

# NationsBank

NationsBanc Leasing Corporation

## Note and Security Agreement (Fixed Rate and Level Payments)

This Note and Security Agreement made as of the date set forth below sets forth the terms and conditions governing the repayment of a loan made by NationsBanc Leasing Corporation ("Secured Party") to the party identified below as "Debtor" for the purpose of financing the personal property identified below as the "Equipment", and the granting by Debtor to Secured Party of a security interest in the Equipment and certain related property to secure the repayment of all Debtor's obligations to Secured Party.

**Date:** March 3, 1995

**Agreement No.:** 01835-00701

**Secured Party:** NationsBanc Leasing Corporation  
2300 Northlake Centre, Suite 300  
Tucker, Georgia 30084-4007

RECORDATION NO. 19301  
FILED 1995

**Debtor:** Southeastern Industrial Enterprises, Inc.  
2017 Ridge Road  
Hartwell, Georgia 30643

MAR 31 1995 4:00 PM  
NATIONS BANK - TUCKER, GA

**Equipment:** Various Rail Cars as set forth on Exhibit A attached hereto and made a part hereof

**Equipment Location:** 2255 Lava Lane Alamosa, Colorado 81101

**Principal Amount of Loan:** Two hundred fifty-two thousand and no/100 dollars (\$252,000.00).

**Number of Repayment Installments (including Final Repayment Installment):** One hundred twenty (120).

**Amount of Each Repayment Installment Prior to Final Repayment Installment:** Three thousand four hundred ninety-nine and 90/100 dollars (\$3,499.90).

**Amount of Final Repayment Installment:** Three thousand four hundred ninety-nine and 90/100 dollars (\$3,499.90).

**Due Date of First Principal Repayment Installment:** On the thirtieth (30th) day following the date Secured Party funds this loan.

**Due Date of Final Principal Repayment Installment:** On the tenth (10th) anniversary of the date Secured Party funds this loan.

**Interest Rate.** A per annum rate of interest equal to (i) eleven and 20/100 percent (11.20%) or (ii) if less, the highest rate of interest permitted by applicable law.

**Loan; Terms of Repayment.** In consideration of the making of a loan by Secured Party to Debtor for the purpose of financing the Equipment specified above (the "Loan"), Debtor promises and agrees to pay to the order of Secured Party, at Secured Party's address stated above or at such other places as Secured Party may from time to time designate in writing, the principal amount of the Loan, together with interest calculated as hereinafter provided. Subject to Debtor's right to prepay such principal amount in whole or in part as hereinafter provided, Debtor shall pay such principal amount together with interest thereon in consecutive monthly installments, each in the amount set forth above under the heading "Amount of Each Repayment Installment Prior to Final Repayment Installment," due and payable on the "Due Date of First Repayment Installment" set forth above and on a like date of each calendar month thereafter until the Loan is fully repaid; provided, however, that the last such installment shall be in the amount set forth above under the heading "Amount of Final Repayment Installment" or (if greater) the amount of the then outstanding principal balance of the Loan together with interest thereon.

**Interest.** Interest shall be calculated on the basis of a year of three hundred sixty (360) days. Each installment shall include all interest accrued through the due date.

**Prepayments.** After one (1) year from the date Secured Party funds this Loan, the outstanding principal balance of the Loan may be prepaid in whole or in part at any time, together with all interest and late charges accrued through the date of prepayment and a prepayment charge calculated as follows: one percent (1%) of the amount prepaid multiplied by the number of years or fraction thereof remaining under the term of this Agreement. Partial prepayments shall be applied against principal installments in their inverse order of maturity. Except as provided herein, the Loan may not be prepaid.

**Late Charges.** To the extent permitted by applicable law, Debtor shall pay on demand, as a late charge, an amount equal to five percent (5%) of each installment or part thereof that is not paid within ten (10) days of the date when due, but nothing in this paragraph alters the definitions of events of default hereunder. Debtor shall pay the late charge, to the extent permitted by applicable law, regardless of whether or not Debtor's failure to pay such installment when due is or becomes a default hereunder and regardless of whether or not Secured Party proceeds under the "Remedies" provisions hereof or takes any other action, and demand for and collection of the late charge shall not be deemed a waiver of default or of any other remedies or rights.

**Security Interest.** Debtor hereby grants to Secured Party a security interest in and security title to the personal property described above as the "Equipment", together with all parts, additions, accessions, accessories, replacements and substitutions thereto or therefor, and all proceeds therefrom (including any proceeds of insurance against fire or other casualty whether or not the insurance policy

**Use of Collateral.** Debtor shall use the Collateral exclusively for business operations.

**Fixtures.** Debtor shall not permit any of the Collateral to become a part of or affixed to any real property.

**Location of Collateral.** Except for items of Collateral that constitute mobile goods and that are in fact in use by Debtor in the ordinary course of business at other locations, all the Collateral shall, from and after the moment that Debtor acquires possession or control of it, be kept either at (i) Debtor's address set forth above or (ii) the "Equipment Location" set forth above, and all records relating to the Collateral shall likewise be kept only at such location or locations. If at any time the Collateral, or any part thereof, is removed to a new location, Debtor: (a) shall provide written notice thereof to Secured Party within thirty (30) days from the date of such relocation; and (b) either (i) the premises in which such Collateral will be installed will be owned by Debtor free of any liens or encumbrances, or (ii) if not owned by Debtor free of liens or encumbrances, the owner of such premises and/or the holder of any such liens or encumbrances on such premises shall have consented and acknowledge the superiority of Secured Party's interest in such Collateral.

**Indemnification.** Debtor shall indemnify Secured Party against all claims arising out of or connected with the ownership or use of the Collateral.

**Motor Vehicles.** If the Collateral consists of or includes motor vehicles or other equipment for which there is a certificate of title evidencing ownership thereof, Debtor shall forthwith cause each certificate to be endorsed over and the lien of Secured Party to be noted so as to show Secured Party's interest, and Debtor shall deliver forthwith each such certificate to Secured Party.

**Taxes.** Debtor shall pay promptly when due all taxes, charges and assessments that are or may become a lien on the Collateral or any part thereof, except to the extent that the same are contested in good faith and by appropriate proceedings.

**Financial Statements.** During the term of this Loan, Debtor (i) shall furnish Secured Party annual balance sheets and profit and loss statements of Debtor and of any guarantor of Debtor's obligations hereunder within 120 days after the end of Debtor's (and any guarantor's) fiscal year, and (ii) at Secured Party's request, shall furnish Secured Party all other financial information and reports reasonably requested by Secured Party at any time, including quarterly or other interim balance sheets and profit and loss statement of Debtor and of any such guarantor. Debtor shall furnish such other information as Secured Party may reasonably request at any time concerning the Debtor and its affairs, including without limitation information concerning the Collateral. Debtor represents and warrants that all information furnished and to be furnished by Debtor to Secured Party is accurate and that all financial statements Debtor has furnished and hereafter may furnish to Secured Party, including operating statement and statements of condition, are and will be prepared in accordance with generally accepted accounting principals, consistently applied, and reasonably reflect and will reflect, as of their respective dates, results of the operations and financial condition of Debtor and of any other entity they purport to cover.

**Reimbursement for Expenses.** At its option, and with no obligation to do so, Secured Party may (i) if an event of default exists, discharge taxes or other encumbrances on the Collateral, or pay for the repair, maintenance and preservation of the Collateral and (ii) ten (10) days after notifying Debtor of Secured Party's intent to do so, arrange and pay for insurance on the Collateral. Debtor agrees to reimburse Secured Party on demand for any payments so made; Debtor also agrees to reimburse and pay to Secured Party on demand all expenses incurred or paid by Secured Party in perfecting the security interest granted hereunder and in collecting the Indebtedness and in protecting or enforcing Secured Party's rights under this Agreement, including but not limited to reasonable attorney's fees and legal expenses. Until Debtor makes such reimbursement, the amount of all such payments and expenses, with interest at the rate then applicable to principal installments of the Loan not paid when due, from the date of payment until reimbursement, shall be added to the Indebtedness and shall be secured by the security interest granted by Debtor under this Agreement. Nothing in this paragraph relieves Debtor of the duty to care for, insure and protect the Collateral and Secured Party's interests therein and to pay tax on or related to the Collateral, or of any other duty.

**Sale or Replacement of Collateral.** Debtor shall not sell or replace any item or part of the Collateral without the prior written consent of Secured Party.

**Post Default Interest.** Any principal balance not paid when due (whether by acceleration or otherwise) shall accrue interest at the "Default Rate" until such principal balance is paid. "Default Rate" shall be a per annum rate of interest equal to (i) fifteen percent (15.0%) or (ii), if less, the highest rate of interest permitted by applicable law. Secured Party may, at its option, apply late payments (either in full or partial) in the following manner: first to interest, then to principal, and finally to late charges. To the extent permitted by applicable law, Debtor shall pay interest on delinquent principal installments on demand regardless of whether or not Secured Party proceeds under the "Remedies" provisions hereof or takes any other action, and demand for and collection of interest on such overdue installments at the Default Rate shall not be deemed a waiver of default or of any other remedies or rights.

**Events of Default.** Debtor shall be in default under this Agreement upon the happening of any of the following events or conditions, each of which is an event of default:

1. Default shall be made in the payment of any installment of the Loan, or in the payment of any other Indebtedness, when and as the same becomes due and payable, whether at the stated maturity thereof or by acceleration or otherwise, and such default shall continue unremedied for ten (10) days; or
2. Default shall be made in the due observance or performance of any term, covenant or agreement contained in this Agreement (other than covenants and agreements to pay Indebtedness), and such default shall continue unremedied for ten (10) days after written notice thereof is given by Secured Party to Debtor; or
3. Any representation or warranty made by Debtor in this Agreement, or any statement or representation made in any certificate, report or opinion delivered pursuant hereto, or in connection herewith, shall prove to have been incorrect in any material respect when made; or
4. A default exists under any other agreement or instrument of Debtor's with or in favor of Secured Party or any direct or indirect affiliate of Secured Party; or
5. The Collateral shall be lost, stolen, substantially damaged, destroyed (unless (i) such occurrence is fully covered by insurance, and (ii) the Loan is fully repaid within thirty (30) days after such occurrence), or shall be sold or encumbered; or Debtor's rights in the

Collateral shall be voluntarily or involuntarily transferred, by way of sale, lease or creation of a security interest, or by way of attachment, levy, garnishment or other judicial process, or otherwise; or

6. Debtor shall become insolvent or be generally unable to meet its obligations as they mature, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, or suspend the operation of its present business; or

7. A trustee, receiver or custodian shall be appointed for Debtor or for a substantial part of its property without the consent of Debtor and not be discharged within thirty (30) days; or

8. Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings shall be instituted by or against Debtor, and, if instituted against Debtor, be consented to or remain undismissed for a period of thirty (30) days; or

9. An event described in Section 6, 7, or 8 shall occur with respect to any party who is guarantor or surety for the Indebtedness; or

10. Any default shall be made by Debtor in any obligation for the payment of borrowed money or capitalized leases with an outstanding obligation in excess of \$1,000,000.00 or any such obligation shall become or be declared to be due and payable prior to the original stated maturity thereof; or

11. Liquidation or dissolution of Debtor; or

12. Sale, transfer or exchange, directly or indirectly, in one or more transactions, of a controlling stock interest in Debtor without the prior written consent of Secured Party, which consent shall not be unreasonably withheld, or the suspension of Debtor's present business; or

13. The Pension Benefit Guaranty Corporation shall commence proceedings under Section 4042 of the Employee Retirement Income Security Act of 1974 to terminate any employee pension benefit plan of Debtor; or

14. The attempted repudiation of any guaranties for obligations of Debtor to Secured Party.

**Remedies.** Upon any event of default and at any time thereafter, Secured Party may declare all the Indebtedness immediately due and payable in full (unless such event of default comprises one or more of the events described in paragraphs 7 or 8 above, in which case all the Indebtedness shall become immediately due and payable in full without any declaration, notice or other action on the part of Secured Party), and may proceed to enforce payment thereof and exercise any and all of the rights and remedies provided by the Uniform Commercial Code as well as all other rights and remedies of Secured Party hereunder or under other applicable law. Upon the occurrence of an event of default, Debtor shall, upon demand by Secured Party, assemble the Collateral and make it available to Secured Party at a place designated by Secured Party reasonably convenient to both parties. Secured Party may, at its election, enforce its rights under this Agreement by a suit in equity for specific performance. Debtor grants Secured Party the right to enter upon any premises of Debtor for the purpose of recovering possession of the Collateral or any part thereof after the occurrence of an event of default, or for the preservation or enforcement of Secured Party's other rights hereunder, all without demand or notice to Debtor and without judicial hearing or proceedings, which Debtor hereby expressly waives. The requirements of reasonable notice shall be deemed met if such notice is mailed to an address of Debtor shown at the beginning of this Agreement at least ten (10) days before the time of the sale or disposition, but nothing contained herein shall be construed to mean that other notice or a shorter period of time does not constitute reasonable notice of the sale or other disposition of the Collateral. Debtor shall reimburse Secured Party for all Secured Party's expenses of retaking, holding, preparing for sale, selling or otherwise dealing with or disposing of the Collateral, including attorney's fees in the amount of fifteen percent (15%) of the outstanding principal balance of and interest on the Indebtedness (but not to exceed the amount of attorneys' fees actually incurred) if collection is by or through an attorney at law. Subject to applicable law, Debtor shall pay any Indebtedness remaining unpaid after sale or other disposition of any or all of the Collateral. Any surplus proceeds from the sale or other disposition of the Collateral remaining after full satisfaction of the Indebtedness shall be paid to Debtor or to such other persons as may be entitled thereto under applicable law.

**Cumulative Rights and No Waiver.** Each and every right granted to Secured Party hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of Secured Party to exercise, and no delay in exercising, any right shall operate as a waiver thereof, nor shall any single or partial exercise by Secured Party of any right preclude any other or future exercise thereof or the exercise of any other right.

**Financing Statements.** Debtor shall sign and deliver to Secured Party such financing statements and other documents as Secured Party may deem necessary to perfect, protect and continue its security interest in the Collateral, in form satisfactory to Secured Party. Debtor will reimburse Secured Party for all expenses incurred in the filing of financing statements, continuation statements, termination statements and any other documents relating to the perfection of Secured Party's security interest in the Collateral. A carbon, photographic or other reproduction of this Agreement or of a financing statement relating to the security interest herein granted is sufficient as a financing statement. Debtor authorizes Secured Party to file financing statements as to the Collateral signed only by Secured Party and not by Debtor.

**Severability.** Any provision of this Agreement that 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.

**Assignability.** Debtor acknowledges that the rights of Secured Party may be assigned to any person in whole or in part at the sole discretion of Secured Party, and Debtor agrees that any defense it may have against Secured Party as to events occurring prior to any assignment shall not be asserted, and shall be void, against any assignee of the rights of Secured Party. Debtor shall not assign any of its rights or obligations under this Agreement to any person without the prior written consent of Secured Party, and in the absence of such prior written consent, no such assignment of any right or obligation of Debtor hereunder shall be binding on Secured Party. Subject to the foregoing limitations, the terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

**Warranty Disclaimer.** Secured Party is not a manufacturer or seller of the Collateral and makes no warranties whatsoever with respect to the Collateral, including without limitation warranties of title, merchantability or fitness for any particular purpose. Debtor shall not assert any breach of any such

warranty as a defense to any of its obligations to Secured Party under this Agreement; however, nothing in this Agreement shall be construed to impair any of Debtor's remedies for breach of warranty against any seller or manufacturer of the Collateral.

**Governing Law; Consent to Venue and Personal Jurisdiction.** This agreement shall be construed and enforced in accordance with and governed by the laws of the State of Georgia as of the date hereof. If the address of Debtor's residence or principal place of business shown herein is not in the State of Georgia, Debtor consents to the exercise of personal jurisdiction over Debtor by any court or record sitting in the State of Georgia in connection with any action arising out of this Agreement, and waives all objections to service of process on Debtor at such address.

**Waiver of Jury Trial.** Secured Party and Debtor each waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Agreement.

**IN WITNESS WHEREOF,** the parties have caused their names to be signed and their seals affixed as of the date first above written. By execution hereof, each party intends and agrees to be legally bound by all the provisions of this Agreement.

NationsBanc Leasing Corporation (Secured Party)

Southeastern Industrial Enterprises, Inc. (Debtor)

By: [Signature]  
Printed Name: James R. Bates  
Assistant Vice President  
Title: \_\_\_\_\_

By: [Signature]  
Printed Name: J. W. FRANKS  
Title: C.E.O.

**Notarial Acknowledgment:**

State of Georgia )  
County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared James R. Bates to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

**In Witness Whereof** I have hereunto set my hand and official seal this 20<sup>th</sup> day of March, 1995.  
My Commission Expires February 20, 1999  
Notary Public, DeKalb County, Georgia

(Official Seal)

[Signature]  
Notary Public  
In and for said County and State or District of Columbia

State of Georgia )  
County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared J. W. Franks to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

**In Witness Whereof** I have hereunto set my hand and official seal this 3<sup>rd</sup> day of March, 1995.  
My Commission Expires \_\_\_\_\_, 19\_\_\_\_.  
Notary Public, DeKalb County, Georgia  
My Commission Expires February 20, 1999

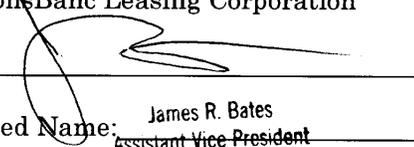
(Official Seal)

[Signature]  
Notary Public  
In and for said County and State or District of Columbia

**EXHIBIT A to  
Note and Security Agreement No. 08135-00701**

Twenty (20)	Secondhand 3960 Cubic Feet Open Top Coke Hoppers	
Car Nos.	SIEX 1000	SIEX 1001
	SIEX 1002	SIEX 1003
	SIEX 1004	SIEX 1005
	SIEX 1006	SIEX 1007
	SIEX 1008	SIEX 1009
	SIEX 1010	SIEX 1011
	SIEX 1012	SIEX 1013
	SIEX 1014	SIEX 1015
	SIEX 1016	SIEX 1017
	SIEX 1018	SIEX 1019

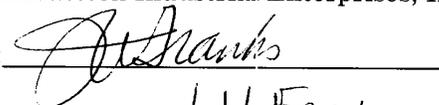
NationsBanc Leasing Corporation

By: 

Printed Name: James R. Bates  
Assistant Vice President

Title: \_\_\_\_\_

Southeastern Industrial Enterprises, Inc.

By: 

Printed Name: J. K. FRANKS

Title: C.E.O.

# NationsBank®

NationsBanc Leasing Corporation

## Annex A to Note and Security Agreement

**This Annex A** constitutes an integral part of Note and Security Agreement Number 08135-00701 dated March 3, 1995 (the "Note"), between Southeastern Industrial Enterprises, Inc. ("Debtor") and **NationsBanc Leasing Corporation** ("Secured Party"). Terms used herein but undefined herein shall have the meanings ascribed them in the Note.

The following provisions are hereby made a part of and incorporated in the Note:

- (a) Debtor agrees to comply in all respects with all laws of the jurisdictions in which the Collateral may be operated, with all applicable rules of the Association of American Railroads, and with all laws, rules, regulations and orders of the Department of Transportation and the Interstate Commerce Commission and any other federal, state or local legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Collateral (collectively, "Applicable Laws"). In the event that any Applicable Law requires the alteration of any Collateral, or in case any Collateral or accessory or attachment thereto shall be required to be changed or replaced, or in case any additional or other accessory or attachment is required to be installed on any Collateral in order to comply with Applicable Laws, Debtor agrees to make such alterations, changes, additions and replacements at its own expense; and Debtor agrees at its own expense to use, store, maintain and operate the Collateral in full compliance with the Applicable Laws throughout the term of the Note.
- (b) In addition to its covenants and agreements under the Note regarding the location of the Collateral, Debtor agrees that the Collateral will be used solely in the continental United States.
- (c) In addition to its covenants and agreements under the Note regarding financing statements, Debtor agrees that it will, at its expense prior to the delivery and acceptance of any Collateral under the Note, cause the Note to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Revised Interstate Commerce Act and the regulations promulgated thereunder. All references in the Note to "financing statements" shall be deemed to include filings and recordations with the Interstate Commerce Commission.
- (d) Debtor shall maintain on each side of each item of Collateral the following identification in block letters not less than two inches high: "NATIONSBANC LEASING CORPORATION, SECURED PARTY", or other appropriate words designated by Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the rights of the Secured Party under this Note. Debtor will not place any Collateral in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such markings which may be removed, defaced or destroyed.
- (e) Debtor shall maintain on each unit of Collateral the serial and other identifying numbers set forth on page one of the Note under the heading "Equipment", and Debtor will not change the identifying number of any Collateral except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been delivered to Secured Party by Debtor and filed, recorded or deposited by Debtor in all public offices where this Note or any notice thereof shall have been filed, recorded or deposited.
- (f) Except as provided in the preceding clauses (d) and (e), Debtor will not allow the name of any person, corporation or other entity to be placed on any Collateral that might be interpreted as a claim of ownership; provided, however, that Debtor may cause the Collateral to be lettered with the names or initials or other insignia customarily used by Debtor on railroad equipment used by Debtor of the same or a similar type.

In the event of any inconsistency between any provision of this Annex A and any other provision(s) of the Note, the provisions of this Annex A shall be controlling, but only to the extent of such inconsistency.

**In Witness Whereof**, Secured Party and Debtor have executed this Annex A as of the 3rd day of March, 1995.

NationsBanc Leasing Corporation (Secured Party)

Southeastern Industrial Enterprises, Inc. (Debtor)

By: James B. Bates

By: J. W. FRANKS

Printed Name: Assistant Vice President

Printed Name: J. W. FRANKS

Title: \_\_\_\_\_

Title: C. E. O.

**Notarial Acknowledgment:**

State of Georgia )

County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JW Franks to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

**In Witness Whereof** I have hereunto set my hand and official seal this 3rd day of March, 1995.  
My Commission Expires Notary Public, DeKalb County, Georgia 19  
My Commission Expires February 20, 1999

(Official Seal)

Carol J. Jones  
Notary Public  
In and for said County and State or District of Columbia

State of Georgia )

County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared James K. Bates to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

**In Witness Whereof** I have hereunto set my hand and official seal this 20<sup>th</sup> day of March, 1995.  
My Commission Expires Notary Public, DeKalb County, Georgia 19  
My Commission Expires February 20, 1999

(Official Seal)

Carol J. Jones  
Notary Public  
In and for said County and State or District of Columbia

# NationsBank®

NationsBanc Leasing Corporation

Acceptance Notice/  
Pay Proceeds Authorization

**Note and Security Agreement Number: 08135-00701**

**Dated: March 3, 1995**

**To: NationsBanc Leasing Corporation**

The undersigned hereby certifies that all property described in the Note and Security Agreement by and between NationsBanc Leasing Corporation ("Secured Party") and the undersigned ("Debtor") has been furnished, that delivery and installation has been fully completed as required, and that the equipment is accepted and satisfactory in all respects.

We hereby authorize you to disburse the proceeds of the Note and Security Agreement as follows:

<b>Disburse To:</b>	<b>Amount:</b>
Material Brokerage Company	\$47,927.12
P & LE Car Company	24,390.00
NationsBank - Athens	90,467.50
Southeastern Ind Enterprises, Inc.	89,215.38
TOTAL	\$252,000.00

Southeastern Industrial Enterprises (Debtor)

By: *J. W. Franks*  
Printed Name: J. W. FRANKS  
Title: C.E.O.

### Notarial Acknowledgment:

State of Georgia )  
County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared J W Franks to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

**In Witness Whereof** I have hereunto set my hand and official seal this 3rd day of March, 1995.  
My Commission Expires Notary Public, DeKalb County, Georgia  
My Commission Expires February 20, 1999

(Official Seal)

*Carol J. Jones*  
Notary Public  
In and for said County and State or District of Columbia

# NationsBank®

NationsBanc Leasing Corporation

## Rider A - Right to Sublease Rider

**This Rider A**, made this 3rd day of March, 1995, to the Note and Security Agreement dated March 3, 1995 (the "Agreement"), between NationsBanc Leasing Corporation ("Secured Party") and Southeastern Industrial Enterprises, Inc. ("Debtor").

### WITNESSETH:

Secured Party and Debtor agree that the following addendum to the subject Agreement shall apply:

### PERMISSION TO LEASE COLLATERAL

Notwithstanding the terms of the Agreement to the contrary, Debtor in its ordinary course of business, may lease the Collateral covered by the Agreement to Colorado Aggregates Company of New Mexico, a New Mexico corporation, with its principal place of business at 2255 Lava Lane, Alamosa, Colorado 81101 provided, however, that such leasing shall in no way relieve Debtor of any of its obligations hereunder, it being specifically understood that Debtor's obligations under the Agreement and in accordance with its terms shall at all times remain primary, direct and unconditional. In the event the Collateral is at any time subject to a lease as permitted under this paragraph, to secure the prompt and full payment or performance of any and all of its obligations hereunder, Debtor hereby assigns to Secured Party and grants to Secured Party a continuing general security interest in all of Debtor's right, title and interest in and to any and all lease agreements now or hereafter entered into by Debtor covering the lease of the Collateral together with the benefits, rights and remedies thereunder, including without limitation all rentals and other monies now or hereafter due or to become due pursuant to said lease agreements, subject to the following:

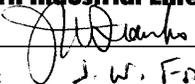
- (a) only that portion of the lease rentals with respect to the Collateral that is equal to the repayment installments due under the Agreement with respect to said Collateral shall be subject to this assignment of lease rentals; and
- (b) Secured Party shall have none of Debtor's obligations under any lease; and
- (c) all of Debtor's right, title and interest assigned with respect to any lease may be reassigned by Secured Party and any subsequent assignee, but only in conjunction with an assignment of the Agreement. It is expressly agreed that, anything herein contained to the contrary notwithstanding, Debtor's obligation under any lease may be performed by Secured Party or any subsequent assignee without releasing Debtor therefrom, and Secured Party shall not, by reason of any assignment, be obligated to perform any of Debtor's obligations under any lease or to file any claim or take any other action to collect or enforce any payment assigned thereunder.

Debtor agrees and covenants that none of said leases shall be amended, revised or altered in such a manner so as to materially affect the rights of Secured Party. If an event of default or other event which with the giving of notice or lapse of time or both would become such event of default shall have occurred and be continuing, then no lease shall be rescinded or canceled without first notifying Secured Party. Debtor represents and warrants that said leases are or will be, valid and subsisting between the parties thereto, that the Collateral covered by said leases shall have been, or shall be, delivered to and accepted by the lessee named in each lease, that it has not and shall not otherwise transfer, assign or pledge said leases or any interest therein or thereunder, and that it has no knowledge of any facts which might impair or affect the validity of said leases. In order to protect Secured Party's security interest in any lease granted, Debtor shall stamp or otherwise write in clear print on the front page of such lease, notice that the lease is subject to a security interest held by NationsBanc Leasing Corporation. Debtor shall take such action as Secured Party may from time to time reasonably request to initiate or maintain or protect the security interest in any lease granted or to be granted pursuant to this paragraph.

Debtor hereby constitutes Secured Party, its successors and assigns, Debtor's true and lawful attorney, irrevocably, with full power (in Debtor's name or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all rents and claims for money due and to become due under, or arising out of any lease to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to Secured Party or any subsequent assignee seem necessary or advisable, all without affecting Lessee's liability in any manner whatsoever.

**In Witness Whereof**, the parties hereto have caused this Rider A to be executed and delivered on the day and year first above written.

**Southeastern Industrial Enterprises, Inc.** (Debtor)

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

Printed Name: J. W. FRANKS

Title: C. E. O.

**Notarial Acknowledgement:**

State of Georgia )  
County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgment, personally appeared \_\_\_\_\_  
JW Franks to me known to be the person(s) described in an who executed the  
foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

In Witness Whereof I have hereunto set my hand and official seal this 3<sup>rd</sup> day of March, 1995  
Notary Public, DeKalb County, Georgia  
My Commission Expires February 20, 1999

(Official Seal) \_\_\_\_\_  
Carol J. Jones  
Notary Public

In and for said County and State or District of Columbia

**NationsBanc Leasing Corporation** (Secured Party)

By: \_\_\_\_\_  
Printed Name: James R. Bates  
Title: Assistant Vice President

**Notarial Acknowledgement:**

State of Georgia )  
County of DeKalb ) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgment, personally appeared \_\_\_\_\_  
James R. Bates to me known to be the person(s) described in an who executed the  
foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

In Witness Whereof I have hereunto set my hand and official seal this 20<sup>th</sup> day of March, 1995.  
Notary Public, DeKalb County, Georgia  
My Commission Expires February 20, 1999

(Official Seal) \_\_\_\_\_  
Carol J. Jones  
Notary Public

In and for said County and State or District of Columbia