

10th and Baltimore  
P. O. Box 419038  
Kansas City, MO 64183  
Tel 816 221-2800

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

Nov 7 4 50 PM '97

**NationsBank**

RECORDATION NO. 20984 FILED

NOV 7 '97 4-50 PM

October 10, 1997

Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423  
(202) 565-1592  
c/o Janice Fort

Dear: Janice,

Enclosed is a Chattel Mortgage dated October 9, 1997 by and between, Branson Scenic Railway, Inc. and NationsBank, N.A. covering:

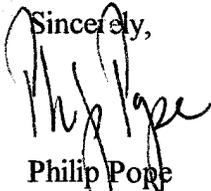
One (1) 1951 Budd, 48-seat Buffet Lunge railcar identified by Amtrak as #3118, identified by Branson Scenic Railway Inc as #3118, and to be renamed Silver Lake

that we would like to have recorded with your office to perfect our security interest in the above listed railcar.

Enclosed is our cashier check #2174940 in the amount of \$24.00 to cover the recording fee.

Please forward a recorded copy of the Chattel Mortgage to me upon completion.

Sincerely,



Philip Pope  
Assistant Vice President  
Private Client Group  
816/979-7092

CHattel MORTGAGE

NOV 7 '97 4-50PM

Branson Scenic Railway, Inc. ("Mortgagor"), a Missouri corporation, whose address is 5732 Windsor Drive, Fairway, KS 66205, to secure payment of the indebtedness described below,

HEREBY CONVEYS AND MORTGAGES to NationsBank, N.A. ("Mortgagee"), 14th West Tenth Street, Kansas City, Missouri 64105 and its successors and assigns, all of the following chattels and all other present and future attachments and accessories thereto and all replacements and proceeds thereof, and including amounts payable under any insurance policy, all hereinafter referred to collectively as the Chattel:

One (1) 1951 Budd, 48-seat Buffet Lounge railcar previously identified by Amtrak as #3118; now, and hereafter identified by Branson Scenic Railway, Inc. as #3118, and to be re-named Silver Lake.

To have and to hold said Chattel unto Mortgagee and Mortgagee's sole use forever.

PROVIDED THAT IF MORTGAGOR SHALL PAY to Mortgagee all sums due to Mortgagee under that certain Promissory Note (the "Note") of Mortgagor of even date herewith payable to the order of Mortgagee and fulfill all of Mortgagor's obligations under the Note and under this Chattel Mortgage, then this Mortgage shall be void, otherwise to remain in full force and effect.

1. **Mortgagor's Warranties, Representations and Covenants.**

Mortgagor warrants, represents and covenants, for itself and its successors and assigns, with Mortgagee as follows:

- (a) Mortgagor is justly indebted to Mortgagee for the full amount of the foregoing indebtedness and interest thereon.
- (b) Mortgagor lawfully possesses and owns the Chattel free from all claims and encumbrances and warrants and shall defend it at its own cost against all claims and demands whatsoever.
- (c) Mortgagor will keep the Chattel free from all liens, claims, security interests and encumbrances.
- (d) Mortgagor will pay promptly when due all taxes, license fees and other public or private charges levied or assessed against the Chattel, this Mortgage or the Note and satisfy all liens against the Chattel, and this obligation shall survive the termination of this Mortgage.
- (e) No financing statement covering the Chattel or any proceeds thereof is on file in favor of anyone other than Mortgagee but, if such other financing statement is on file, it will be terminated or subordinated. No mortgage, lease, equipment trust agreement, conditional sales agreement, security agreement or other instrument evidencing the mortgage, lease, conditional sale or bailment of or grant of a security interest in the Chattel in favor of anyone other than Mortgagee is on file with the Interstate Commerce Commission or Surface Transportation Board; but, if such other instrument is on file, it will be terminated or subordinated.

- (f) All information supplied and statements made by Mortgagor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Mortgage are and shall be true, correct, complete, valid and genuine.
- (g) Mortgagor will not misuse, fail to keep in good repair, secrete, or without the prior written consent of Mortgagee encumber the Chattel.
- (h) Mortgagee may enter upon Mortgagor's premises at any reasonable time to inspect the Chattel and Mortgagor's books and records pertaining to the Chattel and Mortgagor shall assist Mortgagee in making such inspection.
- (i) The Chattel constitutes and will constitute continuing security for all of the obligations of Mortgagor to Mortgagee, now existing or hereafter arising, direct or indirect, absolute or contingent, due or to become due, matured or unmatured, liquidated or unliquidated, arising by contract, operation of law or otherwise, including without limitation, all obligations arising under the Note, in each case if such instrument as originally executed or as modified, amended, supplemented or extended, and all obligations of the Mortgagor arising out of any extension, refinancing or refunding of any of the foregoing obligations.

## 2. Events of Default; Acceleration.

The following are events of default under this Mortgage which will allow Mortgagee to take such action under this Paragraph and under Paragraph 3 as it deems necessary:

- (a) any of Mortgagor's obligations to Mortgagee under this Mortgage, the Note or any promissory note, agreement or other instrument with Mortgagee is not paid promptly when due;
- (b) Mortgagor breaches any warranty or provision hereof, or of the Note or of any other instrument or agreement delivered by Mortgagor to Mortgagee in connection with this or any other transaction;
- (c) a lien, encumbrance or security interest is imposed on the Chattel;
- (d) it is determined that Mortgagor has given Mortgagee materially misleading information regarding its financial condition;
- (e) the Chattel is lost, or destroyed or damaged beyond repair;
- (f) Mortgagor becomes insolvent or ceases to do business as a going concern;
- (g) a petition or complaint in bankruptcy or for arrangement or reorganization or for relief under any insolvency law is filed by or against Mortgagor or Mortgagor admits its inability to pay its debts as they mature;
- (h) property of Mortgagor is attached or a receiver is appointed for Mortgagor;
- (i) whenever Mortgagee in good faith believes the prospect of payment or performance is impaired or in good faith believes the Chattel is insecure; or

- (j) any guarantor, surety or endorser for Mortgagor dies or defaults in any obligation or liability to Mortgagee or any guaranty obtained in connection with this transaction is terminated or breached.

If Mortgagor shall be in default hereunder, the indebtedness herein described and all other indebtedness then owing by Mortgagor to Mortgagee under this or any other present or future agreement (collectively, the "indebtedness") shall, if Mortgagee shall so elect, become immediately due and payable without notice. In no event shall the Mortgagor upon demand by Mortgagee for payment of the indebtedness, by acceleration of the maturity thereof or otherwise, be obligated to pay any interest in excess of the amount permitted by law. Any acceleration of indebtedness, if elected by Mortgagee, shall be subject to all applicable laws, including laws relating to rebates and refunds of unearned charges.

### **3. Mortgagee's Remedies After Default; Consent to Enter Premises.**

Upon Mortgagor's default and at any time thereafter, Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code of Missouri and any other applicable laws, including the right to any deficiency remaining after disposition of the Chattel, for which Mortgagor agrees to remain fully liable. Mortgagor agrees that Mortgagee, by itself or its agent, may without notice to any person and without judicial process of any kind, enter into any premises or upon any land owned, leased or otherwise under the real or apparent control of Mortgagor or any agent of Mortgagor where the Chattel may be or where Mortgagee believes the Chattel may be, and disassemble, render unusable and/or repossess all or any item of the Chattel, disconnecting and separating all of the Chattel from any other property and using all force necessary. Mortgagor expressly waives all further rights to possession of the Chattel after default and all claims for injuries suffered through or loss cause by such entering and/or repossession. Mortgagee may require Mortgagor to assemble the Chattel and return it to Mortgagee at a place to be designated by Mortgagee.

Mortgagee will give Mortgagor reasonable notice of the time and place of any public sale of the Chattel or of the time after which any private sale of the Chattel or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Mortgagor shown herein at least ten (10) days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling and the like shall include reasonable attorneys' fees and other legal expenses. Mortgagor understands that Mortgagee's rights under this Mortgage at law and otherwise are cumulative and not alternative.

### **4. Waiver of Default; Agreement Inclusive.**

Mortgagee may in its sole discretion waive a default, or cure, at Mortgagor's expense, a default. Any such waiver in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default at another time. No modification or change in this Agreement or the Note shall bind Mortgagee unless in writing signed by Mortgagee. No oral agreement or representation shall be binding.

Until any default, Mortgagor shall remain in possession of the Chattel, but Mortgagor shall not without the prior written consent of Mortgagee misuse, fail to keep in good repair, sell, rent, lend, encumber, transfer, secrete or dispose of any of the Chattel, nor permit any such act. Mortgagor will settle all claims against the named Mortgagee directly with it alone and Mortgagor will not set up any defense or counterclaim against any assignee of the named Mortgagee.

**5. Insurance and Risk of Loss.**

All risk of loss, damage to or destruction of the Chattel shall at all times be on Mortgagor. Mortgagor shall promptly notify Mortgagee of any damage or destruction to the chattel and upon receipt of any payments of casualty value on account of such damage or destruction to the Chattel, shall segregate such payments and notify Mortgagee of their receipt. Mortgagee may require Mortgagor to immediately pay over any such funds to Mortgagee to be applied to the payment of the Note or other indebtedness secured hereby or may at its option permit Mortgagor to use such funds to obtain a replacement car or cars. If at any time proper insurance is terminated before the Note is paid in full, then Mortgagor will procure forthwith and maintain at Mortgagor's expense insurance against all risks of loss or physical damage to the Chattel subject to such agreement for the full insurable value thereof for the life of this Mortgage plus breach of warranty insurance and such other insurance thereon in amounts and against such risks as Mortgagee may specify, and shall promptly deliver each policy to Mortgagee with a standard long-form Mortgagee's endorsement attached thereto showing loss payable to Mortgagee; and providing Mortgagee with not less than 30 days written notice of cancellation; each such policy shall be in form, terms and amount and with insurance carriers satisfactory to Mortgagee; Mortgagee's acceptance of policies in lesser amounts or risks shall not be a waiver of Mortgagor's foregoing obligations. As to Mortgagee's interest in such policy, no act or omission of Mortgagor or any of its officers, agents, employees or representatives shall affect the obligations of the insurer to pay the full amount of any loss.

Mortgagor hereby assigns to Mortgagee any monies which may become payable under any such policy of insurance and irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney in fact (i) to hold each original insurance policy, (ii) to make, settle and adjust claims under each policy of insurance, (iii) to make claims for any monies which may become payable under such and other insurance on the Chattel including returned or unearned premiums, and (iv) to endorse Mortgagor's name on any check, draft or other instrument received in payment of claims or returned or unearned premiums under each policy and to apply the funds to the payment of the indebtedness owing to Mortgagee; provided, however, Mortgagee is under no obligation to do any of the foregoing.

Should Mortgagor fail to furnish such insurance policy to Mortgagee, or to maintain such policy in full force, or to pay any premium in whole or in part relating thereto, then Mortgagee without waiving or releasing any default or obligation by Mortgagor, may (but shall be under no obligation to) obtain and maintain insurance and pay the premium therefor on behalf of Mortgagor and charge the premium to Mortgagor's indebtedness under this Mortgage. The full amount of any such premium paid by Mortgagee shall be payable by Mortgagor upon demand, and failure to pay same shall constitute an event of default under this Mortgage.

**6. Financing Statements; Certain Expenses.**

At the request of Mortgagee, Mortgagor will execute any financing statements, agreements or documents, in form satisfactory to Mortgagee which Mortgagee may deem necessary or advisable to establish and maintain a perfected security interest in the Chattel, chattel paper and income arising therefrom, and will pay the cost of filing or recording the same in all public offices deemed necessary or advisable by Mortgagee. If permitted by law, Mortgagor authorizes Mortgagee to file a financing statement with respect to the Chattel signed only by Mortgagee and to file a carbon, photograph or other reproduction of this Mortgage or of a financing statement. Mortgagor also agrees to pay all costs and expenses incurred by Mortgagee in conducting STB, UCC, tax or other lien searches against the Mortgagor or the Chattel.

**7. Waiver of Defenses Acknowledgment.**

If Mortgagee assigns this Mortgage to a third party ("Assignee"), then after such assignment:

- (a) Mortgagor will make all payments directly to such Assignee at such place as Assignee may from time to time designate in writing;
- (b) Mortgagor agrees that it will settle all claims, defenses, setoffs and counterclaims it may have against Mortgagee directly with Mortgagee and will not set up any such claim, defense, setoff or counterclaim against Assignee, Mortgagee hereby agreeing to remain responsible therefor;
- (c) Mortgagee shall not be Assignee's agent for any purpose and shall have no authority to change or modify this Mortgage or any related document or instrument; and
- (d) Assignee shall have all of the rights and remedies of Mortgagee hereunder but none of Mortgagee's obligations.

**8. Miscellaneous.**

Mortgagor waives all exemptions. Mortgagee may correct patent errors herein and fill in such blanks as serial numbers and the like. Any provisions hereof contrary to, prohibited by or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof. Mortgagor and Mortgagee each hereby waive any right to a trial by jury in any action or proceeding with respect to, in connection with or arising out of this Mortgage, or any note or document delivered pursuant to this Mortgage. Mortgagor acknowledges receipt of a true copy and waives acceptance hereof. If Mortgagor is a corporation, this Mortgage is executed pursuant to authority of Directors. Except where the context otherwise requires, "Mortgagor" and "Mortgagee" include the successors or assigns of those parties but nothing herein shall authorize Mortgagor to assign this Mortgage or its rights in and to the Chattel. If more than one Mortgagor executes this Mortgage, their obligations under this Mortgage shall be joint and several. The Mortgagor shall have no right to prepay the Note or any promissory note executed in connection with this Mortgage. A letter or a telegram sent to Mortgagor at the address shown above, whether received by Mortgagor or not, will be sufficient notice or demand as to anything for which notice or demand is required. This Mortgage shall be construed and enforced under the laws of the State of Missouri.

If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in this Mortgage or in any other agreement made in connection with this transaction, it is agreed that:

- (i) the total of all consideration which constitutes interest under applicable law that is contracted for, charged or received upon this Mortgage or any such other agreement shall under no circumstances exceed the maximum rate of interest authorized by applicable law and any excess shall be credited to the Mortgagor; and

- (ii) if Mortgagee elects to accelerate the maturity of, or if Mortgagee permits Mortgagor to prepay the indebtedness described in Paragraph 2, any amounts which because of such action would constitute interest may never include more than the maximum rate of interest authorized by applicable law, and any excess interest, if any, provided for in this Mortgage or otherwise, shall be credited to Mortgagor automatically as of the date of acceleration or prepayment.

This Chattel Mortgage may be executed in multiple counterparts, each of which will constitute an original.

IN WITNESS WHEREOF, Mortgagor has caused this Chattel Mortgage to be executed and sealed on its behalf by persons thereunto duly authorized, on October 9, 1997.

"Mortgagor"

BRANSON SCENIC RAILWAY, INC.

[Corporate Seal]

By: Thomas L. Johnson  
Title: PRESIDENT

STATE OF Missouri  
COUNTY OF Jackson ) ss.

On this 9 day of October, 1997, before me personally appeared Thomas L. Johnson, to me personally known, who being by me duly sworn, says that he is the President of Branson Scenic Railway, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Carol V. Duncan

My Commission Expires:

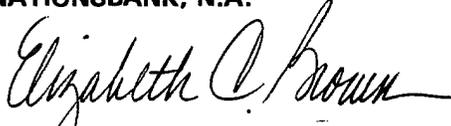
CAROL V. DUNCAN  
NOTARY PUBLIC STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXP. MAY 26, 1998

ACCEPTED BY:

"Mortgagee"

NATIONSBANK, N.A.

[Corporate Seal]

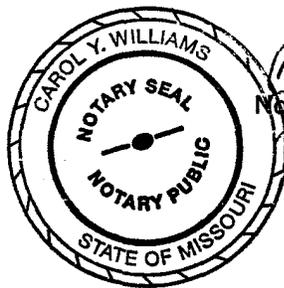


By: Elizabeth C. Brown  
Title: Vice President

STATE OF Missouri )

COUNTY OF Jackson ) ss.

On this 10<sup>th</sup> day of October, 1997, before me personally appeared Elizabeth C. Brown, to me personally known, who being by me duly sworn, says that she is a Vice President of NationsBank, N.A., that the seal affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.



*Carol Y. Williams*  
Notary Public

My Commission Expires:

**CAROL Y. WILLIAMS**  
Notary Public - State of Missouri  
Commissioned in Ray County  
My Commission Expires Nov. 14, 1997