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February 11, 1994

RECORDATION NO. 18699 FILED 1425
FEB 14 1994 - 11 05 AM
INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) duly executed copies of a Chattel Mortgage and Security Agreement-J, dated as of August 4, 1993, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Debtor: Residual Based Finance Corporation
Three First National Plaza, Suite 1240
Chicago, Illinois 60602

Secured Party: Old Kent Bank
Sears Tower
Chicago, Illinois 60606

A description of the railroad equipmment covered by the enclosed document is: seven (7) GP 38-2 locomotives currently bearing road marks and numbes ATSF 2374 through ATSF 2380, inclusive (formerly ATSF 3565 through ATSF 3571, inclusive, and prior thereto TPW 2005 through TPW 2011, inclusive)

Also enclosed is a check in the amount of $18.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

Robert W. Alvord

Edward M. Lewis

Recordation

RECORDATION NO. 18699 FILED 1425
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INTERSTATE COMMERCE COMMISSION

CHATTEL MORTGAGE AND SECURITY AGREEMENT - J

**THIS CHATTEL MORTGAGE AND SECURITY AGREEMENT - J** (this "Agreement") dated as of August 4, 1993 between Residual Based Finance Corporation, an Illinois corporation with its principal place of business and chief executive office located at Three First National Plaza, Suite 1240, Chicago, Illinois 60602 ("Debtor"), and Old Kent Bank, an Illinois banking corporation, with its principal place of business in Sears Tower, Chicago, Illinois 60606 ("Bank").

**NOW, THEREFORE,** in consideration of any loan heretofore, now or hereafter made by Bank to Debtor, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Debtor, the parties hereto hereby agree as follows:

1. **Definitions.** In addition to terms defined elsewhere herein, when used herein the following terms shall have the following meanings:

"Excluded Assets" shall mean that certain property which hereafter becomes Excluded Property pursuant to the provisions of Subsection 4(a) hereof.

"Event of Default" shall have the meaning assigned to such term in that certain Amended and Restated Loan Agreement between the parties hereto dated as of the 4th day of August, 1993, as the same may be amended, modified or supplemented from time to time, but shall also be deemed to have occurred if all or any material part of any Collateral (as hereinafter defined) shall be destroyed or materially damaged by fire or other casualty, whether or not there is insurance coverage for the damage or destruction, except to the extent that such Collateral is Railroad Equipment and Bank receives the amounts payable under the respective Lease by the respective Lessee as a result thereof, as required by this Agreement.

"Indebtedness" shall mean all of Debtor's liabilities, obligations, and indebtedness to Bank of any and every kind and nature, whether heretofore, now or hereafter owing, arising, due or payable and howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed or otherwise (including obligations of performance) and whether arising or existing under written agreement, oral agreement or operation of law, including without limitation all of Debtor's indebtedness and obligations to Bank under this Agreement.

"Leases" shall mean each of the leases described on Schedule 2 hereto, together with any future lease of the Railroad Equipment, including without limitation the continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable or receivable by the Debtor thereunder.

"Lessees" shall mean each of the lessees under the Leases.

"Permitted Encumbrances" shall mean the matters described on Schedule 3 hereto.

"Railroad Equipment" shall mean those railway cars described on Schedule 1 hereto, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of such equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said equipment other than any of the foregoing which are owned by any Lessee as to which removal of the same would not materially impair the value or utility of the cars (individually, an "Item of Equipment"), together with all the rents, issues, income, profits and avails therefrom.

2. **Grant of Security**. To secure the payment and performance of the Indebtedness, Debtor hereby mortgages and grants to Bank a continuing security interest in, and hereby transfers and assigns to Bank, for security, all of the following: (i) the Leases and all proceeds thereof, and all books records and documents at any time evidencing or relating to any of the foregoing; and (ii) the Railroad Equipment, together with all proceeds thereof. All of the foregoing property and interests in property described in clauses (i) and (ii), but excluding the Excluded Assets, is herein referred to, collectively, as the "Collateral".

This security interest secures all present and future indebtedness and obligations owing by Debtor to Bank, regardless of whether any such indebtedness or obligation is (a) not listed above, (b) not presently intended or contemplated by Debtor or Bank, (c) indirect, contingent or secondary, (d) unrelated to the Collateral or to any financing of the Collateral by Bank, (e) of a kind or class that is different from any indebtedness or obligation now owing by Debtor to Bank, or (f) evidenced by a note or other document that does not refer to this security interest or this Agreement.

3. **Warranties and Representations and Agreements.** Debtor warrants and represents to, and agrees with, Bank as follows:

a. Debtor is duly organized and validly existing in good standing under the laws of the state of Illinois; Debtor has full power and authority to enter into and perform its obligations under this Agreement; the execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Debtor's board of directors and will not violate Debtor's articles or certificate of incorporation, bylaws or other governing instrument.

b. This Agreement is the valid and binding obligation of Debtor, enforceable in accordance with its terms.

c. Debtor is the owner of the Collateral, and none of the Collateral is subject to any lien, security interest, encumbrance or claim in favor of any third part, except for Permitted Encumbrances, and no financing statement or mortgage is on file in any public office covering any of the collateral, except for Permitted Encumbrances and except in favor of Bank.

d. Debtor's address in the preamble to this Agreement is the Debtor's sole place of business and Debtor's chief executive office.

e. Any part of the Collateral consisting of accounts or chattel paper does and will evidence bona fide sales or leases to the parties named in Debtor's books, and no defense to any account or chattel paper does or will exist.

f. Except to the extent the Railroad Equipment may from time to time carry or be contaminated by any Regulated Substance (as hereinafter defined), none of the Collateral is, and Debtor will not permit any of the Collateral to be, contaminated or the source of contamination of any other property, by any substance (a "Regulated Substance") that is now or hereafter regulated by or subject to any past, present, or future federal, state, local or foreign law, ordinance, rule, regulation or order that regulates or is intended to protect public health or the environment or that establishes liability for the investigation, removal or clean-up of, or damage caused by, any environmental contamination. Debtor will store, maintain and operate the Collateral in compliance with all such laws and regulations, but as to Railroad Equipment, only when it is not subject to a Lease. Debtor will indemnify Bank with respect to all losses, damages, liabilities and expenses (including attorneys' fees) incurred by Bank by reason of any failure of Debtor to comply with Debtor's obligations under this paragraph.

4. **Agreements of Debtor.** Debtor agrees that:

a. Debtor will not cause or permit any lien, security interest or encumbrance to be placed on any Collateral, except in favor of Bank or for Permitted Encumbrances, and will not sell, lease, assign or transfer any Collateral or permit any Collateral to be transferred by operation of law, except that, so long as no Event of Default as defined herein has occurred, Debtor may sell, lease or refinance inventory (including upon the occurrence of casualty or damage to, or destruction of, Railroad Equipment by a Lessee) in the ordinary course of Debtor's business, provided that the net proceeds of such sales, leases or refinances are paid to Bank for application to the Indebtedness to the extent required under the above-referenced Loan Agreement. In connection with any such refinancing Bank shall release its rights in such inventory as is sold or refinanced and the same shall become Excluded Property for the purposes hereof. A sale in the ordinary course of business does not include a transfer in partial or complete satisfaction of a debt.

b. Debtor will maintain all records concerning the Collateral at Debtor's address appearing on the other side of this Agreement and will keep all Collateral (other than any vehicle or Railroad Equipment being owned or operated by or on behalf of Debtor or any Lessee in the ordinary course of business) at the present location or locations of the Collateral.

c. Debtor will furnish Bank with such information regarding the Collateral as Bank shall from time to time reasonably request and will allow Bank at any reasonable time to inspect the Collateral (subject to the rights of Lessees) and Debtor's records regarding the Collateral.

d. Debtor will execute, file, record, or procure from third persons, such financing statements, chattel mortgages, assignments, subordination agreements and other documents, and take all such other action, as Bank may reasonably deem necessary to perfect, to continue perfection of, or to maintain first priority of, Bank's security interest in the Collateral (subject to Permitted Encumbrances), and Debtor will, upon Bank's request,

place upon the Collateral (other than the Railroad Equipment) and/or documents evidencing the Collateral such notice of Bank's security interest as Bank may from time to time require.

e. The Debtor will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule 1 hereto. The Debtor will not change, or permit any other party to change, the road number of any Item of Equipment except with the consent of the Bank and in accordance with a statement of any road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded or deposited in all public offices where this Chattel Mortgage and Security Agreement shall have been filed, recorded or deposited.

f. Bank may file a photocopy of this Agreement as a financing statement evidencing Bank's security interest in the Collateral.

g. Debtor will maintain all Collateral (other than Railroad Equipment while the same is subject to a Lease) in good condition and repair and maintain fire and extended coverage insurance covering all Collateral (other than Railroad Equipment while the same is subject to a Lease) in such amounts and against such risks as Bank shall reasonably require. Each insurance policy will provide that its proceeds will be payable to Bank to the extent of Bank's interest in the Collateral and that the policy will not be cancelled, and the coverage will not be reduced, without at least ten days' prior written notice by the insurer to Bank. Debtor will provide Bank with written evidence of such insurance coverage. Debtor agrees that Bank may act as agent for Debtor in obtaining, adjusting and settling such insurance and endorsing any draft evidencing proceeds thereof.

h. Debtor will pay, before they become delinquent, all taxes and assessments upon the Collateral or for its use or operation, except for Permitted Encumbrances.

i. Debtor will immediately notify Bank in writing (i) of any change in Debtor's name, identity or corporate structure, (ii) if Debtor now has only one place of business, of any change in its location and of the locations of each additional place of business established by Debtor, (iii) if Debtor now or hereafter has more than one place of business, of any change in the location of Debtor's chief executive office, and (iv) if Debtor has neither a place of business nor a chief executive office, of any change in the location of Debtor's residence.

j. Bank may from time to time contact Debtor's account debtors as to the Collateral (other than the Leases but only so long as no Event of Default or event which with the passage of time or the giving of notice or both would constitute an Event of Default shall have occurred and be continuing) for the purpose of verifying the existence, amount and collectibility of, and other information regarding, any part of the Collateral at any time consisting of accounts, chattel paper, instruments or general intangibles.

k. Debtor will indemnify Bank with respect to all losses, damages, liabilities and expenses (including attorneys' fees) incurred by Bank by reason of any failure of Debtor to comply with any of Debtor's obligations under this Agreement or by reason of any warranty or representation made by Debtor to Bank in this Agreement being false in any material respect.

5. **Bank's Right to Perform.** If Debtor fails to perform any obligation of Debtor under this Agreement (other than an obligation under paragraph 3(f)), Bank may without giving notice to or obtaining the consent of Debtor, perform that obligation on behalf of Debtor. (This may include, for example, obtaining insurance coverage for Collateral or paying off liens on Collateral.) To the extent necessary, Debtor appoints Bank as Debtor's agent and attorney-in-fact with full power and authority to perform any such obligation after the occurrence of an Event of Default. Debtor will reimburse Bank on demand for any expense that Bank incur in performing any such obligation and will pay to Bank interest thereon, from the date the expense was incurred by Bank, at an annual rate equal to the lesser of (a) five percent (5%) above the rate of interest announced from time to time by Bank as its "prime" interest rate, or (b) the highest rate to which Debtor could lawfully agree in writing. Bank is not required to perform an obligation that Debtor has failed to perform. If Bank does so, that will not be a waiver of Bank's right to declare the Indebtedness immediately due and payable by reason of Debtor's failure to perform.

6. **Remedies.** Bank shall have all the rights and remedies of a secured party under applicable laws. Without limiting those rights and remedies, upon the occurrence of an Event of Default:

a. (i) Without notice or demand to Debtor, Bank shall be entitled to notify account debtors and obligors on the Collateral, including without limitation Lessees, to make all payments directly to Bank, and Bank shall have the right to take all actions that Bank considers necessary or desirable to collect upon the Collateral, including, without limitation, prosecuting actions against, or settling or compromising disputes and claims with, account debtors and obligors on the Collateral, (ii) without notice or demand to Debtor, Bank may receive, open dispose of, and notify the postal authorities to change the address of, mail directed to Debtor, and (iii) upon demand by Bank, Debtor shall forthwith deliver to Bank, at such place as Bank shall designate, all proceeds of the Collateral and all books, records, agreements, Leases, documents and instruments evidencing or relating to the Collateral.

b. Upon demand by Bank, Debtor shall deliver the Collateral and proceeds of Collateral to Bank at such place as Bank shall designate.

(i) For the purpose of delivering possession of any Railroad Equipment to the Bank as above required, the Debtor shall, subject to the rights of the Lessees, at his own cost, expense and risk forwith place such Railroad Equipment on the lines of any single railroad designated by the Debtor, subject to the approval of the Bank (which approval shall not be unreasonably withheld), in such reasonable storage place as the Bank may designate or, in the absence of such designation of a storage place, as the Debtor may select; provided that, in the event the Bank shall designate storage tracks which are then unavailable or because such tracks are then being used to store equipment owned by a third party pursuant to a contractual obligation of the Debtor to provide storage therefor or because the storage of the Railroad Equipment on such tracks would materially impair the ability of such railroad to meet its obligations to perform services as a common carrier to the public, then the Debtor agrees, at its own cost, to so store the Railroad Equipment upon such other storage tracks as shall then be so available and nearest to such storage tracks designated by the Bank.

(ii) The assembly, delivery, storage and transporting of the Railroad Equipment as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, the Bank shall be entitled to a decree against the Debtor requiring specific performance of the covenants of the Debtor so to assemble, deliver and store the Railroad Equipment.

(iii) Without in any way limiting the obligation of the Debtor under the foregoing provisions of this Section 6, the Debtor hereby irrevocably appoints the Bank as the agent and attorney of the Debtor, with full power and authority, at any time while the Debtor is obligated to deliver possession of any Railroad Equipment to the Bank, to demand and take possession of such Railroad Equipment in the name and on behalf of the Debtor from whomsoever shall be at the time in possession of such Railroad Equipment.

c. Bank may dispose of the Collateral in any commercially reasonable manner. Any notification required to be given by Bank to Debtor regarding any sale or other disposition of Collateral shall be considered reasonable if mailed at least five days before the sale or other disposition.

d. Bank shall have the right (but no obligation) to continue or complete the manufacturing or processing of, or other operations in connection with, any part of the Collateral and, for such purpose, to enter and remain upon or in any land or buildings that are possessed by Debtor or that Debtor has the right to possess. Debtor will reimburse Bank on demand for any expense that Bank incurs in connection therewith and will pay to Bank interest thereon, from the date the expense was incurred by Bank, at the rate specified in Section 5 hereof.

f. The proceeds of any collection or disposition of the Collateral shall be applied first to Bank's attorneys's fees and expenses, as provided in Section 7 hereof, and then to the Indebtedness, in such manner as Bank shall determine, and Debtor shall be liable for any deficiency remaining.

All rights and remedies of Bank shall be cumulative and may be exercised from time to time.

7. **Expenses.** Debtor shall reimburse Bank on demand for all attorneys' fees, legal expenses and other expenses that Bank incurs in protecting and enforcing its rights under this Agreement. This includes fees and expenses incurred in trying to take possession of Collateral from Debtor, a trustee or receiver in bankruptcy or any other person. Bank may apply any proceeds of disposition or collection of Collateral to Bank's reasonable attorneys' fees, legal expenses and other expenses.

8. **Amendments and Waivers.** No provision of this Agreement may be modified or waived except by a written agreement signed by Bank. Bank will continue to have all of its rights under this Agreement even if it does not fully and promptly exercise them on all occasions.

9. **Notices.** Any notice to Debtor or to Bank shall be deemed to be given if and when mailed, with postage prepaid, to the respective address of Debtor or Bank appearing in the preamble hereto, or if and when delivered personally.

10. **Rights of Lessees.** This Agreement shall be subject to the right of each Lessee under its respective Lease to use and possess the Railroad Equipment subject thereto.

11. **Other.** In this Agreement, "maturity" of any of the Indebtedness means the time when that Indebtedness has become due and payable, for whatever reason (including, for example, acceleration due to default or bankruptcy). This Agreement shall be binding upon and inure to the benefit of Debtor and Bank and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on this 31st day of December, 1993 as of the day and year first written above.

OLD KENT BANK

By: Thomas [illegible]
Its: V.P.

RESIDUAL BASED
FINANCE CORPORATION

By: [illegible]
Its: President

State of Illinois )
) SS
County of Cook )

On this 31st day of December, 1993, before me personally appeared, Vincent A. Kolber, to me personally known, who being by me duly sworn, says that he is the President of Residual Based Finance Corporation, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, that the instrument was signed and sealed on behalf of the 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 the corporation.

[SEAL]

OFFICIAL SEAL
VERONICA L. NACHTWEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-23-96

Veronica L. Nachtwey
Notary Public

My commission expires 12/23/96

State of Illinois )
) SS
County of Cook )

On this 31st day of December, 1993, before me personally appeared, THOMAS E. LUX, to me personally known, who being by me duly sworn, says that (s)he is the VICE PRESIDENT of Old Kent Bank, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, that the instrument was signed and sealed on behalf of the 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 the corporation.

[SEAL]

"OFFICIAL SEAL"
JUANITA WRONKIEWICZ
Notary Public, State of Illinois
My Commission Expires 1/2/94

Juanita Wronkiewicz
Notary Public

My commission expires 1-2-94

Schedule 1

**DESCRIPTION OF ITEMS OF EQUIPMENT**

Description, Original Mark and Number
of Units of Equipment:

Seven (7) 2,000 Horsepower GP38-2 Locomotives manufactured by General Motors Corporation (Electro-Motive Division) and numbered ATSF2374 through ATSF2380, inclusive, formerly ATSF 3565 through 3571, inclusive, and prior thereto TP&W 2005 through 2011, inclusive.

Schedule 2

**LEASES**

Lease of Railroad Equipment dated as of September 15, 1978 between LaSalle National Trust, N. A., as successor to Exchange National Bank of Chicago, in its capacity as trustee (in such capacity, the "Trustee"), under a Trust Agreement dated as of September 15, 1978 between it and American Income Partners V-C Limited Partnership, a Massachusetts limited partnership ("Assignor"), as assignee of Michigan National Leasing Corporation, as lessor thereunder, and The Atchison, Topeka and Santa Fe Railway Company, successor-in-interest to Toledo, Peoria & Western Railroad Company (the "Lessee"), as amended by that certain Amendment Agreement dated as of May 1, 1984 (collectively, the "Lease"), which Lease has been filed under recordation no. 9747-B, with the Interstate Commerce Commission.

Lease dated as of September 15, 1978 between LaSalle National Trust, N.A., as successor to Exchange National Bank of Chicago, in its capacity as trustee (in such capacity, the "Trustee"), under a Trust Agreement dated as of September 15, 1978 between it and American Income Partners V-C Limited Partnership, a Massachusetts limited partnership ("Assignor"), as assignee of Michigan National Leasing Corporation, the original beneficiary thereunder, and General Electric Railcar Services Corporation, as successor to NAC Leasing Corporation (the "Lessee"), which Lease has been filed under recordation nos. 9747-E and 9750 (the "Lease") with the Interstate Commerce Commission.

## SCHEDULE 3

## PERMITTED ENCUMBRANCES

"Permitted Liens" means

(i) liens for taxes, assessments or charges which are not yet due or which are being Properly Contested,

(ii) deposits or pledges to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance,

(iii) deposits or pledges to secure bids, tenders, contracts (other than contracts for borrowed money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business,

(iv) mechanics', workmen's, carriers', warehousemen's, materialmen's or other like liens arising in the ordinary course of business with respect to obligations which are not yet due, for which a bond satisfactory to the Bank in the full amount thereof has been posted, or which are being Properly Contested,

(v) mechanics' and workmen's liens on personal property leased by Borrower to others to the extent the lessee thereof is obligated to release or cause the release of such lien (or pay the obligation secured thereby) prior to redelivery of such property to Borrower,

(vi) legal or equitable encumbrances deemed to exist by reason of the existence of any litigation or other legal proceeding that is being Properly Contested (other than attachments prior to judgment, judgment liens or attachments in aid of execution on a judgment),

(vii) minor defects, easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business, and encumbrances consisting of zoning restrictions, licenses, restrictions on the use of property or minor imperfections in title which, in the aggregate, are not substantial, do not interfere with the ordinary conduct of the business of the Borrower, and do not materially impair the value or use of the property affected thereby or the value of the liens granted to the Bank under the Collateral Documents,

(viii) Liens securing the Debt of the Borrower or Vincent A. Kolber to the Bank hereunder, under any Note and under any of the other Collateral Documents or otherwise,

(ix) rights in favor of lessees on equipment owned by the Borrower under their respective leases,

(x) Liens granted by the Borrower in the ordinary course of its business on equipment or interests under leases which are not part of the Collateral or on its cash or cash equivalents together with any related assets (e.g., books and records related to general intangibles and proceeds), to secure Debt incurred by it in connection with the purchase

of such equipment or interests or the refinancing of such Debt (including any increases thereof),

(xi) Liens in favor of debt holders under leveraged leases in which the Borrower has an interest as owner/participant, on the Borrower's interest in such leases and on the equipment covered thereby,

(xii) Liens in favor of NatWest on specific leases or equipment and related assets (e.g., books and records, related general intangibles and proceeds),

(xiii) Liens on assets of the Borrower other than leases and equipment constituting part of the Collateral to secure Debt of the Borrower not exceeding $100,000 in the aggregate,

(xiv) Liens in favor of NatWest on certificates of deposit issued by NatWest, or shares of mutual funds distributed, issued or managed by NatWest, the Bank or Fidelity Brokerage Services, Inc., or any of their respective Affiliates, and

(xv) the Liens set forth on Schedule B attached to the Amended and Restated Loan Agreement dated August 4, 1993 between Debtor and Bank.