

2-329A062

ALVORD AND ALVORD
ATTORNEYS AT LAW
918 SIXTEENTH STREET, N.W.
SUITE 200
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

20006-2973
(202) 393-2266
FAX (202) 393-2156

OF COUNSEL
URBAN A. LESTER

RECULATION NO. **18011** FILED 1425

NOV 24 1992 -2 55 PM

INTERSTATE COMMERCE COMMISSION

NOV 24 2 48 PM '92
MOTOR OPERATING UNIT

November 24, 1992

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

New No.

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one executed copy and one certified copy of a Security Agreement, dated October 30, 1992, 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: Huron and Eastern Railway Company
644 E. Huron Avenue
Bad Axe, Michigan 48413

Secured
Party: U.S. Concord, Inc.
40 Richards Avenue
Norwalk, Connecticut 06856

A description of the railroad equipment covered by the enclosed document is attached hereto as Schedule "001".

Also enclosed is a check in the amount of \$16.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to Robert W. Alvord, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, DC 20006.

[Handwritten signatures]

Mr. Sidney L. Strickland, Jr.
November 24, 1992
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

Security Agreement dated October 30, 1992 between Huron and Eastern Railway Company, Debtor, and U.S. Concord, Inc., Secured Party, covering certain railroad rolling stock and other equipment as set forth in Schedule "001" attached thereto.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", written in a cursive style.

Robert W. Alvord

RWA/bg
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

11/24/92

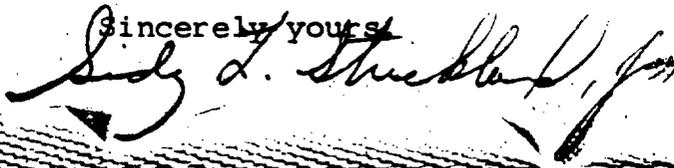
OFFICE OF THE SECRETARY

Robert W. Alvord
Alvord & Alvord
918 16th St. N.W.
Washington, D.C. 20006

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 11/24/92 at 2:55pm, and assigned recordation number(s). 18011

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

SE-30
(7/79)

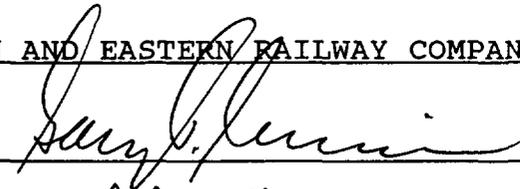
SCHEDULE "001" EQUIPMENT LISTING

- (1) ROAD NO. 100 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 101 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 102 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 103 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 105 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 104 EMD MODEL GP7 LOCOMOTIVE
- (1) 1975 TAMPER MODEL BEB17 BALLAST REGULATOR
- (1) 1980 JORDAN MODEL 925 TIE INSERTER
- (1) 1981 JORDAN MODEL 6000 TAMPER
- (1) 1974 FORD MODEL 6500 TRACTOR WITH LOADER AND BACKHOE
- (1) 1977 CASE MODEL 580 BACKHOE WITH SNOW BUCKET
- (1) 1978 INTERNATIONAL LOADSTAR 1800, HI RAIL, BOOM TRUCK
- (1) 1978 CHEVROLET HI RAIL TRUCK, CREW CAB
- (1) 1979 CHEVROLET 3/4 TON PICK-UP TRUCK
- (1) 1980 FORD HI RAIL TRUCK
- (1) 1986 FORD F350 WITH HI RAIL
- (1) 1987 CHEVROLET 3/4 TON SUBURBAN R10, SCOTTSDALE
- (1) 1988 CHEVROLET BLAZER
- (1) 1989 CHEVROLET SUBURBAN WITH HI RAIL
- (1) 1991 GMC 4X4 UTILITY VEHICLE
- (1) 1947 AMERICAN 25 TON LOCOMOTIVE CRANE
- (1) 1988 SHELBYCO 10 TON CAPACITY TRAILER
- (2) AIR COMPRESSORS
- (1) PORTABLE WELDER
- (2) TRACK DRILLS
- (1) BOLT MACHINE
- (2) RAIL SAWS
- (2) RAIL HAMMERS
- (19) MOTOROLA RADIOS
- (4) RADIO SYSTEM REPEATERS AND 2 BASE STATIONS
- (4) CELLULAR PHONES
- (1) LOT OFFICE EQUIPMENT

INCLUDING ALL PARTS, ACCESSORIES AND ATTACHMENTS.

HURON AND EASTERN RAILWAY COMPANY

(LESSEE)

BY: 

TITLE: V.P. + TREAS.

SCHEDULE "001" EQUIPMENT LISTING

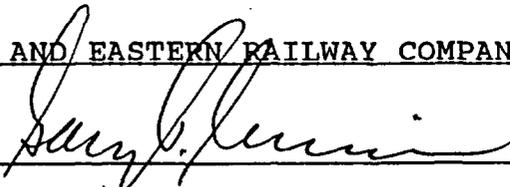
- (1) ROAD NO. 100 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 101 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 102 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 103 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 105 EMD MODEL GP9 LOCOMOTIVE
- (1) ROAD NO. 104 EMD MODEL GP7 LOCOMOTIVE
- (1) 1975 TAMPER MODEL BEB17 BALLAST REGULATOR
- (1) 1980 JORDAN MODEL 925 TIE INSERTER
- (1) 1981 JORDAN MODEL 6000 TAMPER
- (1) 1974 FORD MODEL 6500 TRACTOR WITH LOADER AND BACKHOE
- (1) 1977 CASE MODEL 580 BACKHOE WITH SNOW BUCKET
- (1) 1978 INTERNATIONAL LOADSTAR 1800, HI RAIL, BOOM TRUCK
- (1) 1978 CHEVROLET HI RAIL TRUCK, CREW CAB
- (1) 1979 CHEVROLET 3/4 TON PICK-UP TRUCK
- (1) 1980 FORD HI RAIL TRUCK
- (1) 1986 FORD F350 WITH HI RAIL
- (1) 1987 CHEVROLET 3/4 TON SUBURBAN R10, SCOTTSDALE
- (1) 1988 CHEVROLET BLAZER
- (1) 1989 CHEVROLET SUBURBAN WITH HI RAIL
- (1) 1991 GMC 4X4 UTILITY VEHICLE
- (1) 1947 AMERICAN 25 TON LOCOMOTIVE CRANE
- (1) 1988 SHELBYCO 10 TON CAPACITY TRAILER
- (2) AIR COMPRESSORS
- (1) PORTABLE WELDER
- (2) TRACK DRILLS
- (1) BOLT MACHINE
- (2) RAIL SAWS
- (2) RAIL HAMMERS
- (19) MOTOROLA RADIOS
- (4) RADIO SYSTEM REPEATERS AND 2 BASE STATIONS
- (4) CELLULAR PHONES
- (1) LOT OFFICE EQUIPMENT

INCLUDING ALL PARTS, ACCESSORIES AND ATTACHMENTS.

HURON AND EASTERN RAILWAY COMPANY

(LESSEE)

BY:



TITLE:

V.P. + TREAS.

SECURITY AGREEMENT/8011

RECORDED BY _____ FILED NO. _____

Date: October 30 19 92 Sec. Agreement # 2935

NOV 24 1992 - 2 53 PM

Between: Huron and Eastern Railway Company

644 E. Huron Avenue, Bad Axe, MI 48413

(Debtor's Address)

STATE COMMERCE COMMISSION

As Debtor (herein called "Debtor"; "Debtor" shall mean all persons, jointly and severally, who sign this Contract as Debtors.), and U.S. CONCORD, INC., a corporation organized and existing under the laws of the State of New York with a principal place of business at One Norwalk West, 40 Richards Avenue, Norwalk, Connecticut 06856, as Secured Party (herein called "Secured Party"; "Secured Party" shall include any assignee of this Contract.).

For valuable consideration and to secure an indebtedness of the Debtor to the Secured Party in the principal amount of

\$ 626,835.60 including interest (the "Loan"), and any other obligation of Debtor to Secured Party hereunder or under any other agreement now or hereafter executed by the parties hereto, the Debtor hereby grants to the Secured Party a first priority lien and security interest in the equipment listed below, together with all parts, attachments, accessions, additions and replacements thereto and proceeds thereof (the "Collateral"). The Debtor warrants that the Collateral is, or will be used, primarily for business purposes.

SEE SCHEDULE "001" EQUIPMENT LISTING ATTACHED HERETO AND MADE A PART HEREOF.

Debtor agrees to pay Secured Party, its successors and assigns, the Loan in 60 equal successive installments of

\$ 10,447.26 each, beginning December 4, 19 92 (the "Payment Commencement Date"), and continuing on the same date of

each month thereafter, until paid. Payments shall be made to Secured Party at its place of business shown above or at such other place as Secured Party may designate in writing to Debtor. All payments shall be made without notice and demand. Debtor's obligation to make any payment hereunder shall be absolute and unconditional. Debtor shall not be entitled to any reduction or setoff against such payment, nor, except as otherwise expressly provided herein, shall this Contract terminate, or the obligations of Debtor be otherwise affected by reason of any defect in, lack of fitness for use of, damage to, loss of possession or use of or destruction of all of or any of the Collateral from whatsoever cause, the prohibition of or other restriction against Debtor's use of the Collateral, or for any other cause, it being the intention of the parties hereto that the Loan and other amounts payable by Debtor hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Contract.

In the event of any failure by Debtor to pay any installment promptly when due, Secured Party may, at its election, accept payment of all amounts in arrears; and in the event that such defaulted installment is more than ten (10) days in arrears at the time of such payment, Debtor agrees to pay, in addition to other amounts due, a late charge at the rate of two percent (2%) per month of such defaulted installment, if not prohibited by law, otherwise at the highest rate lawfully payable by Debtor. Such payment shall be made as liquidated damages occasioned by the delay in making payments.

The Collateral is located at the following location:

Street Address City County State

Regardless of its affixation to such real estate, the Collateral shall at all times remain personal property. Upon any failure by Debtor to pay any installment promptly when due, or upon any other default by Debtor, Secured Party shall have the right to remove the Collateral from such real estate, whether or not affixed or attached thereto or to any building thereon, at the sole cost, risk and expense of Debtor, and the Debtor shall be obligated to arrange and permit such removal by and for the benefit of the Secured Party. In such event, Secured Party shall not be liable for any damages caused to such real estate or to any building thereon by the removal of the Collateral.

DEBTOR ACKNOWLEDGES AND AGREES THAT THE COLLATERAL IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY DEBTOR; THAT DEBTOR IS SATISFIED THAT THE COLLATERAL IS SUITABLE FOR DEBTOR'S PURPOSES; AND THAT SECURED PARTY SHALL NOT BE LIABLE IN ANY EVENT FOR SPECIFIC PERFORMANCE OF THIS CONTRACT OR FOR DAMAGES OF ANY TYPE IF, WITH OR WITHOUT CAUSE, THE MANUFACTURER OR VENDOR OR USER THEREOF FAILS TO ACCOMPLISH TIMELY DELIVERY OF THE COLLATERAL IN A CONDITION ACCEPTABLE TO DEBTOR FOR ANY REASON WHATSOEVER. SECURED PARTY SHALL HAVE NO OBLIGATION TO INSPECT, INSTALL, ERECT, TEST, ADJUST, MAINTAIN OR OTHERWISE REPAIR OR SERVICE THE COLLATERAL.

SECURED PARTY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE COLLATERAL, ITS MERCHANTABILITY, SUITABILITY, DESIGN, CAPACITY, PERFORMANCE OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL ANY DEFECT IN, OR UNFITNESS OF, ANY OF THE COLLATERAL RELIEVE DEBTOR OF THE OBLIGATION TO PAY THE LOAN OR TO MAKE ANY OTHER PAYMENTS OR PERFORM ANY OTHER OBLIGATION REQUIRED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SECURED PARTY SHALL NOT BE LIABLE FOR ANY DEFECTS, LATENT OR PATENT, IN ANY OF THE COLLATERAL OR FOR ANY INTERRUPTION IN DEBTOR'S BUSINESS OCCASIONED BY INABILITY TO USE ANY OF THE COLLATERAL FOR ANY REASON WHATSOEVER.

ADDITIONAL TERMS, COVENANTS AND CONDITIONS FORMING PART OF THE SECURITY AGREEMENT

1. Indemnification by Buyer: Debtor shall exonerate and indemnify Secured Party against, and hold it harmless from, any and all claims, actions, suits, proceedings, losses, judgments, damages and liabilities, including reasonable attorneys fees and other costs and expenses in connection therewith or incident thereto, for death or injury to any person whomsoever, and for any loss of or damage to or destruction of any property whatsoever and irrespective of the legal basis of such claim or action, including the doctrine of strict liability in tort or any similar doctrine, caused by or arising out of or arising out of or in any way connected with or resulting from or alleged to result from, any of the Collateral, including, without limitation, the general liability of the foregoing, the manufacture, delivery, possession, use, operation, storage, maintenance or return thereof, until the earlier of the date the Loan and all other amounts payable by the Debtor hereunder have been paid in full or the Collateral has been redelivered to Secured Party as provided in Paragraph 8 of this Contract (the earlier of such dates is hereinafter called the "Termination Date"). Debtor shall also exonerate and indemnify Secured Party against and hold it harmless from any and all claims, actions, suits, proceedings, losses, judgments, damages and liabilities which Secured Party may suffer by reason of any patent infringement or alleged patent infringement in connection with the ownership, use or operation of the Collateral. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this Contract.

2. Maintenance And Manufacturer's Warranties: Debtor shall maintain the Collateral in good and safe operating order, repair and condition and in accordance with the manufacturer's recommended instructions and procedures and the requirements of any applicable insurance and governmental authority, domestic or foreign, having jurisdiction thereof. Debtor, at its own cost and expense, shall pay for all fuel, service, inspection, overhaul, replacements, substitutions, materials and labor necessary or desirable for the proper use, repair, operation and maintenance of the Collateral. Debtor, at its expense, shall keep the collateral protected from the elements when not in use.

3. Fees And Taxes: Debtor agrees to pay promptly when due all registration, title and license fees, assessments, charges, fines and penalties, any and all taxes of whatsoever nature and by whomsoever payable including, but not limited to, sales, use, franchise, business, gross receipts, property (except Federal or State taxes levied on Secured Party's net income), now or hereafter imposed by any State, Federal, local, or foreign government upon any use, ownership, rental, shipment, transportation, delivery, or operation of the Collateral or upon or measured by any payments due hereunder. Debtor agrees, at Debtor's sole expense, to keep the Collateral free from all liens, claims and encumbrances including, but not limited to, any lien for storage, labor, service, materials or the like, and to procure and maintain in effect all licenses, certificates, permits and other approvals and consents required by municipal, state, federal, or foreign laws and regulations in connection with the possession, use and operation of the Collateral.

4. Risk of Loss: From and after the date hereof, unless the Collateral is in the physical possession of the Secured Party as provided in Paragraph 8 of this Contract, Debtor agrees and acknowledges that, as between Secured Party and Debtor, all risks of loss, theft, damage or destruction of the Collateral from any cause whatsoever shall be borne by Debtor.

5. Insurance: Debtor agrees that it will at all times until the Termination Date and, at its own cost and expense, keep all of the Collateral insured at not less than the full replacement value thereof against all risks of physical loss, including loss by fire, windstorm and explosion and with extended coverage and against such other risks, including theft, public liability and property damage insurance, as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Debtor. All insurance policies shall provide that no cancellation or material change thereof shall be effective without thirty (30) days prior written notice to Secured Party. All insurance policies insuring against physical loss of the Collateral shall provide that the coverage shall not be invalidated against Secured Party or any assignee of Secured Party because of any violation of any condition or warranty contained in any policy or application thereof by Debtor. All such insurance shall cover both the interest of Secured Party and of Debtor in the Collateral or, as the case may be, shall protect Secured Party and Debtor in respect of risks arising out of the condition, maintenance, use or operation of the Collateral and shall provide that losses, if any, in respect of the Collateral shall be payable to the Debtor and Secured Party (and, in the event the Secured Party shall notify Debtor that it has assigned this Contract, then under a loss payable clause satisfactory to Secured Party and the Secured Party's assignee) as their respective interests may appear. Debtor hereby appoints Secured Party as attorney-in-fact to endorse any draft, make any claim under the insurance required hereunder, execute any proof of claim and to cancel such insurance upon any default of Debtor. Debtor shall furnish Secured Party with copies, certificates or other satisfactory evidence of the maintenance of the insurance required hereunder.

The proceeds of any insurance received by Secured Party on account of or for any loss casualty shall be released to the Debtor upon a written application signed by an authorized agent of Debtor accompanied by an appropriate invoice marked "paid" to reimburse Debtor for the payment of the cost of repairing, restoring or replacing the Collateral which has been lost, stolen, damaged or destroyed, unless Debtor is at the time in default in the payment of principal or any other liability or obligation hereunder of Debtor to Secured Party, in which event such proceeds shall be applied against such other unpaid liability. In case of failure of Debtor to procure or maintain insurance as provided above, Secured Party may obtain such insurance, in which event the cost thereof shall be payable by Debtor to Secured Party forthwith.

6. Use Of The Equipment:

(a) The operation and use of the Collateral shall be solely at the risk of Debtor and not of Secured Party. Debtor warrants that the Collateral will at all times be used and operated in compliance with the conditions of any applicable insurance, by competent and trained operators in accordance with manufacturer's instructions and under and in compliance with the laws of the jurisdiction in which the Collateral may be operated, and in compliance with all lawful acts, rules, regulations and orders of any judicial, legislative or regulatory body having power to regulate or supervise the use of such property; provided, however, that Debtor may, in good faith, contest in any reasonable manner the application of any of such rules, regulations or orders to the extent that such contest does not create any lien or encumbrance against the Collateral, or result in the forfeiture or sale of any of the Collateral.

(b) Debtor shall not alter, modify or make additions or improvements to the Collateral without Secured Party's prior written consent. Unless otherwise agreed in writing, any such alterations, modifications, additions or improvements shall forthwith upon the making thereof become a part of the Collateral and shall be subject to the terms of this Contract.

7. Ownership: Debtor will protect and defend, at its own cost and expense, the title to the Collateral from and against all claims, liens and legal processes of creditors of Debtor and keep the Collateral free and clear of all such claims, liens and processes.

Debtor agrees that without Secured Party's prior written consent, Debtor will not assign or transfer its rights under this Contract, or remove or suffer the Collateral or any part thereof to be removed from the premises specified in this Contract, or permit the Collateral to be used by anyone other than Debtor or Debtor's employees. Debtor hereby represents and warrants to Secured Party that it has good title to the Collateral and that no creditor (including federal, state or local government) has any claim, lien or any right to the Collateral and Debtor has agreed with Secured Party that Debtor will keep Debtor's interest in the Collateral and each unit of the Collateral including accessories and attachments free and clear of any and all liens, charges and encumbrances which may be levied against or imposed upon it and, without limiting the foregoing, Debtor covenants and agrees that it will keep each unit of the Collateral free and clear of all liens, rights of restraint, charges, encumbrances or claims of the owner or owners of any interest on or in the real estate in which such unit is installed and any purchaser or present or future creditors obtaining a lien on such real estate, and will, upon the request of Secured Party, obtain and deliver concurrently with the execution of this Contract a waiver of any of the foregoing as to the Collateral covered by this Contract in recordable form supplied by Secured Party.

Debtor will permit Secured Party from time to time to inspect the Collateral and at Secured Party's request will securely affix conspicuous tags or plates thereon containing a notation that the same is subject to a security interest in favor of Secured Party or the assignee or mortgagee of Secured Party. Debtor also agrees from time to time to execute and file any financing statements, security agreements, or similar instruments, which, in Secured Party's judgment, are necessary to protect Secured Party or its assignee or mortgagee and to execute and deliver any document which such assignee or mortgagee may require to reflect its interest in the Collateral. Debtor hereby authorizes Secured Party and any assignee of Secured Party to file one or more financing statements, amendments and continuation statements in such jurisdiction as Secured Party or assignee may deem appropriate without the signature of Debtor. Debtor also agrees to execute and deliver such amendments and continuation statements as Secured Party may request.

Secured Party shall have the right from time to time during reasonable business hours to enter upon Debtor's premises or elsewhere, and Debtor has the duty to permit such entry by the Secured Party, for the purpose of confirming the existence, condition and proper maintenance of the Collateral and, during any period of storage, Secured Party shall also have the right to demonstrate and show the Collateral to others.

8. Default: The occurrence of any one of the following shall constitute an Event of Default hereunder:

(a) Debtor fails to pay any installment of the Loan or other amount due hereunder on or before the fifth day following the date when the same becomes due and payable.

(b) Debtor attempts to remove, sell, transfer, encumber, or part with possession of the Collateral or any items thereof.

(c) Debtor fails to maintain in force the required insurance on the Collateral in compliance herewith or fails to provide loss payable protection to Secured Party in form satisfactory to Secured Party.

(d) If any representation or warranty made by Debtor herein or in any statement given to Secured Party shall be materially untrue.

(e) Debtor shall fail to observe or perform any of the other obligations required to be observed or performed by Debtor hereunder, or other obligation or indebtedness of Debtor to Secured Party otherwise owing or due by Debtor to Secured Party in any other agreement now or hereafter executed between the parties hereto and such failure shall continue uncured for ten (10) days after written notice thereof to Debtor by Secured Party.

(f) Debtor ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to or acquiesces in the appointment of a trustee, custodian, receiver or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation, or an order for relief is entered under bankruptcy code against Debtor.

(g) Within thirty (30) days after the commencement of any proceeding against Debtor seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within thirty (30) days after the appointment without Debtor's consent or acquiescence of any trustee, custodian, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated.

Upon the occurrence of any Event of Default, Secured Party may, at its option, do any or all of the following: (i) by notice to Debtor, terminate this Contract; (ii) whether or not this Contract is so terminated, take possession of any or all of the Collateral listed herein, wherever situated, and for such purpose, enter upon any premises without liability for so doing or Secured Party may cause Debtor, and Debtor hereby agrees, to return the Collateral to Secured Party; (iii) recover from Debtor, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to all Loan installments and other sums due hereunder to the date of default plus the present value of all Loan installments remaining to be paid by Debtor hereunder discounted at the rate of nine percent (9%) per annum, which payment shall become immediately due and payable; (iv) sell, dispose of, hold, use or lease the Collateral as Secured Party, in its sole discretion, may determine (and Secured Party shall not be obligated to give preference to the sale, lease or other disposition of the Collateral over the sale, lease or other disposition of similar equipment owned or leased by Secured Party).

In the Event that Debtor shall have paid to Secured Party the liquidated damages referred to in (iii) above, Secured Party hereby agrees to pay to Debtor, promptly after receipt thereof, all rentals or proceeds received from the letting or sale of the Collateral (after deduction of all expenses incurred by Secured Party), said amount never to exceed the amount of the liquidated damages paid by Debtor. Debtor shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by Secured Party on account of such default, including, but not limited to, all court costs and reasonable attorney fees. Debtor hereby agrees that, in any event, it shall remain liable for any deficiency after any sale, lease or other disposition by Secured Party. The rights afforded Secured Party hereunder shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies provided by law or in equity. Secured Party's exercise of one or more remedies hereunder shall not preclude the exercise of any other remedy available to Secured Party.

Assignment: Secured Party may assign this Contract, in whole or in part, without notice to Debtor; Secured Party's assignee may reassign this Contract with notice to Debtor, and Debtor agrees to execute and deliver such document or documents as such assignee may reasonably request in connection with assignment. Each such assignee shall have all the rights but none of the obligations of Secured Party under this Contract, and Debtor shall, upon receipt

of proper notice thereof, recognize each such assignment and shall accept and comply with the directions or demands given in writing by any such assignee. Debtor shall not assert against the assignee any defense, counterclaim or setoff that Debtor may have against Secured Party. However, nothing herein shall relieve Secured Party from its obligations to Debtor hereunder. This Contract may not be amended without prior written consent of any assignee. Upon any assignment of this Contract, Secured Party or its assignee may record any instruments necessary to carry out the assignment.

10. **No Agency:** No person except a duly authorized officer of Secured Party shall have any power to modify, amend or waive any of the provisions hereunder, and all sums to be paid hereunder shall be paid only in the name of and to Secured Party or to its assignee, and no agent, other than an officer of Secured Party or its assignee, shall have any authority to receive payment of any amounts due hereunder. Neither the manufacturer or other vendor of manufacturer's equipment nor any salesman or agent thereof is an agent of Secured Party and no such person is authorized to waive, alter or amend any term or condition hereof or to make any representation on behalf of Secured Party.

11. **Financial Statements:** If so required by Secured Party, Debtor agrees to provide Secured Party as soon as available and in any event within ninety (90) days after the end of each fiscal year of Debtor with a copy of its statement of income and surplus for each year and its balance sheet as at the end of such year, all in reasonable detail and certified as being true and correct by an independent certified public accountant, without material qualifications and in form consistent with statements of previous years.

12. **General Provisions:** Any obligation of Secured Party shall be excused to the extent it is delayed or hindered or prevented from complying therewith because of any matter beyond its control. Except as otherwise expressly set forth herein, all covenants of Debtor herein shall survive the termination of this Contract. Debtor hereby waives the right of a jury trial in any action or proceeding brought in any court by either party or assigns arising out of the subject matter of this Contract, the Collateral, or any note or other obligation secured thereby. Notices hereunder shall be given in writing and mailed to the other party at the address specified for each herein. Notices cannot be waived except by the written consent of Secured Party. Forbearance or indulgence by Secured Party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Debtor to which the same may apply, and until complete performance by Debtor of said covenant or condition, Secured Party shall be entitled to invoke any remedy available to Secured Party under this Contract or by law or in equity despite said forbearance or indulgence. The margin headings are for convenience and are not a part of this Contract. Secured Party shall have the right to correct patent errors herein, or in any other document given in connection herewith. This Contract shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, and shall be subject to modification only by agreement in writing between the parties hereto. This Contract embodies the entire agreement between Secured Party and Debtor with respect to the subject matter hereof, and the loan evidenced and secured hereby is not prepayable without the prior written consent of Secured Party: ALL ORAL NEGOTIATIONS ARE MERGED HEREIN. THERE ARE NO ORAL COVENANTS OR AGREEMENTS MADE BY EITHER PARTY HERETO EXCEPT AS REDUCED TO WRITING HEREIN. THIS CONTRACT MAY NOT BE TERMINATED, MODIFIED OR AMENDED. NOR SHALL ANY WAIVER OR ANY PROVISION HEREIN BE DEEMED TO HAVE OCCURRED, REGARDLESS OF THE ACTION OR NON-ACTION OF SECURED PARTY IN CONNECTION THEREWITH, EXCEPT UPON THE WRITTEN AGREEMENT OF THE PARTIES HERETO. THIS CONTRACT SHALL NOT BE BINDING UPON SECURED PARTY UNLESS EXECUTED ON BEHALF OF SECURED PARTY AT ITS NORWALK, CONNECTICUT OFFICE.

13. **Severability:** In the event any section or paragraph is invalidated for any reason whatsoever, the parties agree that this Contract shall remain binding between them and in full force and effect except for such invalidated section or paragraph.

14. **Authority:** Debtor represents to Secured Party that this Contract has been fully executed by an authorized signatory of Debtor and constitutes a legal, valid and binding obligation of Debtor enforceable in accordance with its terms; performance by Debtor hereunder does not require the consent, approval or authorization of any governmental authority, nor will it constitute a default under any agreement to which Debtor is a party. If Debtor is a corporation, the execution and performance of this Contract has been authorized by its Board of Directors.

15. **Jurisdiction:** This Contract shall be governed by and construed in accordance with the laws of the State of New York. The parties hereto hereby agree that actions arising out of this Contract may be litigated under the laws of, and submits to the jurisdiction of the courts of the State of New York, and that service of process by certified mail, return receipt requested, will be sufficient to confer personal jurisdiction over the parties hereto.

Debtor acknowledges receipt of a completely filled-in copy of this Contract.

IN WITNESS WHEREOF, Debtor has caused this Contract or has caused these presents to be executed and delivered by its proper corporate officer or officers in duplicate as of the date first above written.

DEBTOR: Huron and Eastern Railway Company
Name of Debtor

Accepted: U.S. CONCORD, INC.

By: *Gary J. Quinn*

By: *[Signature]*

Title: VICE PRESIDENT & TREAS.

Title: U.S.