

FROST & JACOBS

2500 CENTRAL TRUST CENTER • 201 EAST FIFTH STREET • CINCINNATI, OHIO 45202-4182 • (513) 651-6800 • TELECOPIER (513) 651-6981 • TELEX 21-4396 F&J CIN • CABLE "FROSTJAC"

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GIBSON R. YUNGBLUT
JAMES H. HAYES
DAVID E. SCHMIT
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RONALD J. SNYDER
ROGER A. GILCREST
JAMES P. DAVIDSON

SENIOR PARTNERS
CHARLES G. PUCHTA
HENRY W. HOBSON, JR.
JOSEPH V. HOFFMAN

COUNSEL
H. J. SIEBENTHALER
WILLIAM R. SEAMAN
JOHN W. MELVILLE
R. O. KLAUSMEYER
JAMES G. HEADLEY
ALAN R. VOGELER
STANLEY H. FOSTER
ELIZABETH K. LANIER
BRUCE F. LOWE
WALTER W. JACKSON
JOHN R. LEATHERS
THOMAS E. TAYLOR
ROI E. BAUGHEN
THOMAS L. WILLIAMS

* NOT ADMITTED IN OHIO
WRITERS DIRECT DIAL NUMBER

(513) 651-6777

1 5588
RECORDATION NO. 5588 F. 10d 1425

April 14, 1988

APR 19 1988-3 25 PM

VIA FEDERAL EXPRESS

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

Attention: Mildred Lee
Room 2303

Dear Ms. Lee:

Enclosed is an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a primary document dated March 10, 1988.

The names and addresses of the parties to the document are as follows:

Secured Party - The Central Trust Company, N.A., 201 East Fifth Street, Cincinnati, Ohio 45202.

Debtor - Newburgh & South Shore Railroad Company, 2300 First National Bank Center, 425 Walnut Street, Cincinnati, Ohio 45202.

A description of the equipment covered by the document is attached as "Exhibit A."

A short summary of the document to appear in the index follows:

INTERSTATE COMMERCE COMMISSION

8-110A0004

No.

Date APR 19 1988

Fc. \$ 13.00

ICC Washington, D.C.

FROST & JACOBS

Interstate Commerce Commission
April 14, 1988
Page Two

Security Agreement between The Central Trust Company, N.A., 201 East Fifth Street, Cincinnati, Ohio 45202 and Newburgh & South Shore Railroad Company, 2300 First National Bank Center, 425 Walnut Street, Cincinnati, Ohio 45202 dated March 10, 1988 and covering all equipment of the debtor including but not limited to all of the debtor's rolling stock and railroad equipment listed on Exhibit A attached to the Security Agreement.

Please return the original to the undersigned at the above address. The \$13.00 recording fee is enclosed. If you have any questions, please call me (collect) at (513) 651-6777.

Very truly yours,

FROST & JACOBS



Georgiana C. Swauger
Corporate Paralegal

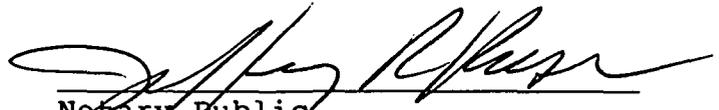
GCS/jpb
Enclosures
1400c/5

State of Ohio)
)
County of Hamilton)

SS

On this 10th day of March, 1988, before me personally appeared, Dennis N. Lindberg, to me personally known, who being by me duly sworn, says that he is the Treasurer of The Newburgh and South Shore Railroad Company, that said instrument was signed 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.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.


Notary Public

mdt/0639y/1

JEFFERY R. RUSH, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 R. C.

24 A

NEWBURGH & SOUTH SHORE

LOCOMOTIVES:

<u>Road #</u>	<u>Model</u>	<u>Horsepower</u>	<u>Builder</u>
1019	SW1001	1000	EMD
1021	SW1001	1000	EMD

Interstate Commerce Commission
Washington, D.C. 20423

4/25/88

OFFICE OF THE SECRETARY

Georgiana C. Swauger
Corporate Paralegal
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182

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 4/19/88 at 3:35pm, and assigned recordation number(s). 15588,15589,15590,15591

Sincerely yours,

Narita R. McGee

Secretary

Enclosure(s)

SECURITY AGREEMENT

Accounts Receivable, Inventory, Equipment & General Intangibles

Newburgh & South Shore Railroad Company

whose principal place of

business is located at 2300 First National Bank Center, 425 Walnut St. Cincinnati
(no. and street) (city)
Hamilton Ohio 45202
(county) (state) (zip code)

valuable consideration, receipt of which heretofore is acknowledged, hereby transfers, assigns, pledges and grants to THE CENTRAL TRUST COMPANY, N.A., 201 East Fifth Street, Cincinnati, Ohio 45202 ("Secured Party"), a security interest in the following collateral, wherever located, now existing and hereafter arising or coming into existence (the "Collateral"):

- (a) All of Debtor's receivables (the "Receivables"), which term includes Debtor's accounts, contract rights, chattel paper, notes, drafts, acceptances and other forms of receivables, now existing and all such as may hereafter come into existence;
- (b) All of Debtor's inventory (the "Inventory"), which term means all goods, merchandise and other personal property now owned and hereafter acquired by Debtor, which are held for sale or lease or are furnished or to be furnished under a contract of service and/or raw materials, parts, finished goods, work in process and materials used or consumed or to be used or consumed in Debtor's business;
- (c) All of Debtor's equipment and fixtures, now owned and hereafter acquired (the "Equipment"), which term means all of Debtor's machinery, parts, tools, fixtures, furniture, and accessories, together with all attachments, additions and accessories thereto, and added and substituted parts, equipment and repairs now or hereafter placed upon such property, whether because of necessary repairs or otherwise; * * *
- (d) All of Debtor's intellectual property, contract rights and other general intangibles now owned and hereafter acquired (collectively, the "General Intangibles"), including but not limited to (i) all contracts, (ii) all judgments, patents, trademarks, trade or business names, service marks, logos, copyrights, trade secrets, plans, blueprints, licenses, permits, tax or other refunds, programs, inventions, business or technical data, processes, mailing and customer lists, books and records, and goodwill, (iii) all rights, applications, continuations, renewals, substitutions, improvements, modifications and extensions in any manner related thereto, and (iv) all proceeds and products thereof, including but not limited to all license royalties, payments made under insurance policies, and proceeds of infringement suits and any other suits; and
- (e) The proceeds and products of the foregoing in whatever form the same may be,

for the purpose of securing the payment to Secured Party of all indebtedness, liabilities and obligations of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, joint or several, whether as drawer, maker, endorser, guarantor or surety, pursuant to letter of credit obligations or otherwise, whether due or to become due and whether now existing or hereafter arising or contracted (all of which are hereinafter called the "Obligations").

All of the Collateral described in subparagraphs (a) through (e) above will be included in this Agreement except those items listed as follows and initialed by the Debtor and Secured Party:

N/A

Debtor further warrants to and agrees with Secured Party as follows:

1. **Place of Business.** Debtor's principal place of business is as specified in the introductory paragraph of this Agreement and Debtor has no other place or places of business except as follows:

(no. and street) (city) (county) (state) (zip code)

(no. and street) (city) (county) (state) (zip code)

2. **Location and Use of Collateral.**

- (b) The Collateral is or is to be used primarily for
 - (i) personal, family or household purposes,
 - (ii) farming operations,
 - (iii) business purposes.

(c) The Collateral is (is not) being acquired with the proceeds of loans by Secured Party to Debtor. If it is specified that the Collateral is being acquired with the proceeds of loans by Secured Party, Secured Party may disburse such proceeds directly to the seller of the Collateral.

(d) If the Equipment is used or bought primarily for personal, family or household purposes or for farming operations, Debtor's residence is

(no. and street) (city) (county) (state) (zip code)

(e) If the Equipment is of a type normally used in more than one state (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) Debtor's chief place of business is located at

(no. and street) (city) (county) (state) (zip code)

(f) If the Equipment has been or is to be attached to real estate, the name of the record owner of such real estate is _____

and such real estate is described as follows (reasonably identify: if farm property, at least township, county, state and acreage; if city property, at least street address, municipality, county and state): _____

and if the Equipment is attached to real estate prior to the perfection of the security interest hereby granted, Debtor upon demand will furnish Secured Party with written consent to such security interest or a written disclaimer of any interest in the Equipment as fixtures, signed by all persons with an interest in the real estate at the time of the attachment of such security interest.

3. **Preservation of Collateral.** Debtor will keep the Collateral in good order and repair at all times, will use same with reasonable care and caution, will not part with possession or ownership thereof without the written consent of Secured Party, and will exhibit the same to Secured Party upon demand. Debtor will not use, or permit the Collateral to be used, in violation of any federal, state, county or municipal law or for any unlawful purpose whatsoever.

4. **Insurance.** Debtor will keep the Collateral insured at all times against loss by fire, theft and/or other hazards concerning which, in the judgment of Secured Party, insurance protection is necessary, in a company or companies satisfactory to Secured Party and in amounts sufficient to protect Secured Party against loss or damage to the Collateral; such policy or policies of insurance will be delivered to Secured Party, together with loss payable clauses in favor of Secured Party as its interest may appear. All such policies will provide for written notice to Secured Party prior to any cancellation and will be in form and substance satisfactory to Secured Party. All amounts payable in settlement of insurance losses may be applied, at Secured Party's option, on the Obligations or used to repair, replace or restore the Collateral. **in excess of \$500,00**

5. **Payment of Expenses by Secured Party.** At its option, Secured Party may discharge taxes, liens, security interests or such other encumbrances as may attach to the Collateral, may pay for required insurance on the Collateral and may pay for the maintenance and preservation of the Collateral, as determined by Secured Party to be necessary. Debtor will reimburse Secured Party on demand for any payment so made or any expense incurred by Secured Party pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by Secured Party.

6. **Information, Taxes.** Debtor will furnish to Secured Party from time to time if and as requested current lists of the Collateral; will mark chattel paper and nonnegotiable instruments to evidence the assignment thereof to Secured Party;

and will allow Secured Party by its agents, at any reasonable time during business hours, to examine and make extracts from the books and records of Debtor, to examine and verify the Collateral wherever kept and, if and when requested by Secured Party from time to time, will furnish to it copies of all purchase orders, inventory lists, billings, shipping orders, correspondence and other instruments or writings in any way evidencing or relating to the Collateral or the proceeds thereof. Debtor will pay all taxes, assessments and governmental charges on the Collateral as the same become due.

7. **Sale of Inventory.** As long as Debtor is not in default under the Obligations or otherwise in default under this Agreement, Debtor will have the right to process and sell the inventory in the regular course of its business at customary prices immediately after any sale if Secured Party so requires. Debtor will deliver to Secured Party the proceeds of such sale in the form received or Debtor will pay to Secured Party an amount equal to the proceeds of such sale to be applied by Secured Party to such of the Obligations as Secured Party determines.

8. **Collection of Receivables; Setoff.** *Debtor will collect all of the Receivables and whenever Debtor receives any payment of any Receivables it will hold such payment in trust for Secured Party and forthwith will deliver to Secured Party the same in the form received by Debtor without commingling with any funds belonging to Debtor, and promptly will deposit the same in a special collateral account with Secured Party. Debtor authorizes Secured Party, or any employee thereof, to endorse the name of Debtor upon any checks, negotiable instruments or other items received in payment of any Receivables and to do all things necessary to reduce the same to cash. All amounts received by Secured Party representing payment of Receivables and deposited in the special collateral account may be applied by Secured Party to the payment of the Obligations in such order of preference as Secured Party determines, or the same or a portion thereof may be released by Secured Party to Debtor as Secured Party from time to time may determine. Any amounts so released will be credited by Secured Party to an unrestricted commercial account of Debtor. Debtor authorizes Secured Party at any time without notice to appropriate and apply any balances, credits, deposits or accounts or money of Debtor in its possession, custody or control to the payment of the Obligations, all of which may at all times be held and treated as additional Collateral.

9. **Notification of Account Debtors.** Secured Party at any time without notice to Debtor may notify any persons who are indebted to Debtor with respect to any Receivables or Intangibles of the assignment thereof to Secured Party and may direct such account debtors to make payment directly to Secured Party of the amounts due. Secured Party is authorized to give receipts to such account debtors for any such payments and the account debtors will be protected in making such payments to Secured Party.

10. **Representations and Warranties.** Debtor represents and warrants to Secured Party that: (a) Debtor has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral and the same is free from all encumbrances and rights of setoff of any kind; (b) except as herein provided, Debtor will not hereafter without the prior written consent of Secured Party sell, pledge, encumber, assign or otherwise dispose of any of the Collateral or permit any right of setoff, lien or security interest to exist thereon except to Secured Party; (c) Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein; (d) each General Intangible is genuine and enforceable in accordance with its terms and Debtor will defend the same against all claims, demands, setoffs and counterclaims at any time asserted; (e) at the time any of the Receivables becomes subject to this Agreement, such Receivable will be a good and valid account representing a bona fide sale of goods or services by Debtor and such goods will have been shipped to the respective account debtors or the services will have been performed for the respective account debtors, and no Receivable will be subject to any claim for credit, allowance or adjustment by any account debtor or any setoff, defense or counterclaim;

*In the event of the return to Debtor for credit of any goods, the sale or other disposition of which created any such Receivable, Debtor will pay to Secured Party promptly after the receipt of such goods the full amount of the invoice price therefor and, until such payment has been made, Debtor will hold such returned goods separate and apart from Debtor's own property in trust for Secured Party and in the meantime Secured Party will have a security interest in such goods.

11. **Financing Statements; Documents.** At the request of Secured Party, Debtor will join with Secured Party in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Secured Party and will pay the cost of filing financing, continuation and termination statements in all public offices where filing is deemed necessary or desirable by Secured Party. Debtor will execute and deliver to Secured Party from time to time such supplemental assignments or other instruments as Secured Party may require for the purpose of confirming Secured Party's interest in the Collateral. Debtor hereby authorizes Secured Party to execute and file on behalf of Debtor all financing statements and documents deemed necessary or appropriate to perfect Secured Party's interest in the Collateral.

12. **Debtor's Consent.** Debtor consents, with respect to the Receivables or any General Intangibles, to all extensions or postponements of time of payment thereof or any other indulgences in connection therewith, to the acceptance of partial payments thereon and to the settlement, compromise and adjustment thereof, all in such manner and at such time or times as Secured Party deems advisable.

13. **Default.**

(a) The occurrence of any of the following events will constitute a default hereunder: (i) the failure of Debtor to pay any of the Obligations when due whether by acceleration or otherwise; (ii) the failure of Debtor to observe or perform any of the provisions of this Agreement or of any instrument pertaining to any of the Obligations; (iii) the making or furnishing by Debtor to Secured Party of any representation, warranty, financial statement or other information that is materially false; (iv) the making of any levy, seizure or attachment thereof or thereon; (v) the sale or other disposition by Debtor of any substantial portion of its assets except in the ordinary course of business;

(vi) any assignment for the benefit of creditors; (vii) the dissolution of Debtor or any guarantor (if a partnership), or the beginning of any action or proceeding to dissolve Debtor or any guarantor (if a partnership or a corporation); (ix) the commencement of any action or proceeding by or against Debtor or any guarantor under the Bankruptcy Code or under any other present or future state or federal law for the relief of debtors, including but not limited to any action or proceeding for an arrangement, reorganization or liquidation or the appointment of a receiver or trustee for Debtor or any of its assets.

(b) Upon the occurrence of any such event of default, Secured Party is authorized in its discretion to declare any or all of the Obligations immediately due and payable without demand or notice to Debtor and may exercise any one or more of the rights and remedies granted pursuant to this Agreement or given to a secured party under the Ohio version of the Uniform Commercial Code, as it may be amended from time to time, including but not limited to the right upon default to take possession and sell, lease or otherwise dispose of the Collateral and, at its option, operate, use or exercise any rights of ownership pertaining to the Collateral as Secured Party deems necessary to preserve the value and receive the benefits of the Collateral. Upon default, Secured Party may, so far as Debtor can give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and take possession of and remove the same therefrom. Secured Party may require Debtor to make the Collateral available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. Debtor waives all claims for damages by reason of any seizure, repossession, retention, use or sale of the Collateral under the terms of this Security Agreement.

(c) The net proceeds arising from the disposition of the Collateral after deducting expenses incurred by Secured Party will be applied to the Obligations in the order determined by Secured Party. If any excess remains after the discharge of all of the Obligations, the same will be paid to Debtor. If after exhausting all of the Collateral, there should be a deficiency, Debtor will be liable therefor to Secured Party.

(d) Whenever notice is required by law to be sent by Secured Party to Debtor of any sale, lease or other disposition of the Collateral, five days written notice sent by certified mail at its address set forth in the introductory paragraph of this Agreement will be reasonable.

14. **Rights of Secured Party; Power of Attorney.** Debtor hereby irrevocably constitutes and appoints Secured Party and any officer thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor or in its name, from time to time in Secured Party's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, Debtor hereby gives Secured Party the power and right, on behalf of Debtor, after an Event of Default, and without notice to or assent by the Debtor, to do the following:

(a) to receive payment of, endorse, and receipt for, any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of the Collateral;

(b) to commence and prosecute any suits, actions or proceeding at law or in equity in any court of competent jurisdiction to collect any of the Collateral and to enforce any other right in respect of the Collateral;

(c) to settle, compromise or adjust any suit, action or proceeding described above, and, in connection therewith, to give such discharges or releases as Secured Party may deem appropriate; and

(d) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option, at any time, or from time to time, all acts and things which Secured Party deems necessary to protect or preserve the Collateral and Secured Party's security interest and rights therein in order to effect the intent of this Agreement, all as fully and effectively as Debtor might do.

The Debtor hereby ratifies all that such attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest, will be irrevocable and shall terminate only upon payment in full of the Obligations and the termination of this Agreement. The powers conferred upon Secured Party hereunder are solely to protect Secured Party's interests in the Collateral and will not impose any duty upon it to exercise any such powers. Secured Party will be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents will be responsible to Debtor for any action taken or omitted to be taken in good faith or in reliance on the advice of counsel except for its own gross negligence or willful misconduct.

15. **Expenses.** To the extent that Secured Party incurs any costs or expenses in protecting or enforcing its rights in the Collateral or observing or performing any of the conditions or obligations of Debtor thereunder, including but not limited to reasonable attorneys' fees and the costs and expenses of litigation, such costs and expenses will be due on demand, will be included in the Obligations secured hereby and will bear interest from the incurring or payment thereof at an annual rate equal to the sum of 4% per annum plus the rate of interest established from time to time as the Prime Commercial Rate of Secured Party but not less than 18% per annum and not more than the highest rate permitted by law. As used herein, the term "Prime Commercial Rate" will mean the base lending rate established by Secured Party from time to time based on its consideration of various factors including money-market, business and competitive factors. The Prime Commercial Rate is not necessarily Secured Party's most favored rate. Subject to any maximum or minimum interest rate limitations specified herein or by applicable law, if and when such Prime Commercial Rate changes, then in each such event, the rate of interest payable under this provision will change automatically effective the date of such change.

16. **Indemnification.** Secured Party will not be obligated to perform or discharge any obligation or duty of Debtor under any of the Collateral, and the acceptance of the assignment and grant of a security interest in the Collateral does not constitute an assumption by Secured Party of any obligation or duty of Debtor. Debtor will indemnify and hold Secured Party harmless against all claims, demands, liabilities, losses, damages, costs and expenses (including attorneys' fees) that Secured Party may incur arising under or by reason of this Agreement, the Collateral or any act of Secured Party thereunder or with respect thereto except Secured Party's own willful misconduct or gross negligence.

17. **Modification, Waiver.** This Agreement may not be amended except by a writing signed by all of the parties. No failure or delay by Secured Party to exercise any right or remedy hereunder will operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy by Secured Party preclude any other or further exercise thereof or the exercise of any other right or remedy. All remedies hereunder and in any instrument or document relating to any of the Obligations are cumulative and none of them shall be exclusive of the others or any other remedy afforded by law. No waiver shall be asserted against Secured Party unless in writing signed by Secured Party.

18. **Survival of Representations and Warranties.** All representations and warranties contained herein will survive the execution of this Agreement.

19. **Binding Effect.** This Agreement will be binding upon and inure to the benefit of Debtor and Secured Party and their respective heirs, executors, administrators, successors and assigns. If there is more than one Debtor, their obligations hereunder will be joint and several. Whenever the word "Debtor" appears, it will be taken to be singular or plural, masculine or feminine, as the context may require. Section headings used herein are for convenience only and will not affect the construction of this Agreement. This Agreement will take effect when signed by Debtor. Any provision herein that may prove limited or unenforceable under any laws or judicial rulings will not affect the validity or enforcement of the remainder of the provision or any other provision.

20. **Miscellaneous.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. Debtor agrees that all legal actions or proceedings between Debtor and Secured Party may be brought in any court of competent jurisdiction in the State of Ohio and waives objections to summons, service of process jurisdiction of the person or venue of any such court.

21. **Acknowledgment.** Debtor acknowledges receipt of a true copy of this Agreement with all blanks suitably filled in at the time of execution hereof and certifies that the terms of the transaction are correctly stated herein.

22. **Special Agreements.** In the event there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Loan Agreement entered into on March 10, 1988 between Secured Party and Chicago West Pullman and Southern Railroad Company, (the "Loan Agreement"), the terms and conditions of the Loan Agreement shall control.

23. **Debtor.** Debtor is a corporation existing under the laws of the State of Ohio

(corporation)

(partnership)

(proprietorship)

Signed at Cincinnati Ohio on March 10 1988.

, Chicago West Pullman Corporation and
Chicago West Pullman Transportation Corporation

DEBTOR:

Newburgh & South Shore Railroad Company

By

Dennis N. Lindberg

Treasurer

(name)

(title)

SECURED PARTY:

THE CENTRAL TRUST COMPANY, N.A.
a national banking association

By

[Signature]
SVP

Inserts to Security Agreement

- * If Debtor is in default under the Obligations or under this Agreement,
- ** and such failure shall not be cured within ten (10) days after receipt of written notice of default from the Secured Party
- *** and the continuance of such failure for a period of thirty (30) days;
- **** and shall also include but not be limited to all of Debtor's rolling stock and railroad equipment listed on the attached Exhibit A;

0990a