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RECORDATION NO. 21257 FILED

MAR 5 '98 4-53 PM

RECEIVED MAR 5 1998 MAIL MANAGEMENT STB

Gerald F. O'Connell, Jr.
*Direct Dial: 513/629-2808*

March 4, 1998

**Via Federal Express**

Secretary
Surface Transportation Board
Washington, D.C. 20423

***Re: Documents For Recordation***

Dear Secretary:

We are the attorneys for Fifth Third Bank, which has made a loan to RMW Ventures, LLC, which leases railroad assets to three railroads: C&NC Railroad Corporation, Maumee & Western Railroad Corporation and Wabash Central Railroad Corporation. I have enclosed please find an original and one copy/counterpart of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. These documents are notarized in compliance with Ohio law.

The documents are:

1. A Loan and Security Agreement, a primary document dated February 27, 1998.

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

Borrower:

RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112

Lender:

The Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263

A short summary of the document to appear in the index follows: Loan and Security Agreement between Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263 and RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112 dated February 27, 1998, and covering all business assets, including all equipment, general intangibles, inventory, rolling stock,

Borrower: RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Guarantor: Maumee & Western Railroad Corporation, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Bank: The Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

A short summary of the document to appear in the index follows: Collateral Assignment and Subordination of Contract between RMW Ventures, LLC, Borrower, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, Maumee & Western Railroad Corporation, Guarantor, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263, dated February 27, 1998, and covering the Equipment Lease between RMW Ventures, LLC as lessor and Maumee & Western Railroad Corporation as the lessee which is a lease of all railroad equipment, locomotives, rolling stock, etc.

16. Collateral Assignment and Subordination of Contract, a primary document dated February 27, 1998.

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

Borrower: RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Guarantor: Wabash Central Railroad Corporation, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Bank: The Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

A short summary of the document to appear in the index follows: Collateral Assignment and Subordination of Contract between RMW Ventures, LLC, Borrower, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, Wabash Central Railroad Corporation, Guarantor, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263, dated February 27, 1998, and covering the Equipment Lease between RMW Ventures, LLC as lessor and Wabash Central Railroad Corporation as the lessee which is a lease of all railroad equipment, locomotives, rolling stock, etc.

17. Collateral Assignment and Subordination of Contract, a primary document dated February 27, 1998.

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

Borrower: RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Guarantor: C & NC Railroad Corporation, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Bank: The Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

A short summary of the document to appear in the index follows: Collateral Assignment and Subordination of Contract between RMW Ventures, LLC, Borrower, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, C & NC Railroad Corporation, Guarantor, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263, dated February 27, 1998, and covering the Equipment Lease between RMW Ventures, LLC as lessor and C & NC Railroad Corporation as the lessee which is a lease of all railroad equipment, locomotives, rolling stock, etc.

18. Subordination Agreement of Lease to Debt, a primary document dated February 27, 1998.

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

Lessor: RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Lessee: Maumee & Western Railroad Corporation, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112.

Bank: The Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 46263.

A short summary of the document to appear in the index follows: Subordination Agreement Of Lease To Debt between Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263, RMW Ventures, LLC, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112, as lessor, and Maumee & Western Railroad Corporation, Suite A, 205 North Capitol Avenue, Corydon, Indiana 47112 as lessee, dated February 27, 1998, and covering all the right, title and interest of lessor and lessee in and to a real estate lease from lessor as landlord to lessee as tenant of real property over which railroad tracks run, as more particularly described in the exhibit to the Agreement.

19. Subordination Agreement of Lease to Debt, a primary document dated February 27, 1998.

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

Date: 3/5/98

RE: Check # 0008-13-31/420 dated: 3/3/98 for $ 462.00

Total cost of Recordation filings: $ 192.00.

A refund for $ 270.00 is being done.

Fifth Third Bank
CINCINNATI, OHIO

FIFTH THIRD CENTER

No. 0008 13-31/420

March 3 19 98

PAY TO THE ORDER OF Surface Transportation Board $ 462.00

Four hundred sixty-two dollars and no cents DOLLARS

PLEASE ENTER ACCOUNT NUMBER HERE

9 9 9 - 4 1 8 3 8

Spencer Wendel

⑆042000314⑆

RECORDATION NO. 21257 FILED

MAR 5 '98 4-53 PM

2/25/98

# COLLATERAL ASSIGNMENT AND SUBORDINATION OF CONTRACT

THIS ASSIGNMENT, made jointly and severally this 27th day of February, 1998, by RMW VENTURES, LLC, an Indiana limited liability company ("Borrower") and C & NC RAILROAD CORPORATION, an Indiana corporation ("Guarantor") (the Borrower and Guarantor are sometimes collectively referred to herein as the "Assignors") to THE FIFTH THIRD BANK, an Ohio banking corporation (the "Bank").

## RECITALS

WHEREAS, the Borrower is buying certain railroad assets out of bankruptcy (the Indiana Hi-Rail assets) and will enter into an Equipment Lease of certain of those assets with Guarantor (the "Lease"), as Guarantor is a railroad approved by the Surface Transportation Board; and

WHEREAS, the Borrower has requested the Bank to enter into a certain loan agreement of even date herewith (the "Loan Agreement") pursuant to which the Bank may make financing available to the Borrower in an aggregate amount not to exceed Two Million Six Hundred Thousand Dollars ($2,600,000) (the "Loan") to enable Borrower to buy such assets out of bankruptcy; and

WHEREAS, in order to induce the Bank to enter into the Loan Agreement, the Guarantor has executed a Continuing Guaranty Agreement whereby the Guarantor has guarantied the full repayment by Borrower of the Loan to Bank (the "Guaranty"); and

WHEREAS, in order to induce Bank the Assignors have agreed to assign to the Bank all of the Assignor's right, title and interest in and to the Lease and any and all proceeds thereof and Assignors have agreed that the Lease is subordinate to the rights of Bank under the Loan Agreement; and

WHEREAS, the Bank is not willing to enter into the Loan Agreement unless and until the Assignors make, execute and deliver this Assignment and Subordination.

WHEREAS, Guarantor's business is closely connected to that of Borrower, and the Lease is an integral part of Guarantor's business and the Lease and the success of Borrower's business will contribute materially to the success of Guarantor's business, and vice-versa, and therefore Assignors are willing to execute this Assignment and Subordination in order to induce Bank to extend such credit and accommodations.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. To secure the complete and prompt payment and performance of all of the indebtedness and obligations now existing or hereafter owing from the Borrower under the Loan Agreement and the Guarantor under the Guaranty Agreement to the Bank of any nature whatsoever, including without limitation all "Obligations" as that term is defined in the Loan Agreement and Guaranty (which definition is hereby incorporated herein by reference) (collectively the "Indebtedness"), the Assignors hereby assign to Bank as collateral, and grants a security interest to Bank in, all right, title and interest of the Assignors in and to (i) the Lease and (ii) all monies or other proceeds now due or to become due to the Assignors, their successors or assigns, under or in connection with the Lease or the termination of the Lease, including without limitation rights arising out of breach or nonperformance of the Lease (whether sounding in tort, contact or otherwise) or sale, transfer or assignment of any interest of Assignor in the Lease (collectively the "Proceeds"). Assignors subordinate their right, title and interest in the Lease to the Bank's right of repayment under the Loan Agreement.

2. The Bank shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligations, duties or liabilities of the Assignors under the Lease or to file any claim or take any other action to collect or force any payment assigned hereunder. It is expressly agreed that, notwithstanding anything in this Assignment to the contrary, the Assignors shall remain liable under the Lease to perform all the obligations assumed by it thereunder.

3. The Assignors jointly and severally represent and warrant to the Bank as follows:

(a) The Assignors have the full power, authority and unqualified right to enter into, execute and deliver this Assignment and perform all of its terms and conditions;

(b) The Lease is in full force and effect and has not been modified or amended since its original execution, and the Assignors have not received any notice of its termination, invalidity or other materially adverse event;

(c) The Assignors together are the sole and exclusive owner of the rights in and to the Lease and the Proceeds, free and clear of any and all liens, charges and encumbrances thereon;

(d) There are no suits or actions pending or to the knowledge of the Assignors, threatened against the Assignors which would have a material effect on the Lease or this Assignment;

(e) The Assignors have not executed any prior assignment of their right, title and interest in and to the Lease;

(f) The execution and delivery of this Assignment does not violate any Lease, agreement or other instrument to which the Assignors are a party; and

(g) There is no set off, defense or claim against any of the payments due to the Assignors under the Lease.

4. The Bank hereby authorizes the Borrower to collect the Proceeds as they come due in the manner described in the Loan Agreement, provided, however, that the Bank may at any time, and from time to time hereafter, in the Bank's sole and absolute discretion, terminate this privilege and notify Guarantor to deliver the Proceeds directly to the Bank at such address as the Bank shall designate.

5. Upon or at any time after a default by the Assignors in the payment of any of the Indebtedness, or a violation by the Assignors of the representations, warranties or covenants contained in this Assignment, or the occurrence of an Event of Default under the Loan Agreement, Guaranty, or any other instrument or document executed or to be executed in connection therewith, the Assignors shall automatically have no further right to collect and retain the Proceeds, and (i) the Bank may exercise all rights and remedies accorded to it by law and such additional rights contained in the Loan Agreement and the other documents executed or to be executed in connection therewith, (ii) the Bank may do any acts which the Bank deems proper to protect the security hereof, including without limitation, notifying Borrower to deliver the Proceeds directly to the Bank, (iii) Bank may terminate the Lease and take control of the equipment pursuant to the security interests Bank has received from the Assignors in and to all of Assignors' rights in equipment, contracts, etc.; and (iv) the Assignors do hereby constitute and appoint the Bank, its successors, assigns or designee, to be the Assignors' true and lawful attorney, irrevocably, with full power (in the name of the Assignors or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for money due and to become due under, or arising out of the Lease, including without limitation, the Proceeds, and to endorse any checks or other instruments or orders in connection therewith, to give all or any of the notices, consents, instructions or other communications reserved to the Assignors in the Lease, and to file any claims, to take any action or institute any proceedings which the Bank or any subsequent assignee deem to be necessary or advisable for the purposes of collecting the Proceeds, hereby ratifying and confirming whatsoever said attorney shall and may do by virtue thereof.

6. The Assignors jointly and severally covenant and agree that, so long as any of the Indebtedness remains outstanding:

(a) The terms of the Lease shall not be altered, modified, amended or changed;

(b) They shall not assign, pledge, surrender, waive, release or cancel any of their rights under the Lease and in and to the Proceeds;

(c) They will faithfully perform all of the terms, conditions and covenants contained in the Lease and exercise promptly and diligently every right they may have under the Lease; and

(d) They will keep their rights in and to the Lease and the Proceeds free and clear of any and all liens, charges and encumbrances and it will make appropriate notations on their books of account to indicate the interest of the Bank in the Lease; and

(e) They will promptly notify the Bank of any default or alleged default by each other under the Lease, or the termination or alleged termination of the Lease; and

(f) They will, from time to time, take such further action and execute such further instruments of assurance as may be required by the Bank to carry out the intention of this Assignment and to protect and enforce the Bank's rights in and to the Proceeds.

7. This Assignment shall remain in full force and effect and shall be irrevocable until the Indebtedness is indefeasibly paid in full to the Bank.

8. The Assignors hereby covenant and agree to jointly and severally indemnify and save the Bank harmless of and from any and all claims, demands, loss, liability, costs (including reasonable attorneys' fees) and expenses arising out of or incurred in connection with this Assignment.

9. Guarantor hereby agrees that from time to time (notwithstanding that the Indebtedness may at any time(s) exceed the aggregate principal sum set forth in the Loan Agreement), without notice or demand and without affecting or impairing in any way the rights of Bank with respect to the Lease or the Proceeds or the obligations of Assignors hereunder, Bank may: (a) renew, compromise, extend, accelerate or change the time for payment or the terms of the Indebtedness, or any part thereof, (b) exchange, enforce, waive, release, apply and direct the order or manner of sale of any and all collateral for the Indebtedness, including, without limitation, the Lease and the Proceeds, as Bank, in its sole discretion, may determine, and/or (c) release or substitute any one or more endorsers or guarantors. Guarantor waives any right to require Bank to: (a) proceed against any endorsers or guarantors, (b) proceed against or exhaust any security held for the Indebtedness, or (c) pursue any other remedy in Bank's power whatsoever. Guarantor waives any defense based upon or arising out of the disability or other defense or the cessation of liability of the Borrower or any other person. Guarantor hereby acknowledges and agrees that Bank may foreclose on any security held by it by one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable, or exercise any other right or remedy it may have against the Borrower or Guarantor or any security held by it for the Indebtedness, without affecting or impairing in any way the rights of Bank with respect to the Lease or the Proceeds or the obligations of the Assignors hereunder. Guarantor waives any defense arising out of any such election by Bank. Assignor hereby irrevocably waives all legal and equitable rights to recover from the Borrower any loss suffered by Guarantor resulting from the Agreement, including without limitation, all rights of reimbursement, contribution and subrogation, and all other rights that could result in Guarantor being deemed a creditor of the Borrower under the Federal Bankruptcy Code or any other law. Guarantor hereby waives notice of acceptance of this Agreement, and also presentment, demand, protest and notice of dishonor of any and all of the Indebtedness, and promptness in commencing suit against

any party thereto or liable thereon, and in giving notice to or of making any claim or demand hereunder upon the Assignor. No act or omission of any kind on Bank's part in the premises shall in any event affect or impair this Agreement.

10. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered or when mailed via certified or registered mail, addressed to the party for whom they are intended at the following addresses:

| | |
|---|---|
| Borrower: | RMW Ventures, LLC<br>205 North Capitol Avenue, Suite A<br>Corydon, Indiana 47112<br>Attention: Spencer Wendelin, Manager |
| Guarantor: | C & NC Railroad Corporation<br>205 North Capitol Avenue, Suite A<br>Corydon, Indiana 47112<br>Attention: Spencer Wendelin, President |
| Assignee: | The Fifth Third Bank<br>38 Fountain Square Plaza<br>Cincinnati, OH 45263<br>Attention: Secured Lending Department |

11. This Agreement may be executed by the parties hereto in 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. This Agreement is the complete agreement of the parties hereto and supersedes all previous understandings and agreements relating to the subject matter hereof; neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against whom enforcement of the termination, amendment, supplement, waiver or modification is sought. The provisions of this Agreement are severable, and the invalidity of any provision hereof shall not invalidate the balance of this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their heirs, successors and assigns, except as otherwise specified in this Agreement.

12. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the domestic laws of the State of Indiana. Assignors agree that the state and federal courts in Hamilton County, Ohio or any other court in which Bank initiates proceedings have exclusive jurisdiction over all matters arising out of this Assignment, and that service of process in any such proceeding shall be effective if mailed to Assignors at their address described in the Notices section of this Assignment. BANK AND ASSIGNORS HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS

ARISING OUT OF THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:

RMW VENTURES, LLC

By: Spencer Wendelin
Spencer Wendelin
Its: Manager

WITNESSES:

Debra Aldred
Kimberly A. Worthing

BANK:

THE FIFTH THIRD BANK

By: David G. Fuller
Its: Structured Finance Officer

Debra Aldred
Kimberly A. Worthing

GUARANTOR:

C & NC RAILROAD CORPORATION

By: Spencer Wendelin
Spencer Wendelin
Title: President