

*Counterpart - Mary A Oster*

# OSTER

## Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771  
301-253-6040

RECORDATION NO. 20942 FILED

OCT 17 '97

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RECEIVED  
TRANSPORTATION  
BOARD

October 17, 1997

Mr. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recording with the Surface Transportation Board is a Loan and Security Agreement dated 9/30/97 between the following parties:

Lender: FBS Business Finance Corporation  
First Bank Place  
601 Second Avenue South  
Minneapolis, MN 55402

Debtor: LRC Credit Corp.  
704 East Gallatin  
Livingston, Montana 59047

The equipment included in this transaction is listed on Schedule 1 to the agreement.

Please record this agreement as a primary document. The filing fee of \$24 is enclosed. Thank you for your assistance.

Sincerely,

*Mary A Oster*

Mary Ann Oster  
Research Consultant

Enclosures

OCT 17 '97

9-38 AM

**LOAN AND SECURITY AGREEMENT**  
(Railroad Cars)

THIS LOAN AND SECURITY AGREEMENT, dated as of the 30th day of September, 1997, is entered into by and between LRC CREDIT CORP., a Montana corporation ("Borrower"), and FBS BUSINESS FINANCE CORPORATION, a Delaware corporation ("Lender").

In consideration of the mutual covenants hereinafter set forth in this Loan and Security Agreement and intending to be legally bound, Borrower and Lender hereto agree as follows:

**1. Definitions.** As used herein:

(a) "Agreement" means this Loan and Security Agreement, as originally executed and as amended, modified, supplemented or restated from time to time.

(b) "Business Day" means any day, other than a Saturday, Sunday or holiday, on which Lender is open for the transaction of business of the type described in this Agreement.

(c) "Collateral" has the meaning ascribed to it in **Section 3** hereof.

(d) "Default" means any event which, with the passing of time, the giving of notice, or both, would constitute an Event of Default.

(e) "Event of Default" has the meaning ascribed to it under **Section 7** hereof.

(f) "Environmental Laws" means: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. § 9601 et seq.; (ii) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendment of 1984, 42 U.S.C.A. § 6901 et seq.; (iii) the Clean Air Act, 42 U.S.C.A. § 7401 et seq.; (iv) the Clean Water Act of 1977, 33 U.S.C.A. § 1251 et seq.; (v) the Toxic Substances Control Act, 15 U.S.C.A. § 12601 et seq.; and (vi) all other laws relating to air pollution, water pollution, noise control and/or the handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as each of the foregoing may be amended from time to time.

(g) "Environmental Liability" means any claim, demand, obligation, cause of action, order, violation, damage, injury, judgment, penalty or fine, cost of enforcement, cost of remedial action or any other cost or expense whatsoever, including reasonable attorneys' fees and disbursements, resulting from the violation or alleged violation of any Environmental Law or the imposition of any Environmental Lien.

(h) "Environmental Lien" means a lien in favor of any Person for: (i) any liability under an Environmental Law; or (ii) damages arising from or costs incurred by such Person in response to a release or threatened release of hazardous or toxic waste, substance or constituent into the environment.

(i) "Equipment" means equipment described on **Schedule I** attached hereto and made a part hereof, together with all accessories, attachments, parts and repairs now or hereafter affixed or used in connection therewith and equipment substituted for the original Equipment.

(j) "Guarantor(s)" means Livingston Rebuild Center, Inc., a Montana corporation, and Randolph Peterson.

(k) "Guaranty(ies)" means that certain Corporate Guaranty (Unlimited) of Livingston Rebuild Center, Inc. and that certain Individual Guaranty (Unlimited) of Randolph Peterson each dated as of August 27, 1997.

(l) "Insurance Proceeds" means all proceeds of any and all insurance policies payable to Borrower with respect to any Equipment, whether or not such policies are issued to or owned by Borrower.

(m) "Loan" means the term loan in the amount of \$220,739.00 made by Lender to Borrower and evidenced by the Note.

(n) "Loan Documents" means this Agreement, the Note, and all other documents and agreements now or hereinafter delivered to Lender in connection with this Agreement.

(o) "Note" means that certain Promissory Note dated of even date herewith, in the form attached hereto as Exhibit A, together with all extensions, renewals, substitutions, modifications, and changes in form thereof.

(p) "Person" means any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in an individual fiduciary or other capacity.

(q) "Proceeds" means whatever is received upon the sale, exchange, collection or other disposition of the Equipment or the proceeds thereof, including, but not limited to, Insurance Proceeds.

(r) "Secured Obligations" has the meaning ascribed to it in **Section 3** hereof.

(s) "STB" means the Surface Transportation Board, or any successor agency thereto.

(t) "USDOT" means the United States Department of Transportation, or any successor agency thereto.

## **2. The Loan.**

(a) Subject to the terms and conditions hereof, Lender agrees to make the Loan to Borrower which shall be evidenced by the Note. Interest under the Note shall be calculated from the date of the Note through the maturity thereof at the rate shown on the Note.

(b) The Note shall be payable in equal consecutive monthly installments of principal plus interest in such amounts and on such dates as shown in the Note. Each monthly installment shall be applied first to the payment of any late charges and costs incurred by Lender hereunder, then to accrued interest, and thereafter to principal.

(c) If any installment is received by Lender more than ten (10) days after its due date, Borrower agrees to pay a late charge of five percent (5%) of such payment, but not in excess of the maximum late charge permitted by law.

(d) Interest and fees shall be calculated on the basis of a 30-day month and a 360-day year. If any payment hereunder or on the Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day. All payments by Borrower on the Note and all fees, expenses and other obligations under this Agreement payable to Lender shall be made without setoff or counterclaim in lawful money of the United States of America and immediately available funds, received no later than 3:00 p.m. (Minneapolis time) on the dates called for under the Note at Lender's address set forth in the Note.

(e) Borrower further promises to pay interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law from and after the maturity of the then outstanding

amount of principal, whether such maturity is caused by default, acceleration or otherwise, and, to the extent permitted by law, to pay interest on overdue interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law, until such amounts are paid.

(f) Upon the terms and subject to the conditions set forth in this subsection (f), Borrower, at its option, and upon three (3) Business Days written notice to Lender, may prepay the Note in whole or in part, subject to the following:

(i) If such prepayment occurs during the first half of the term of the Note, a prepayment premium equal to two percent (2%) of the principal amount prepaid shall accompany such prepayment. Any partial prepayment shall be applied pro rata to the then remaining installments of principal of the Note. Each prepayment under this Section shall be made with accrued interest on the principal amount prepaid to the date of the prepayment. No partial prepayment of the principal of the Note shall relieve Borrower of its obligation to pay the installments due under the Note on the scheduled payment dates and in the amounts set forth therein, except as the amount of such installments shall be reduced by any prepayments made and applied pursuant to this Section. The amount of any payment due as reflected on Lender's books and records shall be conclusive absent manifest error.

(ii) For purposes of this subsection (f), the terms "Government Yield" means as of the date of determination, the yield (converted as necessary to the equivalent semi-annual compound rate) on U.S. Treasury securities (as published by the Federal Reserve Bank of New York) having a maturity date closest to the scheduled maturity of the Note. "U.S. Treasury Securities" means actively traded U.S. Treasury bonds, bills and notes and, if more than one issue of U.S. Treasury securities is scheduled to mature at or about the time of the scheduled maturity of the Note, then to the extent possible the issue having a coupon rate or stated interest rate closest to the rate of interest on the Note (the "Note Rate") will be chosen as the basis for the Government Yield.

(iii) If at the time of any prepayment (including a prepayment occurring as a result of acceleration of the Note) the Government Yield is less than the Note Rate, Borrower will be required to pay, in addition to the prepayment fee described in subsection (f)(i) above, a prepayment premium calculated as follows: a new monthly payment (Payment 1) will be derived that will amortize the amount so prepaid at the Note Rate over the number of whole months then remaining to the scheduled maturity of the Note. A second monthly payment (Payment 2) will be derived that will amortize the amount so prepaid at the Government Yield over the number of whole months then remaining to the scheduled maturity of the Note. Such additional prepayment premium shall be the present value as of the date of prepayment (using the Government Yield as the discount factor) of a stream of hypothetical equal monthly payments in number equal to the number of whole months remaining to the scheduled maturity of the Note, with the amount of each hypothetical monthly payment equal to the difference between Payment 1 and Payment 2 and with the first payment payable thirty (30) days from the date of prepayment.

### 3. Security Interest.

To secure payment of the Loan, the Note, and all other obligations, liabilities and indebtedness of Borrower to Lender, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, joint or several, howsoever created, arising or evidenced (collectively, the "Secured Obligations"), Borrower hereby grants Lender a continuous and continuing security interest in and to the following (the "Collateral"):

(a) The Equipment; and

(b) Proceeds of the foregoing.

4. **Warranties and Representations of Borrower.** Borrower warrants and represents to Lender as follows:

(a) Borrower is a corporation duly created and existing and in good standing in the state of its incorporation and in each other jurisdiction where the nature of its business makes qualification necessary for the operation of its business and the enforcement of its contracts in such jurisdiction and has full power and authority to execute the Loan Documents to which it is a party and to perform its obligations thereunder.

(b) The execution and performance of the Loan Documents to which Borrower is a party will not violate any provision of Borrower's Articles of Incorporation or bylaws or any law, regulation, judgement, decree, indenture, contract, agreement or instrument to which it is a party or by which it is bound.

(c) Borrower has taken all necessary corporate action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and Borrower is not required to obtain the consent of any other party or any consent, license, approval or authorization from, or registration or declaration with, any governmental authority, bureau or agency in connection with the execution, delivery, performance, validity or enforceability of such Loan Documents.

(d) The Loan Documents to which Borrower is a party constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms.

(e) Borrower has not within the past five (5) years operated, nor is it now operating, under any name other than its true name, which is as specified in the first paragraph of this Agreement.

(f) The chief executive office of Borrower is at the address specified in **Section 9(b)** hereof.

(g) No petition for relief under any chapter of the United States Bankruptcy Code, any analogous law of any state, or foreign jurisdiction, or any liquidation, dissolution or winding up law has ever been filed by or against Borrower. Borrower is licensed as required by all applicable laws.

(h) Borrower has delivered to Lender the balance sheets of Borrower and the related statements of income and retained earnings of Borrower for its most recent fiscal year-end and for the most recent fiscal quarter. Such balance sheets and statements fairly present the financial condition of Borrower as of such dates and the results of the operations of Borrower for the period ended on such dates, all in accordance with generally accepted accounting principles consistently applied. Since the end of the latest fiscal quarter, there has been no material adverse change in such condition or operations.

(i) Upon appropriate filing with the STB, the security interest contemplated hereby will at all times constitute a valid, perfected and enforceable first priority security interest in favor of Lender, subject to no other security interest, mortgage, lien or encumbrance and Borrower shall provide Lender with an opinion of counsel confirming same.

(j) Borrower has filed all applicable tax returns required to be filed by it, and has paid or made provisions for the payment of all taxes which have become due pursuant to said returns or pursuant to any assessment received by Borrower except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles, and such returns properly reflect the United States income and tax liability of Borrower for the period covered thereby.

(k) No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Borrower, threatened by or against Borrower or against its properties or revenues with respect to this Agreement or any of the transactions contemplated thereby, or which could have a material adverse effect on the business, operations, property or financial or other condition of Borrower.

(l) Borrower is not in default under any agreement, instrument or undertaking in any respect which could be materially adverse to, and no agreement, instrument, undertaking, law, rule or regulation or determination of a court or other governmental authority, materially adversely affects, or insofar as Borrower may reasonably foresee may so affect, (i) the business, operations, property or financial or other condition of Borrower, or (ii) Borrower's ability to perform its obligations under the Loan Documents to which it is a party.

(m) No reportable event, as defined in Title IV of the Employee Retirement Income Security Act of 1984, as amended ("ERISA") has occurred and is continuing with respect to any employee benefit plan or other plan maintained for employees of Borrower and covered by ERISA.

(n) Borrower (i) has not received any notice or otherwise learned of any Environmental Liability in connection with (A) any non-compliance with or violation of the requirements of any Environmental Law or (B) the release or threatened release of any toxic or hazardous waste, substance or constituent, or other substance into the environment; (ii) has no threatened or actual liability in connection with the release or threatened release of any toxic or hazardous waste, substance or constituent, or other substance into the environment; and (iii) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a release or threatened release of any toxic or hazardous waste, substance or constituent into the environment for which Borrower is or may be liable. Borrower is in compliance with all Environmental Laws in the respective jurisdictions where it is presently doing business or conducting operations.

(o) Subject only to the security interest created hereby, Borrower has good title to the Equipment free and clear of all liens, claims and encumbrances and, as of the date of funding of the Loan, no financing statement (or similar document evidencing a security interest or other lien) covering any of the Equipment will be on file in any public office except financing statements filed by Lender. All such financing statements shall have been disclosed to Lender in writing and have been assigned to Lender by appropriate document. None of the Equipment is included as collateral under any security agreement signed by Borrower other than this Agreement.

**5. Affirmative Covenants.** Borrower hereby agrees that, so long as any Secured Obligations remain outstanding and unpaid, Borrower shall:

(a) Pay and perform all of the Secured Obligations according to their terms.

(b) On demand of Lender and at Borrower's sole expense, (i) execute any written agreement or do any other acts reasonably necessary to effectuate the purposes and provisions of this Agreement, (ii) execute any instrument or statement required by law or otherwise in order to create, perfect, continue or maintain the security interest of Lender in the Collateral, and (iii) pay all costs of filing in connection with creating, perfecting, continuing or maintaining said security interest.

(c) Retain possession of the Collateral and not sell, exchange, assign, loan, deliver, lease without the prior written permission of Lender, mortgage or otherwise dispose of the Collateral. Lender consents to the Lease dated August 28, 1996, as amended, between LRC Credit Corp., as lessor, and Burlington Northern Sante Fe Co., as lessee, provided that LRC Credit Corp. and Burlington Northern Sante Fe Co. expressly (i) acknowledges the assignment to Lender of all of the payments under the Lease, (ii) agree that the Collateral subject thereto will be

returned as directed by the Lender upon notice to LRC Credit Corp. and Burlington Northern Sante Fe Co. that an Event of Default shall have occurred and be continuing, and (iii) agree that it shall not enter any further sublease or assignment of the Collateral. Borrower shall, within fifteen days after the execution of any such sublease, deliver a conformed copy thereof to the Lender.

(d) Keep title to the Equipment free and clear of any liens or encumbrances, except for the security interest created under this Agreement, and defend the Equipment against all claims and demands of all persons (other than Lender) claiming the Equipment or any interest therein.

(e) Pay, when due, all license fees, assessments and sales, use, property, excise and other taxes now or hereafter imposed by any governmental body or agency in connection with the Collateral or this transaction, and keep the Collateral free from all liens arising therefrom, except such fees, assessments, taxes or liens as are being contested by Borrower in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles.

(f) At its own expense, maintain (i) actual cash value all risk insurance on the Equipment naming Lender as Loss Payee; (ii) single limit public liability and property damage insurance of not less than \$1,000,000 per occurrence, or such greater or lesser amount as Lender may from time to time request on notice to Borrower; and (iii) comprehensive and collision damage coverage for the actual cash value of the Equipment naming Lender as Loss Payee and Additional Insured. Policies shall be obtained from responsible insurers authorized to do business in the United States. Each such policy of insurance shall provide that the insurance company shall give Lender thirty (30) days prior written notice of the effective date of any alteration or cancellation of such policy.

(g) Keep the Collateral in good repair and condition, ordinary wear and tear excepted.

(h) Give Lender not less than thirty (30) days prior written notice of a change in Borrower's chief executive office or name.

(i) Indemnify and save harmless Lender, its successors and assigns, employees, officers, directors and agents from and against any and all claims or suits for any loss, damage or injury sustained by any person whatsoever by reason of the sale, financing, use or disposition of the Collateral, and in this connection, Borrower shall pay the costs of all reasonable legal fees and all other reasonable expenses incurred by Lender.

(j) Furnish Lender, as soon as available, but in no event more than ninety (90) days after the end of each fiscal year of Borrower, a copy of the balance sheet of Borrower as at the end of such year and the related statements of operations, and such other financial information as Lender may from time to time request. Borrower warrants and represents that all such financial statements shall be complete and correct in all material respects and be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein.

(k) At its own expense, upon written direction from Lender, do all further acts and execute, acknowledge and deliver all instruments and assurances reasonably necessary or proper to comply with or accomplish the covenants and agreements contained in this Agreement, and in the event that Borrower does not so perform, Borrower hereby authorizes Lender to do such acts as Lender, in its sole discretion, shall deem necessary to protect the interests created hereby and agrees to pay to Lender on demand all reasonable costs and expenses associated with Lender's actions in connection herewith. Borrower hereby appoints Lender, or any other person whom Lender may from time to time designate, as Borrower's attorney-in-fact with power, after the occurrence and during the continuance of an Event of Default, to endorse Borrower's name on any checks, notes, acceptances, drafts, or other forms of payment or security with respect to the

Collateral that may come into Lender's possession, to sign Borrower's name on any invoice or bill of lading relating to any Collateral, on notices of assignment, financing statements under the Uniform Commercial Code (the "Code") and other public records, and to do all things necessary to carry out this Security Agreement. Borrower ratifies and approves all acts of the attorney taken within the scope of the authority granted. Neither Lender nor the attorney-in-fact will be liable for any acts of commission or omission nor for any error in judgment or mistake of fact or law. This power, being coupled with an interest, is irrevocable so long as any Secured Obligation remains unpaid.

(l) Continue to engage in business of the same general type as now conducted by it, and preserve, renew and keep in full force and effect its corporate existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and comply with all agreements, instruments, undertakings, laws, rules, regulations and determinations of any court binding upon Borrower except to the extent that the failure to comply therewith could not, in the aggregate, have a material adverse effect on the business, operations, property or financial or other condition of Borrower.

(m) Ensure that all items of Collateral remain personal property and not in any way allowed to become part of or to be affixed to any real property without first assuring to Lender's reasonable satisfaction that Lender's security interest in the Collateral is prior and senior to any interest or lien then held or thereafter acquired by any mortgagee of such real property or the owner or purchaser of any interest therein. With the exception of any motor vehicles included in the Collateral, the Collateral shall be kept at Borrower's address set forth **Section 9(b)** below and will not be removed from such location or location unless, prior to any such removal, Borrower has given written notice to Lender of the location or locations to which Borrower desires to remove the same, and Lender has given its written consent to such removal. Any motor vehicles included in the Collateral will not be used outside the United States.

(n) As soon as available, but in any event within ninety (90) days after the funding of the Loan, Borrower shall provide evidence satisfactory to Lender of the payment of all sales, use and personal property taxes, as required by applicable law, with respect to the Equipment.

(o) Permit Lender to examine Borrower's books and records during Borrower's regular business hours with respect to the Equipment and make extracts therefrom and copies thereof at any time and from time to time.

(p) Comply with all Environmental Laws and give Lender notice of any Environmental Lien or Environmental Liability affecting Borrower or any Collateral as soon as Borrower has knowledge of the same.

(q) As soon as Borrower becomes aware thereof, give Lender notice of any Default or Event of Default.

(r) Comply with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads (and qualify for interchange service in accordance with such interchange rules), and with all rules of the USDOT, the STB, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any Equipment, Borrower will conform at its own expense.

(s) Cause the Equipment to be kept numbered with the identification numbers as shall be set forth in any amendment or supplement hereto. Borrower will not change the identification number or any unite of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lender, and filed, recorded and deposited by Borrower in all public offices where this Agreement shall have been filed, recorded

and deposited, and (ii) Borrower shall have furnished Lender an opinion of counsel in form and substance reasonably satisfactory to Lender to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Lender's interests in such Equipment and that no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of Lender in such Equipment.

**6. Negative Covenants.** So long as any Secured Obligation remains outstanding, Borrower shall not:

(a) Purport to create or permit any lien, mortgage, encumbrance or security interest upon, or lease of, the Equipment.

(b) Use the Equipment, or permit the Equipment to be used, for any unlawful purpose or in violation of any federal, state or municipal law, statute or ordinance.

(c) Change its name or the location of its leasing office or chief executive office without providing Lender with thirty (30) days prior written notice thereof.

(d) Consolidate with or merge into or with any other entity; or sell (other than sales of inventory in the ordinary course of business), transfer, lease or otherwise dispose of all or a substantial part of its assets out of the ordinary course of business.

(e) Use the Equipment or permit it to be used for the transportation or storage of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous", "explosive" or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the date hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous materials.

**7. Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Failure to pay when due any amounts payable under the Note, this Agreement or any other Secured Obligation.

(b) Failure of Borrower to comply with any provision under **Section 6** hereof.

(c) Except as otherwise addressed this **Section 7**, failure of Borrower to comply with any provisions or perform any of the obligations arising under this Agreement, the Note or any other Loan Document within five (5) days after receipt of written notice of such failure.

(d) Any representation or warranty made or given by Borrower in connection with this Agreement or any other Loan Document is false or untrue in any material respect.

(e) Subjection of all or any portion of the Collateral to levy or execution or any other judicial process which is not or cannot be removed within sixty (60) days from said subjection or loss, substantial damage to, destruction, theft, or encumbrance on all or any portion of the Collateral.

(f) Borrower or any guarantor of the Secured Obligations shall admit in writing its inability, or fail generally, to pay its debts as they become due, or the commencement of any insolvency, bankruptcy or similar proceeding by or against Borrower or any guarantor of the Secured Obligations under the provisions of the United States Bankruptcy Code or any insolvency law or other statute or law providing for the modification or adjustment of the rights of creditors, including any assignment by Borrower or any guarantor of the Secured Obligations for the benefit of creditors which proceeding, if filed against Borrower or any guarantor of the Secured Obligations, has not been dismissed within sixty (60) days.

(g) The liquidation or dissolution of Borrower or any guarantor of the Secured Obligations or the commencement of any acts relative thereto, or, without the prior written consent of Lender, any sale or other disposition of all or substantially all of the assets of Borrower or any guarantor of the Secured Obligations, including any merger or consolidation of Borrower or any guarantor of the Secured Obligations unless Borrower or such guarantor is the surviving corporation and unless Borrower or such guarantor has obtained the prior written consent of Lender.

(h) Any default by Borrower or any guarantor of the Secured Obligations of its obligations to Lender or any affiliate of Lender under any loan, indenture, agreement or undertaking.

(i) Any judgment, writ or warrant of attachment or of any similar process against Borrower or any guarantor of the Secured Obligations or its property shall remain unpaid for a period of sixty (60) days after said judgment became final and unappealable or all appeals are exhausted.

(j) Borrower or any guarantor of the Secured Obligations ceases to do business, or, in the case of an individual guarantor, such guarantor shall die or become incapacitated.

(k) Lender, in the exercise of reasonable discretion, deems itself unsecured or the prospect of repayment hereunder impaired for any reason whatsoever.

## 8. Remedies.

(a) If an Event of Default under **Section 7(f), (g), or (j)** shall occur, all Secured Obligations shall be immediately and automatically due and owing, without notice or demand whatsoever, such notice and demand being hereby expressly waived, and Lender shall be entitled to exercise any and all rights and remedies available to it under law or equity to enforce the obligations of Borrower hereunder and collect the Secured Obligations.

(b) If any other Event of Default shall occur and be continuing, Lender may, at its option, without demand or notice, exercise any one or more of the following remedies: (i) declare all Secured Obligations immediately due and payable in full, without presentment or other notice or demand; (ii) secure peaceable repossession of the Collateral without judicial process or the removal of the same by Lender or its representative(s); (iii) require Borrower to assemble the Collateral and make it available to Lender at a place designated by Lender which is reasonably convenient to both parties; (iv) sell the Collateral at public or private sale, without advertisement or notice except that required by law, for the best price that Lender can obtain and upon such terms as Lender may deem advisable and be the purchaser at any such sale; (v) exercise any other right or remedy which may be available to it under the Uniform Commercial Code or any other applicable law, equity or agreement or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement; (vi) offset any indebtedness Lender, its participants, successors or assigns then owes to Borrower, whether or not then due, against any Secured Obligation, whether or not then due; or (vii) declare Lender's obligation to make the Loan under this Agreement to be terminated, whereupon said obligation shall immediately be terminated.

(c) Borrower agrees that Lender's exercise of any remedy shall obligate Borrower, and Borrower agrees that it will take such action and pay such amounts as are required by Lender. Borrower shall be liable for any deficiency remaining after the sale of the Collateral and application of the net proceeds to the Secured Obligations. If such proceeds exceed the amount due and owing Lender for such Secured Obligations, Lender agrees to pay over the surplus to Borrower. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to Borrower at the address set forth below.

Lender's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Lender exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in selection of the bailee or other third person, and Secured Collateral or, in the case of Collateral in the custody or possession selection of the bailee or other third person, and Lender need not otherwise preserve, protect, insure or care for any Collateral. Lender shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application.

(d) Borrower agrees to pay reasonable attorneys' fees whenever an attorney is used to collect on or enforce this Agreement or to enforce, defend, declare or adjudicate any of Lender's rights or interests hereunder or with respect to any Collateral, whether by suit, negotiation or otherwise and regardless of the forum (including, but not limited to, efforts to seek relief from the automatic stay imposed by 11 U.S.C. Sec. 362 or other litigation in bankruptcy proceedings).

(e) All rights and remedies of Lender pursuant to the provisions of this Agreement are cumulative, and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise or partial exercise of any right or remedy shall not be deemed to be an election of such right or remedy or to preclude any other or further or future exercise of any other right or remedy. No failure on the part of Lender to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof or of any similar or other right or remedy in the future.

**9. Miscellaneous.**

(a) This Agreement and all of the Loan Documents shall inure to the benefit of the parties hereto and thereto and their respective legal representatives, successors and assigns; provided, however, that Borrower may not assign this Agreement or any provision thereof without the prior written consent of Lender.

(b) Notices requests or other communications required under this Agreement to be sent to either party shall be in writing and shall be by mail, postage prepaid, and addressed as follows:

If to Lender: FBS Business Finance Corporation  
Leasing Division (MPFP0904)  
First Bank Place  
601 Second Avenue South  
Minneapolis, Minnesota 55402-4302  
Attention: Ms. Deborah Eckert

If to Borrower: LRC Credit Corp.  
704 East Gallatin  
Livingston, Montana 59047  
Attention: Mr. Randolph Peterson

(c) This Agreement may not be amended, modified, changed, discharged or waived in any respect except by an instrument in writing signed by the party against whom said amendment, modification, change, discharge or waiver is sought to be enforced.

(d) Notwithstanding a termination of this Agreement, all representations, warranties, covenants, agreements and obligations contained in this Agreement or made in writing by Borrower in connection herewith shall remain in full force and effect to the extent required for their full observance and performance.

(e) If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, then such provision shall be deemed null and void without invalidating the remaining provisions hereof.

(f) This Agreement and the Note constitute the entire agreement of the parties with respect to the transactions described herein and all prior negotiations, term sheets, commitment letters, and other agreements, whether oral or in writing, are merged into this Agreement and are superseded hereby.

**(g) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE LAW, BUT NOT THE LAW OF CONFLICTS, OF THE STATE OF MINNESOTA.**

**(h) BORROWER HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF MINNESOTA IN CONNECTION WITH ANY CONTROVERSY RELATED TO THIS AGREEMENT, WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT AND AGREES THAT ANY LITIGATION INSTIGATED BY BORROWER AGAINST LENDER IN CONNECTION HERewith SHALL BE VENUED IN EITHER THE DISTRICT COURTS OF HENNEPIN COUNTY, MINNESOTA, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION.**

**(i) EACH OF BORROWER AND LENDER WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR (b) ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

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IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

**BORROWER:**

LRC CREDIT CORP.,  
a Montana corporation

By: Dale McCleary  
Name: Dale McCleary  
Title: President

and

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

FBS BUSINESS FINANCE CORPORATION,  
a Delaware corporation

By: John M. Carlotto  
Name: John M. Carlotto  
Title: VP

**SCHEDULE I**

**Equipment Description**

(2) 1980 General Electric, C30-7, 3000 Horsepower, Class 8099 Locomotives

LRCX 8149  
LRCX 9567

(2) 1980 General Electric, B36-7, 3000 Horsepower, Class 8099 Locomotives

LRCX 7771  
LRCX 7773

STATE OF Montana  
COUNTY OF Park

On this 1 day of October, 1997, before me personally came Dale Mc Cleary to me known, who, being by me duly sworn, did depose and say that he/she is the President of LRC Credit Corp., a Montana corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.

Jackie M. Fuller  
Notary Public in and for said State

My commission expires: May 5, 1998

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

My commission expires: \_\_\_\_\_

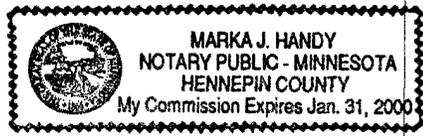
STATE OF Minnesota  
COUNTY OF Hennepin

On this 3 day of October, 1997, before me personally came John M. Carlotta to me known, who, being by me duly sworn, did depose and say that he/she is the Vice President of FBS Business Finance Corp., a Delaware corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.

Mark J. Handy  
Notary Public in and for said State

My commission expires: 1-31-2000





# FBS Leasing

EXHIBIT A

## PROMISSORY NOTE

Minneapolis, Minnesota  
September 30, 1997

\$220,739.00

FOR VALUE RECEIVED, the undersigned **LRC Credit Corp.**, a Montana corporation (the "Borrower") hereby promises to pay to the order of **FBS Business Finance Corporation**, Leasing Division, a Delaware corporation (the "Lender"), at its main office at First Bank Place, 601 Second Avenue South, MPFP0904, Minneapolis, Minnesota 55402-4302, the principal sum of **Two Hundred Twenty Thousand Seven Hundred Thirty-Nine and NO/100 DOLLARS (\$220,739.00)**, in lawful money of the United States of America, together with interest on the unpaid principal balance from time to time outstanding (computed on the basis of a 30 day month and a year of 360 days), at the rate of Eight and Ninety-Eight Hundredths percent (8.98%) per annum.

The principal hereof and interest accrued hereon shall be paid together in Forty-Eight (48) equal consecutive monthly installments, each in the amount of **Five Thousand Four Hundred Fifty and 53/100 DOLLARS (\$5,450.53)**, with the first such installment payable October 1, 1997, and thereafter on the same day of each succeeding month until September 1, 2001, when the entire remaining balance hereof and all accrued and unpaid interest shall be paid in full. If any installment is more than ten (10) days late, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law. Each monthly installment shall be applied first to the accrued interest, then to principal and thereafter to any late charges or other costs then due.

This Note is issued pursuant to the Loan and Security Agreement dated as of September 30, 1997 by and between the Borrower and the Lender. The Borrower, the Lender and the holders hereof are entitled to all of the benefits provided for or referred to in the Loan and Security Agreement. The maturity of this Note is subject to acceleration upon the terms provided in said Loan and Security Agreement.

The undersigned hereby waives presentment, demand, protest, notice of dishonor and diligence in collecting, and agrees to pay all costs of collection, including reasonable attorneys' fees, in the event payment of this Note is not made in accordance with its terms.

**THIS NOTE REPRESENTS A LOAN NEGOTIATED, EXECUTED AND TO BE PERFORMED IN THE STATE OF MINNESOTA AND SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE SUBSTANTIVE LAWS (BUT NOT THE LAW OF CONFLICTS) OF SAID STATE. THE BORROWER HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF MINNESOTA IN CONNECTION WITH ANY CONTROVERSY RELATED TO THIS NOTE, WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT AND AGREES THAT ANY LITIGATION INSTIGATED BY THE BORROWER AGAINST LENDER IN CONNECTION WITH THIS NOTE SHALL BE VENUED IN EITHER THE DISTRICT COURTS OF HENNEPIN COUNTY, MINNESOTA, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION.**

**BORROWER AND LENDER EACH WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THE LOAN AND SECURITY AGREEMENT, THIS NOTE OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION THEREWITH OR HERewith, OR (b) ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THE LOAN AND SECURITY**

AGREEMENT OR THIS NOTE AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

LRC CREDIT CORP.

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT**