



Citizens Fidelity Bank & Trust Company

CITIZENS PLAZA • LOUISVILLE, KENTUCKY 40296

13350

RECORDATION NO. _____ FILED 1425

DEC 11 1981 - 1 30 PM

INTERSTATE COMMERCE COMMISSION

1-345A073

1-345A073

No. _____
Date DEC 11 1981

Fee \$ 50.00

ICC Washington, D. C.

DEC 11 1 29 PM '81

December 9, 1981

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Attached is the original and enclosed are two additional executed counterparts of each of the following documents: (i) a Mortgage and Security Agreement dated as of December 23, 1981, and (ii) an Assignment of Lease and Security Agreement, dated as of December 23, 1981. I have also enclosed an original and two copies of an Amended Equipment Lease, dated September 18, 1979, to which are attached two amendments regarding rents each styled "Amended Equipment Lease", the first dated June 1, 1980, the other dated January 1, 1981. All of these documents concern the railroad locomotives listed below and are made between the following parties:

Title

Name and Address

Lessor/LaViers Enterprises/
Mortgagor:

LaViers Enterprises
P.O. Box 332
Irvine, KY 40336

Lessee/Assignor:

South-East Coal Company
P.O. Box 332
Route 1840
Irvine, KY 40336

Mortgagee/Bank/Assignee:

Citizens Fidelity Bank
and Trust Company
Citizens Plaza
Louisville, KY 40296

Donna Lilly
[Handwritten signature]

The following equipment is covered by each of the above-described agreements:

Three (3) General Motors Model GP38-2 2000 H. P. Diesel-Electric General Purpose Locomotives, bearing GM Serial Numbers 786237-1, 786237-2 and 786237-3, to be operated by the Louisville & Nashville Railroad and bearing Road Numbers 3821, 3822 and 3823, and A.A.R. Markings SECX 3821, SECX 3822 and SECX 3823, all respectively; and

Six (6) GP-21 Diesel Electric Locomotives rebuilt by Precision National Corporation, to be operated by the Louisville & Nashville Railroad and more particularly described as follows:

	Engine and Serial Number	Road Number	A.A.R. Marking
1.	16-567-C, 60-F32	2001	SECX 2001
2.	16-567-C, 65-C3-1169	2002	SECX 2002
3.	16-567-C, 57K117	2003	SECX 2003
4.	16-567-C, 71-769-0	2004	SECX 2004
5.	16-567-C, 55K4	2005	SECX 2005
6.	16-D3A, 68362-0	2006	SECX 2006

Including all attachments, accessories, accessions and improvements to the above-described nine (9) locomotives, specifically including, but not limited to, the six (6) Motorola Model S214 radios bearing Serial Numbers 214CDG0291 to 214CDG0296, inclusive (the six rebuilt locomotives described above being each equipped with one of said radios), and all of the inventory of spare parts and supplies of LaViers

Secretary
December 9, 1981
Page 3

Enterprises for the above-described locomotives.

I respectfully request that the original of these documents be recorded under the provisions of 49 U.S.C.A. §11303 (1979) (formerly §20(c) of the Interstate Commerce Act). Please record the Mortgage and Security Agreement first, then the Amended Equipment Lease and then please record the Assignment of Lease last. (The person who presents the Assignment of Lease to you for recording will fill in the Amended Lease recording information needed on the first page of the Assignment.) I would also appreciate your receipting one of each of the copies by both date stamp and letter and returning it, along with the original of each document, to Ms. Donna Lilly (who has presented these documents for recording) or to me at Citizens Fidelity Bank and Trust Company at the above address.

The undersigned certifies that he is an officer of the Mortgagee/Bank/Assignee and that he has knowledge of the matter set forth in all of the enclosed documents.

Very truly yours,


C. Tabb Hazelrigg, Jr.
Vice President

CTH:tlp
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/11/81

OFFICE OF THE SECRETARY

C. Tabb Hazelrigg, Jr.
Vice President
Citizens Fidelity Bank & Trust Co.
Citizens Plaza
Louisville, Kentucky 40296

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 **12/11/81** at **1:30pm**, and assigned re-
recording number(s). **13350 12/11/81 1:35pm 13350-A**

12/11/81: 1:40pm 13350-B Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

DEC 11 1981 - 1 30 PM

MORTGAGE AND SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE AND SECURITY AGREEMENT is made and entered into as of the 23rd day of December, 1981, by and between (i) LAVIERS ENTERPRISES, ("LaViers Enterprises"), a Kentucky limited partnership with principal office and place of business in Irvine, Estill County, Kentucky and whose address is P. O. Box 332, Irvine, Kentucky 40336, and (ii) CITIZENS FIDELITY BANK AND TRUST COMPANY ("Bank"), a Kentucky banking corporation with principal office and place of business in Louisville, Jefferson County, Kentucky, and whose address is Citizens Plaza, Louisville, Kentucky 40296.

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, LaViers Enterprises hereby pledges, mortgages, assigns, transfers and grants a security interest in all the following collateral (the "Collateral") to the Bank, to-wit:

Three (3) General Motors Model GP38-2 2000 H. P. Diesel-Electric General Purpose Locomotives, bearing GM Serial Numbers 786237-1, 786237-2 and 786237-3, to be operated by the Louisville & Nashville Railroad and bearing Road Numbers 3821, 3822 and 3823, and A.A.R. Markings SECX 3821, SECX 3822 and SECX 3823, all respectively; and

Six (6) GP-21 Diesel Electric Locomotives rebuilt by Precision National Corporation, to be operated by the Louisville & Nashville Railroad and more particularly described as follows:

	Engine and Serial Number	Road Number	A.A.R. Marking
1.	16-567-C, 60-F32	2001	SECX 2001
2.	16-567-C, 65-C3-1169	2002	SECX 2002
3.	16-567-C, 57K117	2003	SECX 2003

4.	16-567-C, 71-769-0	2004	SECX 2004
5.	16-567-C, 55K4	2005	SECX 2005
6.	16-D3A, 68362-0	2006	SECX 2006

Including all attachments, accessories, accessions and improvements to the above-described nine (9) locomotives, specifically including, but not limited to, the six (6) Motorola Model S214 radios bearing Serial Numbers 214CDG0291 to 214CDG0296, inclusive (the six rebuilt locomotives described above being each equipped with one of said radios), and all of the inventory of spare parts and supplies of LaViers Enterprises for the above-described locomotives.

2. (a) This Mortgage and Security Agreement is made and granted by LaViers Enterprises to the Bank in order to secure the full and punctual payment to the Bank by LaViers Enterprises of (i) those certain promissory notes (the "Notes") of even date herewith from LaViers Enterprises payable to the order of the Bank (acting as agent for itself and certain other persons), which Notes are in the original aggregate face principal amount of Three Million Two Hundred Seventy-Six Thousand Eight Hundred Dollars (\$3,276,800.00), and bear interest at the rates set forth therein, and (ii) all other indebtedness, obligations and liabilities of whatever kind of LaViers Enterprises to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to, all future loans and advances made by the Bank to LaViers Enterprises.

(b) The maturity date of the Notes is March 31, 1994.

(c) The Notes have all been made and issued by LaViers Enterprises in accordance with a Loan Agreement of even date herewith by and among the parties hereto and certain other parties (hereinafter referred to as the "Loan Agreement").

3. LaViers Enterprises hereby warrants and represents to the Bank that:

(a) LaViers Enterprises is a duly organized and validly existing limited partnership, in good standing, under the laws of Kentucky and is duly qualified to transact business in all other jurisdictions where its business and applicable law so require.

(b) LaViers Enterprises has absolute title to the Collateral free and clear of all liens, encumbrances and security interests, except (i) the lien and security interest granted to the Bank by this Mortgage and Security Agreement, (ii) the Lease of the Collateral by LaViers Enterprises to South-East Coal Company, a Kentucky corporation, which Lease is dated as of September 18, 1979, as amended by instruments styled Amended Equipment Lease and dated as of June 1, 1980 and January 1, 1981, respectively, which Lease is being recorded, together with a collateral assignment thereof by LaViers Enterprises to the Bank, concurrently with this instrument with the Interstate Commerce Commission, and (iii) the lien of any ad valorem or property taxes which are not yet due and payable.

(c) LaViers Enterprises has the right and power to obtain and obligate itself on the loan represented by the Notes and to enter into and perform its obligations under this Mortgage and Security Agreement; and the execution and delivery of the Notes and this instrument do not violate any provision of the Limited Partnership Agreement or Certificate of Limited Partnership, as amended, of LaViers Enterprises, or any term or condition of any contract, indenture or agreement to which LaViers Enterprises is a party.

(d) The acquisition of the Collateral, the loan evidenced by the Notes and the execution and delivery of this instrument have all been duly and fully authorized by the partners of LaViers Enterprises and all other necessary parties, and the Notes and this instrument when duly executed and delivered will constitute valid, binding and enforceable obligations of LaViers Enterprises, and the general partner of LaViers Enterprises executing the Notes and this instrument on its behalf has been fully and properly authorized to do so.

4. LaViers Enterprises hereby covenants and agrees with the Bank that LaViers Enterprises will:

(a) Not use or operate, nor will LaViers Enterprises authorize or permit its lessees or other persons to use or operate, any of the Collateral outside of the forty-eight contiguous states of the United States. Should any of the Collateral ever be used in, leased in, or its use permitted in Canada (or any province or territory thereof) or in Mexico (or any state or the Federal District thereof), LaViers Enter-

prises shall immediately notify Bank and take all necessary action to protect the right, title and interest of the Bank in the Collateral and will furnish the Bank with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Bank to the effect that the action taken by LaViers Enterprises is all that is necessary to protect fully the right, title and interest of the Bank in the Collateral.

(b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.

(c) Mark each locomotive forming part of the Collateral appropriately to show the ownership of LaViers Enterprises and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and LaViers Enterprises will maintain and cause the Collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to indicate ownership in any other party or to be remarked or renumbered without the prior written consent of the Bank, nor will LaViers Enterprises allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than the Bank. The Bank may at any time and from time to time require LaViers Enterprises to mark some or all of the Collateral to indicate the Bank's lien thereon hereunder.

(d) Maintain the Collateral or cause the same to be maintained in good and proper working order and condition throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of coal without the prior written consent of the Bank.

(e) Permit the Bank and its agents to inspect the Collateral and the books and records of LaViers Enterprises regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each locomotive forming part of the Collateral.

(f) Pay all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for late payment. The Bank shall have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of LaViers Enterprises to so pay same, to pay all such taxes and govern-

mental charges itself on behalf of LaViers Enterprises and LaViers Enterprises shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the per annum rate of five and one-half percent (5-1/2%) in excess of the then current "Prime Rate", promptly upon demand by the Bank. The term "Prime Rate", as used herein, shall have the same meaning accorded said term in the Notes.

(g) Pay the Notes, and all installments of principal and interest thereunder, and all other amounts owed by LaViers Enterprises to the Bank hereunder and otherwise, in full when, as and how due.

(h) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by Bank to perfect its lien on the Collateral.

(i) Promptly notify the Bank in writing in the event any of the locomotives forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.

5. LaViers Enterprises hereby covenants and agrees with the Bank that LaViers Enterprises will not:

(a) Permit any other chattel mortgages, security interests, liens or other encumbrances to attach to any of the Collateral;

(b) Permit any of the Collateral to be seized, attached or levied upon under any legal process;

(c) Sell, contract to sell, exchange, transfer or otherwise dispose of any of the Collateral, without the prior written consent of the Bank (or pursuant to §9.5 of the Loan Agreement);

(d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement.

(e) Use, permit the use of, or lease for use any of the Collateral predominately outside the United States of America within the meaning of §48(a) of the Internal Revenue

Code of 1954 (the "Code"), as amended to the date of this Mortgage and Security Agreement, or permit the use of the Collateral by any person in whose hands the Collateral would not qualify as "§38 property" within the meaning of said Code.

6. LaViers Enterprises will at all times maintain or cause to be maintained property and casualty insurance in respect of the Collateral in at least the amounts and against the risks as prudent railroad companies customarily insure similar equipment owned by them; provided, however, that the amount of such coverage shall not, at any time, be less than the current aggregate outstanding principal balance of the Notes (with a deductible or retained liability of the insured of not greater than One Hundred Thousand Dollars (\$100,000.00)). The Bank shall be named as loss payee or an additional insured under all such insurance policies and the proceeds of such insurance shall be payable to the Bank and LaViers Enterprises as their respective interests may appear.

LaViers Enterprises will, at all times carry and maintain or cause to be carried and maintained public liability insurance, naming the Bank as an additional named insured, in at least the amounts and against the risks as prudent railroad companies customarily insure similar equipment owned by them; provided, however, that the amount of such coverage shall not, at any time, be less than One Million Dollars (\$1,000,000.00) (with a deductible or retained liability of the insured of not greater than One Hundred Thousand Dollars (\$100,000.00)) per occurrence. Any policy of insurance carried in accordance with this §6 shall not provide for any payment of premiums or commissions by the Bank.

LaViers Enterprises shall obtain from each insurer issuing a policy in satisfaction of the terms of the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Bank at least thirty (30) days written notice prior to the effectiveness of any modification or cancellation of the policy issued by such insurer. On the execution hereof, LaViers Enterprises shall deliver to the Bank a binder, policy or certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy, which policies together satisfy the provisions of this §6, and LaViers Enterprises shall at least thirty (30) days prior to the expiration of each such policy present to the Bank satisfactory evidence of the renewal, extension or replacement thereof.

7. LaViers Enterprises shall not, while the Notes remain outstanding and this Mortgage and Security Agreement remains in effect, dissolve, wind up its affairs, liquidate in whole or in part, or sell substantially all of its assets, nor merge,

consolidate or pool its assets with any corporation, partnership, joint venture or any other person or business entity.

8. (a) Each of the following shall constitute and be deemed an "Event of Default" hereunder:

(i) LaViers Enterprises shall fail to pay in full any installment of principal and/or interest, or any other amount, due under any of the Notes at the time and in the manner due under the terms of the Notes and shall further fail to cure such default within ten (10) days of written notice thereof from the Bank;

(ii) LaViers Enterprises shall fail to comply fully with any of the provisions of this Mortgage and Security Agreement or of the Loan Agreement, and such default is not cured to the satisfaction of the Bank within fifteen (15) days of written notice thereof from the Bank to LaViers Enterprises;

(iii) Any of the warranties and representations made by LaViers Enterprises herein or in any other document pertaining to this financing and delivered to the Bank shall prove to be false or misleading in any respect or shall omit a material fact;

(iv) Any "Event of Default" under that Loan Agreement referenced in §2(c) above; or

(v) LaViers Enterprises is adjudicated as bankrupt or insolvent, or files a voluntary petition in bankruptcy or a petition seeking reorganization or an arrangement with creditors, or requests or suffers the appointment of a trustee, receiver or liquidator for all or a substantial part of its business or assets, or makes a general assignment for the benefit of creditors, or takes advantage of any statute or law, federal or state, pertaining to relief for debtors.

(b) Upon the occurrence of any Event of Default as defined in §§8(a)(i), (ii), (iii) or (iv) above, the Bank may, at its option and without further notice, declare the entire unpaid principal balance of, and all accrued interest on, the Notes, plus all other indebtedness and obligations of LaViers Enterprises to the Bank, to be immediately due and payable in full and proceed to forthwith realize upon the Collateral and all other security for the Notes and such indebtedness. Upon the occurrence of an Event of Default of the nature defined in §8(a)(v) above, the entire outstanding principal balance of, and all accrued interest on, the Notes, and all other indebtedness of LaViers Enterprises to the Bank, shall automatically and immediately, without notice, presentment or other action by the Bank, become due and payable in

full. On the occurrence of an Event of Default, the Bank shall have all of the rights and remedies in and against the Collateral available under federal law and to a secured party under the Uniform Commercial Code as adopted in Kentucky, and, in addition, all rights and remedies provided herein, in the other instruments pertaining to the financing evidenced by the Notes, or otherwise by law, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Upon the occurrence of an Event of Default, the Bank shall have all of the rights available to it under the Assignment of Lease referenced in §3(b)(ii) and any similar assignments of leases covering any of the Collateral. Following an Event of Default, the Bank shall have the right to require LaViers Enterprises, at the latter's expense, to assemble the Collateral and make it available to the Bank at such rail points as are feasible and designated by the Bank, and the Bank may immobilize and keep from use all or any part of the Collateral, with or without proceeding to sell the Collateral or any part thereof, and shall also have the right to lease all or part of the Collateral to other parties with or without taking possession thereof. The Bank shall have the right at its discretion to sell the Collateral at public or private sale(s) in one or more lots. LaViers Enterprises will on demand by the Bank pay, as part of the indebtedness and obligations hereby secured, all amounts, including but not limited to attorneys' fees, permitted by law, with interest on all such amounts paid by the Bank at the rate of five percent (5%) per annum in excess of the "Prime Rate" as defined in §4(b) above, incurred or paid by the Bank as expenses in taking possession of, preserving and disposing of the Collateral, including any taxes, insurance and maintenance costs incurred during such proceedings. The requirement of reasonable notice of time and place of disposition of the Collateral by the Bank shall be conclusively met if such Notice is mailed, postage prepaid, to LaViers Enterprises' last address as furnished to the Bank at least fifteen (15) days before the sale or disposition. The Bank may bid upon and purchase any or all of the Collateral at any public sale thereof. The Bank may dispose of all or any part of the Collateral in one or more lots and at one or more times and from time to time, and upon such terms and conditions, including a credit sale, as the Bank determines in its sole discretion. The Bank may apply the net proceeds of any such disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing and preserving for sale and the sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may elect, to the indebtedness of LaViers Enterprises secured hereunder, including but not limited to the Notes, and any remaining proceeds, after all such indebtedness and other amounts due

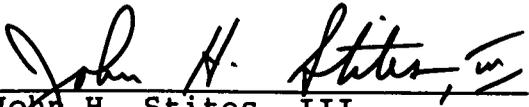
hereunder are satisfied in full, shall be paid to LaViers Enterprises or other party legally entitled thereto.

9. This Mortgage and Security Agreement shall extend to and include, and LaViers Enterprises hereby grants the Bank a security interest in, (i) any proceeds and products of the Collateral, (ii) all of its equipment apart from the Collateral, including, but not limited to, all of its tools and machinery for servicing the Collateral, and (iii) all of its goods and inventory, including, but not limited to, all spare parts and fuel for the Collateral. LaViers Enterprises further hereby collaterally assigns to the Bank, and grants the Bank a security interest in, all of its leases, accounts and accounts receivable, contract rights, chattel paper, securities, documents, instruments and general intangibles, including, but not limited to, all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral. At the request of the Bank, LaViers Enterprises will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such latter items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.

10. LaViers Enterprises consents to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under the provisions of 49 U.S.C. §11303 (formerly §20c of the Interstate Commerce Act). LaViers Enterprises shall also execute and deliver to the Bank a UCC-1 Financing Statement, evidencing the security interests granted herein, for filing with the Estill County Clerk, Irvine, Kentucky. LaViers Enterprises shall, pursuant to §4(h) hereof, pay and reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

11. This Mortgage and Security Agreement, the Loan Agreement, Notes and other instruments and documents pertaining to the financing evidenced by the Notes shall all be construed harmoniously together. The covenants and obligations of LaViers Enterprises and the rights and powers of the Bank under all such instruments and documents shall be regarded and interpreted as cumulative (rather than as in any way mutually exclusive or contradictory) to the full extent possible and permitted by law. Such instruments and documents shall always be construed and applied to effectuate their purpose of providing the Bank, its successors and all other persons having a beneficial interest in the Notes, maximum security for the payment of the Notes and flexibility with regard thereto.

I certify that I prepared
the foregoing instrument:


John H. Stites, III

GREENEBAUM DOLL & McDONALD
3300 First National Tower
Louisville, Kentucky 40202