

The Huntington National Bank
P.O. Box 1558
Columbus, Ohio 43216

Direct Telephone Number
(614)480-3055



RECORDATION NO. **18703** FILED 1425

FEB 17 1994 - 9 55 AM

INTERSTATE COMMERCE COMMISSION

0700119016

February 2, 1994

Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Secretary:

I have enclosed an original and one copy of the document(s) described below, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is a mortgage, a primary document, dated February 2, 1994.

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

Mortgagor: Railway Equipment Corp.
375 E 5th Avenue
Columbus, Ohio 43201

Mortgagee: The Huntington National Bank
41 South High Street
Columbus, Ohio 43287

A description of the equipment covered by the document follows:

45 ton General Electric Locomotive - SN# 17750
45 ton General Electric Locomotive - SN# 194245
Pettibone Car Mover - SN# 2570
7TM Trackmobile - SN# 7TM-7551
7TM Trackmobile - SN# 7TMA-7231
5TM Trackmobile - SN# 5TM-51563
EMB Model #SW1200 Locomotive - Unit # 7019

LICENSING BRANCH

RECEIVED
OFFICE OF THE
SECRETARY
FEB 17 9 59 AM '94

The Personal Bankers

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Neil P. Eilbert, Vice President, The Huntington National Bank, P.O. Box 1558, Columbus, Ohio 43260.

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

Mortgage between Railway Equipment Corp., 375 E 5th Avenue, Columbus, Ohio, 43201, as mortgagor, and The Huntington National Bank, 41 South High Street, Columbus, Ohio 43287, as mortgagee, dated February 2, 1994, and covering two General Electric locomotives, one Pettibone Car Mover, three Trackmobiles and one EMB locomotive.

Very truly yours,


Neil P. Eilbert
Vice President
Commercial Banking Division

NPE:mlp

Interstate Commerce Commission
Washington, D.C. 20423

00057 (S
2/24/94

OFFICE OF THE SECRETARY

Neil P. Eilbert
Vice President
The Huntington National Bank
P.O. Box 1558
Columbia, Ohio 43216

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 2/17/94 at 9:55am, and assigned
recording number(s).

18703

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

**RAILROAD EQUIPMENT MORTGAGE
AND
SECURITY AGREEMENT**

18703
RECORDATION NO. _____ FILED 1425
FEB 17 1994 9 55 AM
INTERSTATE COMMERCE COMMISSION

Railway Equipment Corporation
Name

375 East Fifth Avenue
No. and Street

Columbus, Franklin County, Ohio
City County State

a corporation organized under the law of the State of Ohio (hereinafter called "Debtor"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, pledges and assigns to The Huntington National Bank (hereinafter called "Bank"), a security interest in the following property, whether Debtor's interest therein as owner, co-owner, lessor, consignee, secured party or otherwise be now owned or existing or hereafter arising or acquired, and wherever located, together with all substitutions, replacements, additions and accessions therefor or thereto, all replacement and repair parts therefor, lease receivables, all negotiable documents relating thereto, all products thereof and all cash and non-cash proceeds thereof including, but not limited to, notes, drafts, checks, instruments, insurance proceeds, indemnity proceeds, warranty and guaranty proceeds and proceeds arising in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the following property by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority):

The specific equipment more fully described as:

45 ton General Electric locomotive	-	SN# 17750
45 ton General Electric locomotive	-	SN# 194245
Pettibone Car Mover	-	SN# 2570
7TM Trackmobile	-	SN# 7TM-7551
7TM Trackmobile	-	SN# 7TMA-7231
5TM Trackmobile	-	SN# 5TM-51563
EMD Model #5W1200 Locomotive	-	Unit # 7019

(hereinafter sometimes called the "Collateral"), some or all of which Collateral may be more fully described in the schedule set forth at the end of this agreement or in a separate schedule attached hereto, and which Collateral Debtor agrees is and shall remain personal property and, without the prior written consent of Bank, which consent may be withheld pending Bank's receipt of such documents or instruments as may be reasonably requested by Bank, shall not be affixed to real estate in such manner as to become a fixture or realty.

The security interest hereby granted is to secure the prompt and full payment and complete performance of all Obligations of Debtor to Bank. The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Debtor to Bank, whether now existing or hereafter arising, either created by Debtor alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, application for letter of credit or otherwise, and any and all renewals of or substitutes therefor. The word "Obligations" shall include, BUT NOT BE LIMITED TO, all indebtedness owed by Debtor to Bank by reason of credit extended or to be extended to Debtor in the principal amount of \$100,000.00, pursuant to one or more instruments of indebtedness and related loan documents.

It is Debtor's express intention that this agreement and the continuing security interest granted hereby, in addition to covering all present Obligations of Debtor to Bank, shall extend to all future Obligations of Debtor to Bank, whether or not such Obligations are reduced or entirely extinguished and thereafter increased or reincurred, whether or not such Obligations are related to the indebtedness identified above by class, type or kind and whether or not such Obligations are specifically contemplated by Debtor and Bank as of the date hereof. The absence of any reference to this agreement in any documents, instruments or agreements evidencing or relating to any Obligation secured hereby shall not limit or be construed to limit the scope or applicability of this agreement.

1. General Covenants. Debtor represents, warrants and covenants as follows:

(a) Except for such claims and interests, if any, shown in the schedule set forth at the end of this agreement or in any schedule attached hereto and signed by both Debtor and Bank and the security interest granted hereby, (i) Debtor is, or as to Collateral arising or to be acquired after the date hereof, shall be, the sole owner of the Collateral free from any and all liens, security interests, encumbrances, claims and interests; and (ii) no security agreement, financing statement, equivalent security or lien instrument or continuation statement covering any of the Collateral is on file or of record in any public office.

(b) Debtor shall not create, permit or suffer to exist, and shall take such action as is necessary to remove, any claim to or interest in or lien or encumbrance upon the Collateral, other than those, if any, shown in the schedule set forth at the end of this agreement or in any schedule attached hereto and signed by both Debtor and Bank and the security interest granted hereby, and shall defend the right, title and interest of Bank in and to the Collateral against all claims and demands of all persons and entities at any time claiming the same or any interest therein.

(c) Debtor's principal place of business and chief executive office/residence is located at the address set forth at the beginning of this agreement; Debtor has no other place of business/residence, except as shown in the schedule set forth at the end of this agreement or in any schedule attached hereto and signed by both Debtor and Bank; and, unless Bank consents in writing to a change in the location of the Collateral prior to such a change in location, the Collateral shall be kept at that address or at the locations set forth in such schedules.

(d) At least thirty (30) days prior to the occurrence of any of the following events, Debtor shall deliver to the loan officer who is handling Debtor's Obligations on behalf of Bank written notice of such impending events: (i) a change in Debtor's principal place of business, chief executive office and/or residence; (ii) the opening or closing of any place of business; or (iii) a change in Debtor's name, identity or corporate structure.

(e) Subject to any limitation stated therein or in connection therewith, all information furnished by Debtor concerning the Collateral or otherwise in connection with the Obligations, is or shall be at the time the same is furnished, accurate, correct and complete in all material respects.

(f) The Collateral is and shall be used primarily for business purposes.

2. Insurance. Debtor shall have and maintain insurance at all times with respect to the Collateral (i) insuring against risks of fire (including so-called extended coverage), explosion, theft, sprinkler leakage and such other casualties as Bank may designate, and (ii) insuring against liability for personal injury and property damage relating to the Collateral, containing such terms, in such form, for such periods and written by such companies as may be satisfactory to Bank, such insurance to be payable to Bank and Debtor as their

interests may appear. All policies of insurance shall provide for twenty (20) days' written minimum cancellation notice to Bank and, at request of Bank, shall be delivered to and held by it. Bank may act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and indorsing any drafts. In the event of failure to provide insurance as herein provided, Bank may, at its option, provide such insurance and Debtor shall pay to Bank, upon demand, the cost thereof. Should Debtor fail to pay said sum to Bank upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the highest rate set forth in any document or instrument evidencing any of the Obligations.

3. **Inspection.** Debtor shall, at all reasonable times and from time to time, allow Bank, by or through any of its officers, agents, attorneys or accountants, to examine and inspect the Collateral and Debtor's books and records relating thereto wherever located. Debtor shall perform, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Bank may require to more completely vest in and assure to Bank its rights hereunder and in or to the Collateral.

4. **Preservation and Disposition of Collateral.**

(a) Except for such claims and interests, if any, shown in the schedule set forth at the end of this agreement or in any schedule attached hereto and signed by both Debtor and Bank and the security interest granted hereby, Debtor shall keep the Collateral free from any and all liens, security interests, encumbrances, claims and interests. Debtor shall advise Bank promptly, in writing and in reasonable detail, (i) of any material encumbrance upon or claim asserted against any of the Collateral; (ii) of any material change in the composition of the Collateral; and (iii) of the occurrence of any other event that would have a material effect upon the aggregate value of the Collateral or upon the security interest of Bank.

(b) Debtor shall not sell or otherwise dispose of the Collateral; provided, however, that until default, Debtor may use the Collateral in any lawful manner not inconsistent with this agreement or with the terms or conditions of any policy of insurance thereon.

(c) Debtor shall keep the Collateral in good condition and shall not misuse, abuse, secrete, waste or destroy any of the same.

(d) Debtor shall not use the Collateral in violation of any statute, ordinance, regulation, rule, decree or order.

(e) Debtor shall pay promptly when due all taxes, assessments, charges or levies upon the Collateral or in respect to the income or profits therefrom, except that no such charge need be paid if (i) the validity thereof is being contested in good faith by appropriate proceedings; (ii) such proceedings do not involve any danger of sale, forfeiture or loss of any Collateral or any interest therein; and (iii) such charge is adequately reserved against in accordance with generally accepted accounting principles.

(f) At its option, Bank may discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Bank upon demand for any payment made or any expense incurred (including reasonable attorneys' fees) by Bank pursuant to the foregoing authorization. Should Debtor fail to pay said sum to Bank upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the highest rate set forth in any document or instrument evidencing any of the Obligations.

(g) Upon Bank's request at any time or times, Debtor shall assign and deliver to Bank any Collateral and shall furnish to Bank additional collateral of value and character satisfactory to Bank as security for the Obligations.

5. **Extensions and Compromises.** With respect to any Collateral held by Bank as security for the Obligations, Debtor assents to all extensions or postponements of the time of payment thereof or any other indulgence in connection therewith, to each substitution, exchange or release of Collateral, to the addition or release of any party primarily or secondarily liable, to the acceptance of partial payments thereon and to the settlement, compromise or adjustment thereof, all in such manner and at such time or times as Bank may deem advisable. Bank shall have no duty as to the collection or protection of Collateral or any income therefrom, nor as to the preservation of rights against prior parties, nor as to the preservation of any right pertaining thereto, beyond the safe custody of Collateral in the possession of Bank.

6. **Financing Statements.** At the request of Bank, Debtor shall join with Bank in executing one or more financing statements in a form satisfactory to Bank and shall pay the cost of filing the same in all public offices wherever filing is deemed by Bank to be necessary or desirable. A carbon, photographic or other reproduction of this agreement or of a financing statement shall be sufficient as a financing statement.

7. **Bank's Appointment as Attorney-in-Fact.** Debtor hereby irrevocably constitutes and appoints Bank and any officer or agent thereof, with full power of substitution, as Debtor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in Bank's own name, from time to time in Bank's discretion, for the purpose of carrying out the terms of this agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this agreement and, without limiting the generality of the foregoing, hereby grants to Bank the power and right, on behalf of Debtor, without notice to or assent by Debtor:

(a) To execute, file and record all such financing statements, certificates of title and other certificates of registration and operation and similar documents and instruments including, but not limited to, those relating to aircraft or marine vessels, as Bank may deem necessary or desirable to protect, perfect and validate Bank's security interest therein.

(b) Upon the occurrence and continuance of any event of default under paragraph 8 hereof, (i) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (ii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (iii) to defend any suit, action or proceeding described above and, in connection therewith, to make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Bank were the absolute owner thereof for all purposes, and to do, at Bank's option and Debtor's expense, at any time or from time to time, all acts and things which Bank deems necessary to protect, preserve or realize upon the Collateral and Bank's security interest therein, in order to effect the intent of this agreement, all as fully and effectively as Debtor might do.

Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

The powers conferred upon Bank hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon Bank to exercise such powers and neither Bank nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act, except for Bank's own gross negligence or willful misconduct.

8. **Default.** If any event of default in the payment or performance of any of the Obligations secured by this agreement or the performance of any covenant contained herein shall occur and be continuing; or if any warranty, representation or statement made or furnished to Bank by Debtor proves to have been false in any material respect when made or furnished; or if Bank shall for any reason deem itself insecure as to the prospect of payment of any of the Obligations:

(a) Bank may, at its option and without notice, declare the unpaid balance of any or all of the Obligations immediately due and payable and this agreement and any and all of the Obligations in default.

(b) All payments received by Debtor under or in connection with any of the Collateral shall be held by Debtor in trust for Bank, shall be segregated from other funds of Debtor and shall forthwith upon receipt by Debtor be turned over to Bank in the same form as received by Debtor (duly indorsed by Debtor to Bank, if required). Any and all such payments so received by Bank (whether from Debtor or otherwise) may, in the sole discretion of Bank, be held by Bank as collateral security for, and/or then or at any time thereafter be applied in whole or in part by Bank against, all or any part of the Obligations in such order as Bank may elect. Any balance of such payments held by Bank and remaining after payment in full of all the Obligations shall be paid over to Debtor or to whomsoever may be lawfully entitled to receive the same. Nothing set forth in this subparagraph (b) shall authorize or be construed to authorize Debtor to sell or otherwise dispose of any Collateral.

(c) Bank shall have the rights and remedies of a secured party under this agreement, under any other instrument or agreement securing, evidencing or relating to the Obligations and under the law of the State of Ohio. Without limiting the generality of the foregoing, Bank shall have the right to take possession of the Collateral and all books and records relating to the Collateral and for that purpose Bank may enter upon, with or without breaking into, any premises on which the Collateral or books and records relating to the Collateral or any part thereof may be situated and remove the same therefrom. Debtor expressly agrees that Bank, without demand of performance or other demand, advertisement or notice of any kind (except the notices specified below of time and place of public sale or disposition or time after which a private sale or disposition is to occur) to or upon Debtor or any other person or entity (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or sell or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any of Bank's offices or elsewhere at such prices as Bank may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Bank shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees, at Bank's request, to assemble the Collateral and to make it available to Bank at such places as Bank may reasonably select, whether at Debtor's premises or elsewhere. Debtor further agrees to allow Bank to use or occupy Debtor's premises, without charge, for the purpose of effecting Bank's remedies in respect of the Collateral. Bank shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any or all of the Collateral or in any way relating to the rights of Bank hereunder, including reasonable attorneys' fees and legal expenses, to the payment in whole or in part of the Obligations, in such order as Bank may elect, and only after so paying over such net proceeds and after payment by Bank of any other amount required by any provision of law, including Ohio Revised Code Section 1309.47(A)(3), need Bank account for the surplus, if any, to Debtor. To the extent permitted by applicable law, Debtor waives all claims, damages and

demands against Bank arising out of the repossession, retention, sale or disposition of the Collateral. Debtor agrees that Bank need not give more than five (5) days' notice (which notification shall be deemed given when mailed, postage prepaid, addressed to Debtor at Debtor's address set forth at the beginning of this agreement, or when telecopied or telegraphed to that address or when telephoned or otherwise communicated orally to Debtor or any agent of Debtor at that address) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Bank is entitled. Debtor shall also be liable for the costs of collecting any of the Obligations or otherwise enforcing the terms thereof or of this agreement including reasonable attorneys' fees.

9. **General.** Any provision of this agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by Debtor unless such waiver be in writing and signed by Bank. No delay or omission on the part of Bank in exercising any right shall operate as a waiver of such right or any other right. All of Bank's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singularly or concurrently. Any written demand upon or written notice to Debtor shall be effective when deposited in the mails addressed to Debtor at the address shown at the beginning of this agreement. This agreement and all rights and obligations hereunder including matters of construction, validity and performance, shall be governed by the law of the State of Ohio. The provisions hereof shall, as the case may require, bind or inure to the benefit of, the respective heirs, successors, legal representatives and assigns of Debtor and Bank.

IN WITNESS WHEREOF, Debtor has signed this agreement this 2nd day of FEBRUARY, 1994.

DEBTOR: Railway Equipment Corporation
By: Brian T. Williams President
Name: Brian T. Williams
Title: President

State of Ohio
County of Franklin, ss:

On this 2nd day of February, 1994, before me personally appeared Brian T. Williams, to me personally known, who being by me fully sworn, says that (s)he is the President of Railway Equipment Corporation, 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 (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Mary Lou Payne
Signature of Notary Public
My Commission Expires:



MARY LOU PAYNE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES APRIL 25, 1994

SECURED PARTY: The Huntington National Bank

By: *Neil P. Eilbert*

Name: Neil P. Eilbert

Title: Vice President

State of Ohio
County of Franklin, ss:

On this 2nd day of February, 1994, before me personally appeared Neil P. Eilbert, to me personally known, who being by me fully sworn, says that he is a Vice President of The Huntington National Bank, 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 (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Mary Lou Payne
Signature of Notary Public
My Commission expires:



MARY LOU PAYNE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES APRIL 25, 1994