortgage with respect to the Collateral by an appropriate document in recordable form and thereupon this Mortgage shall be satisfied and void.

Section 4.4. Section Headings, Effect and Modification of Agreement. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Mortgage.

Section 4.5. Modifications. No variation or modification of this Mortgage and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Bank and the Grantor.

Section 4.6. Notices. All notices hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to the respective addresses set forth in the Guaranty in the manner set forth in the Guaranty. The Grantor shall cause a copy of every notice or communication received from or on behalf of any of the other parties to any of the Leases to be promptly delivered to the Bank at its address set forth in the Guaranty, including, without limitation, the filing of any bankruptcy petition by or against, or the institution of any insolvency or reorganization proceeding involving, any such party.

Section 4.7. Law Governing. The terms of this Mortgage and all rights and obligations hereunder shall be governed by the internal laws (as opposed to the conflicts of law provisions) and decisions of the State of New York; provided, however, that the Bank shall be entitled to all rights conferred by the filing, recording or deposit hereof in the appropriate office(s) pursuant to Section 11303 of the Interstate Commerce Act or in such other offices as may be appropriate in the jurisdiction in which the Equipment and Leased Equipment is operated.

Section 4.8. Counterparts. This Mortgage may be executed in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 4.9. Successors and Assigns. This Mortgage shall be binding upon the Grantor and inure to the benefit of the Bank, and its successors and assigns. The Grantor may not assign or transfer its rights hereunder without the prior written consent of the Bank.

Section 4.10. Severability. The provisions of this Mortgage are severable and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Mortgage in any jurisdiction.

Section 4.11. Further Assurances. The Grantor will, from time to time, do and perform any other act or acts and will execute, acknowledge, and deliver, and file, register, and record (and will re-file, re-register and re-record whenever required) any further instrument, including any extensions and renewals thereof, required by law or requested by the Bank in order to confirm or further assure the interests of the Bank hereunder.

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IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed by its duly authorized representative as of the day and year first set forth above.

TEMPERANCE YARD CORPORATION,
an Ohio corporation

By: _____
Its PRESIDENT

ATTEST: _____
Its ASSISTANT SECRETARY

Agreed to and acknowledged
as of the ____ day of
October, 1988.

IRVING TRUST COMPANY

By: _____
Its _____

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed by its duly authorized representative as of the day and year first set forth above.

TEMPERANCE YARD CORPORATION,
an Ohio corporation

By: _____
Its _____

ATTEST: _____
Its _____

Agreed to and acknowledged
as of the 5th day of
October, 1988.

IRVING TRUST COMPANY

By: _____
Its Vice President

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

This instrument was acknowledged before me on October 5, 1988 by Michael J. Barron and Patrick J. O'Meara, President and Asst. Secretary, respectively, of TEMPERANCE YARD CORPORATION, an Ohio corporation, on behalf of said corporation.

Deborah Ruegger Wilson
Notary Public in and
for the State of Illinois

Print or
Type Name: Deborah Ruegger Wilson

My commission expires: _____

"OFFICIAL SEAL"
Deborah Ruegger Wilson
Notary Public, State of Illinois
My Commission Expires Aug. 5, 1992

[SEAL]

STATE OF New York)
) SS:
COUNTY OF New York)

This instrument was acknowledged before ~~me on~~ October 31st 1988 by A.D. Kruglinski, Vice President of IRVING TRUST COMPANY, a New York bank, on behalf of said corporation.

A. Gary Chace
Notary Public in and
for the State of New York

Print or
Type Name: A. GARY CHACE

My commission expires: 12/31/89

[SEAL]

ATTACHMENT I
to
Security Agreement (Equipment
Mortgage and Assignment of Leases)
Dated as of October 5, 1988

EQUIPMENT

None.

LEASED EQUIPMENT

None.