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July 5, 1994

18889

RECORDATION NO. \_\_\_\_\_ FILED 1408

JUL 6 1994 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

Sidney C. Strickland  
Secretary of Interstate  
Commerce Commission  
12th Constitutional Avenue N.W.  
Room 2303  
Washington, D.C. 20423

**Re: Chattel Mortgage and Continuing Security Agreement  
Dated July 1, 1994 Between NBD Bank, N.A. & Sagamore National  
Corporation**

Dear Mr. Strickland:

Please be advised that this law firm represents NBD Bank, N.A. ("Bank") in connection with secured loans to Sagamore National Corporation ("Saganat"). Enclosed please find the following documents:

1. The original and certified copy of the Chattel Mortgage And Continuing Security Agreement ("Security Agreement"), executed by the Bank and Saganat on July 1, 1994;
2. a check in the amount of \$18.00 payable to the Interstate Commerce Commission to cover filing fees; and
3. a stamped, self-addressed envelope for returning the original document.

The parties to the Security Agreement are the Bank, as secured party, and Saganat as the Debtor. The Bank's address is One Indiana Square, Indianapolis, Indiana 46266; Saganat's address is 4301 North State Road 1, Connersville, Indiana 47331. The purpose of the Security Agreement is to continue the Bank's liens in certain personal property,

DANN PECAR NEWMAN TALESNICK & KLEIMAN

Sidney C. Strickland

July 5, 1994

Page 2

including without limitation the locomotives identified on Exhibit "A" to the Security Agreement.

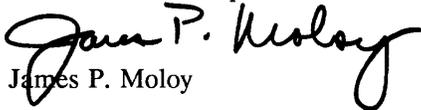
Please return the original Security Agreement, with your file stamp, to the undersigned.

Please cross-reference this new filing to the Bank's previously filed Security Agreement, which was filed with the ICC on June 19, 1989, and assigned Recordation No. 16392. For your information, at the time the prior Security Agreement was filed, the secured party was INB National Bank and the Debtor was Indiana Hi-Rail Corporation. NBD Bank, N.A. is the successor by merger to INB National Bank. Indiana Hi-Rail Corporation recently dissolved and transferred all of its assets, including the locomotives, to Saganat.

If you have any questions regarding this matter, please contact me.

Very truly yours,

DANN PECAR NEWMAN TALESNICK & KLEIMAN  
A Professional Corporation

  
James P. Moloy

JPM\sms

cc: Stanley B. Bibbs (w/o encls.)

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

JULY 12, 1994

JAMES P. MOLOY  
DANN PECAR NEWMAN TALESNICK  
& KLEIMAN  
ONE AMERICAN SQUARE, SUITE 2300  
BOX 82008  
INDIANAPOLIS IN 46282

Dear MR. MOLOY:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/6/94 at 11:05AM, and assigned recordation number(s) 18889

Sincerely yours,

Sidney L. Strickland, Jr.  
Secretary

Enclosure(s)

\$ 18.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one stamped on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine you document.

Signature

*Saledia M. Stokes*

CHattel MORTGAGE AND CONTINUING SECURITY AGREEMENT

This Chattel Mortgage And Continuing Security Agreement (the "Security Agreement") is made on this 1st day of July, 1994, by and between Sagamore National Corporation, an Indiana corporation ("Debtor") whose chief executive office is 4301 North State Road 1, Connersville, Indiana 47331, and NBD Bank, N.A., a national banking association ("Bank") whose address is One Indiana Square, Indianapolis, Indiana 46266.

In consideration for the Assumption Agreement executed concurrently herewith by the parties, the covenants herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **GRANT OF SECURITY INTEREST:** The Debtor hereby mortgages and grants to Bank a continuing security interest in the Collateral described in Section 2 below, to secure the payment and performance of all of Debtor's Liabilities to the Bank. The term "Liabilities" as used herein shall include each and every debt, liability and obligation of Debtor to the Bank, of every type and description, whether now owed or arising at a later time, whether they are matured or contingent, direct or indirect, joint, several, or joint and several and whether or not of the same type or class as presently outstanding and including, without limitation, the Assumed Obligations (as defined in the Assumption Agreement). Liabilities shall also include all interest, costs, expenses and reasonable attorney's fees accruing to or incurred by the Bank in collecting the Liabilities or in the protection, maintenance or liquidation of the Collateral.

2. **DESCRIPTION OF COLLATERAL:** The Collateral covered by this Security Agreement is all of the Debtor's property defined below, present and future, including, but not limited to any items listed on any schedule or list attached. Also included are all proceeds, including but not limited to stock rights, subscription rights, dividends, stock dividends, stock splits, or liquidating dividends, and all cash, accounts, chattel paper and general intangibles arising from the sale, rent, lease, casualty loss or other disposition of the Collateral, and any Collateral returned to, repossessed by or stopped in transit by Debtor. Where the Collateral is in the possession of the Bank, the Debtor agrees to deliver to the Bank any property which represents an increase in the Collateral or profits or proceeds of the Collateral. The Collateral includes the following:

2.1 "Accounts Receivable," consisting of accounts, chattel paper and general intangibles as those terms are defined in the Indiana Uniform Commercial Code ("UCC"). Also

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INTERSTATE COMMERCE COMMISSION

included is any right to a refund of taxes paid at any time to any governmental entity. Also included are letters of credit, and drafts under them, given in support of Accounts Receivable. Debtor warrants that Debtor's chief executive office is at the address shown above.

- 2.2 "Inventory," consisting of all property held at any location by or for Debtor for sale, rent, or lease, or furnished or to be furnished by Debtor under any contract of service, or raw materials or work in process and their products, or materials used or consumed in Debtor's business, and shall include containers and shelving useful for storing. Without limiting the security interest granted, Inventory is presently located at Debtor's chief executive office.
- 2.3 "Equipment," consisting of any goods at any time acquired, owned or held by Debtor at any location primarily for use in Debtor's business, including, but not limited to, machinery, fixtures, furniture, furnishings, rolling stock, locomotives and vehicles, and any accessions, parts, attachments, accessories, tools, dies, additions, substitutions, replacements and appurtenances to them or intended for use with them. Without limiting the security interest granted, Equipment is presently located at Debtor's chief executive office, ~~or in the States of Illinois or Ohio.~~
- 2.4 "Instruments," consisting of Debtor's interest of any kind in any negotiable instrument or security as those terms are defined in the UCC, or any other writing which evidences a right to payment of money and is of a type which is, in the ordinary course of business, transferred by delivery alone or by delivery with any necessary endorsement or assignment, or any non-negotiable instruments or documents.
- 2.5 "Railroad Equipment," consisting of railway cars described on Exhibit "A" 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), together with all the rents, issues, income, profits and avails therefrom.

3. WARRANTIES & COVENANTS: The Debtor warrants and covenants to the Bank that:

- 3.1 Debtor will pay and perform all Liabilities to the Bank secured by this Security Agreement;
- 3.2 Debtor is or will become the owner of the Collateral free from any liens, encumbrances or security interests, except for this security interest and, existing liens disclosed to and accepted by the Bank in writing, and will defend the Collateral against all claims and demands of all persons at any time claiming any interest in it;
- 3.3 Debtor will keep the Collateral free of liens, encumbrances and other security interests except for this security interest, maintain it in good repair, not use it illegally and exhibit it to Bank on demand;
- 3.4 At Debtor's own expense, the Debtor will maintain comprehensive casualty insurance on the Collateral against such risks, in such amounts, with such deductibles and with such companies as may be satisfactory to the Bank. Each insurance policy shall contain a lender's loss payable endorsement satisfactory to the Bank and a prohibition against cancellation or amendment of the policy or removal of the Bank as loss payee without at least 30 days prior written notice to the Bank. In all events, the amounts of such insurance coverages shall conform to prudent business practices and shall be in such minimum amounts that the Debtor will not be deemed a co-insurer.
- 3.5 Debtor will not sell or offer to sell or otherwise transfer the Collateral, nor change the location of the Collateral, without the written consent of the Bank, except in the ordinary course of business;
- 3.6 Debtor will pay promptly when due all taxes and assessments upon the Collateral, or for its use or operations, *except taxes contested by Debtor in good faith;*
- 3.7 No financing statement covering all or any part of the Collateral or any proceeds is on file in any public office, unless the Bank has approved that filing, and at Bank's request, Debtor will execute one or more financing statements in form satisfactory to Bank and will pay the cost of filing them in all public offices wherever filing is deemed by Bank to be desirable;

- 3.8 Debtor will immediately notify Bank in writing of any name change or any change in business organization;
- 3.9 Debtor will provide any information that Bank may reasonably request, and will permit Bank upon prior notice, to inspect and copy Debtor's books and records during normal business hours.
- 3.10 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 Borrower 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. Borrower will store, maintain and operate the Collateral in compliance with all such laws and regulations. Borrower will indemnify Bank with respect to all losses, damages, liabilities and expenses (including attorneys' fees) incurred by Bank by reasons of any failure of Borrower to comply with Borrower's obligations under this paragraph.

4. **ACCOUNTS RECEIVABLE:** The Debtor acknowledges that if the Collateral includes "Accounts Receivable" then until the Bank gives notice to Debtor to the contrary, Debtor will, in the usual course of Debtor's business and at Debtor's own cost and expense, on the Bank's behalf but not as the Bank's agent, demand and receive and use Debtor's best efforts to collect all moneys due or to become due on the Accounts Receivable. Until the Bank gives notice to Debtor to the contrary or until Debtor is in default, Debtor may use the funds collected in Debtor's business. Upon notice from the Bank or upon default, the Debtor agrees that all sums of money Debtor receives on account of or in payment or settlement of the Accounts Receivable shall be held by Debtor as trustee for the Bank without commingling with any of Debtor's funds, and shall immediately be delivered to the Bank with endorsement to the Bank's order of any check or similar instrument. It is agreed that, at any time Bank so elects, it shall be entitled, in its own name or in the name of Debtor or otherwise, but at the expense and cost of the Debtor, to collect, demand, receive, sue for or compromise any and all Accounts Receivable, and to give good and sufficient releases, to endorse any checks, drafts or other orders for the payment of money payable to the Debtor in payment and, in its discretion, to file any claims or take any action or proceeding

which the Bank may deem necessary or advisable. It is expressly understood and agreed, however, that the Bank shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. All notices required in this paragraph will be immediately effective when sent. Such notices need not be given prior to the Bank taking action.

5. **REPRESENTATIONS BY DEBTOR:** Debtor represents that it is duly organized and existing and that the execution and delivery of this Security Agreement and the performance of the obligations it imposes do not conflict with any provision of its articles of incorporation or bylaws and have been duly authorized by all necessary corporate action. Debtor represents that the execution and delivery of this agreement and the performance of the obligations it imposes do not violate any law, do not conflict with any agreement by which Debtor is bound, do not require the consent or approval of any governmental authority or any third party, and that this agreement is a valid and binding agreement, enforceable according to its terms. Debtor further represents that all balance sheets, profit and loss statements, and other financial statements furnished to the Bank are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

6. **DEFAULT/REMEDIES:** If the Debtor fails to pay any of the Liabilities when due, or otherwise defaults under the terms of any agreement related to any of the Liabilities, or if the Debtor fails to observe or perform any term of this Security Agreement, or if any representation or warranty of the Debtor contained in this Security Agreement is untrue in any material respect, then the Bank shall have the rights and remedies provided by law or this Security Agreement, including but not limited to the right to require the Debtor to assemble the Collateral and make it available to the Bank at a place to be designated by Bank which is reasonably convenient to both parties, the right to take possession of the Collateral with or without demand and with or without process of law, and the right to sell and dispose of it and distribute the proceeds according to law. In connection with the right of Bank to take possession of the Collateral, the Bank may take possession of any other items of property in or on the Collateral at the time of taking possession, and hold them for the Debtor without liability on the part of Bank. If there is any statutory requirement for notice, that requirement shall be met if Bank sends notice to the Debtor at least seven (7) days prior to the date of sale,

disposition or other event giving rise to the required notice. The Debtor shall be liable for any deficiency remaining after disposition of the Collateral, and waives all valuation and appraisal laws.

6.1 (a) For the purpose of delivering possession of any Railroad Equipment to Bank as above required, Debtor shall, subject to the rights of any lessees, at its own cost, expense and risk, forthwith place such Railroad Equipment on the lines of any single railroad designated by Bank, in such reasonable storage place as Bank may designate or, in the absence of such designation of a storage place, as Debtor may select; provided, that in the event 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 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 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 Bank.

(b) 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, Bank shall be entitled to a decree against Debtor requiring specific performance of the covenants of Debtor so to assemble, deliver and store the Railroad Equipment.

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

7. **MISCELLANEOUS:**

7.1 At its option the Bank may, but shall be under no duty or obligation to, discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral, pay for insurance on the Collateral, and pay for the maintenance and preservation of the Collateral,

and the Debtor agrees to reimburse the Bank on demand for any payment made or expense incurred by the Bank, with interest at the maximum legal rate.

- 7.2 No delay on the part of Bank in the exercise of any right or remedy shall operate as a waiver, no single or partial exercise by Bank of any right or remedy shall preclude any other exercise of it or the exercise of any other right or remedy, and no waiver or indulgence by the Bank of any default shall be effective unless in writing and signed by Bank, nor shall a waiver on one occasion be construed as a waiver of that right on any future occasion.
- 7.3 If any provision of this Security Agreement is invalid, it shall be ineffective only to the extent of its invalidity, and the remaining provisions shall be valid and effective.
- 7.4 Except as provided in the Accounts Receivable paragraph above, notice from one party to another relating to this Security Agreement shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or facsimile number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express, Purolator Courier or like overnight courier service or (e) facsimile, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with this section shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by first class, registered or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier.
- 7.5 All rights of Bank shall inure to the benefit of the Bank's successors and assigns; and all obligations of the Debtor shall bind the Debtor's heirs, executors, administrators, successors and assigns. If there is more than one Debtor, their obligations are joint and several.

- 7.6 A carbon, photographic or other reproduction of this agreement is sufficient, and can be filed as a financing statement. The Bank is irrevocably appointed the Debtor's attorney-in-fact to execute any financing statement on Debtor's behalf covering the Collateral.
- 7.7 The terms and provisions of this security agreement shall be governed by Indiana law.

8. **MUTUAL WAIVER OF JURY TRIAL:** The Bank and the Debtor, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waive any right either of them may have to a trial by jury in any litigation based upon or arising out of this agreement or any related instrument or agreement, or any of the transactions contemplated by this agreement, or any course of conduct, dealing, statements (whether oral or written), or actions of either of them. Neither the Bank nor the Debtor shall seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. These provisions shall not be deemed to have been modified in any respect or relinquished by either the Bank or the Debtor except by a written instrument executed by both of them.

Dated: July 1, 1994.

NBD BANK, N.A.

SAGAMORE NATIONAL CORPORATION

By: Stanley B. Bubba  
Its: ASST. VICE PRES.

By: R Powell Felty  
Its: President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Fayette )

Before me, a Notary Public in and for said County and State, personally appeared Stanley B. Bibbs, the Assistant Vice President of NBD Bank, N.A., a national banking association, and acknowledged the execution of the foregoing instrument as his voluntary act and deed on behalf of said national banking association.

WITNESS my hand and Notarial Seal this 1<sup>st</sup> day of July, 1994.

Fayette  
My County of Residence

Gina K. Vavorec  
Signature of Notary Public

July 15<sup>th</sup>, 1997  
My Commission Expires

Gina K. Vavorec  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Fayette )

Before me, a Notary Public in and for said County and State, personally appeared B. J. Felix, the President of Sagamore National Corporation, an Indiana corporation, and acknowledged the execution of the foregoing instrument as his voluntary act and deed on behalf of said corporation.

WITNESS my hand and Notarial Seal this 1<sup>st</sup> day of July, 1994.

Fayette  
My County of Residence

Gina K. Vavorec  
Signature of Notary Public

July 15<sup>th</sup>, 1997  
My Commission Expires

Gina K. Vavorec  
Printed Name of Notary Public

EXHIBIT A

ORIGINAL LOCOMOTIVES IN WHICH BANK HAS A SECURITY INTEREST:

<u>Unit</u>	<u>Manufacturer</u>	<u>Type</u>	<u>Horsepower</u>	<u>Year Built</u>	<u>Prior Owner</u>
167	ALCO	RS - 1	1000	1953	L1RR
310	ALCO	C420	2000	1964	LV
311	ALCO	C420	2000	1964	LV
325	ALCO	C425	2500	1965	BN
332	ALCO	C420	2000	1967	LN
442	ALCO	RSD15	2400	1958	PEABODY
443	ALCO	RSD15	2400	1958	PEABODY

ADDITIONAL LOCOMOTIVES IN WHICH BANK SHALL HAVE A SECURITY INTEREST

119	ALCO	S - 4	1000	1951	ASTF
312	ALCO	C420	2000	1964	DH
326	ALCO	C425	2500	1965	BN
327	ALCO	C425	2500	1966	BN
328	ALCO	C425	2500	1966	BN
352	ALCO	RS11	1800	1960	LN