



MCBRIDE BAKER & COLES

A Law Partnership Including Professional Corporations

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Lloyd M. McBride
1934-1983
Edward H. Baker, Jr.
1935-1970

February 5, 1996

RECORDATION UNIT 19927

FEB 11 1996 - 10 19 AM

INTERSTATE COMMERCE COMMISSION

FEB 12 10 03 AM '96

ATTN: Recordation Unit
Interstate Commerce Commission
12 & Constitution, N.W., Rm. 2303
Washington D.C. 20423

Re: Excel Railcar Corporation
Harris Bank Naperville
Assignment and Security Agreements

RECORDATION UNIT 19923

FEB 11 1996 - 10 19 AM

INTERSTATE COMMERCE COMMISSION

Dear Sir or Madam:

Enclosed are the following documents submitted for recordings:

1. Original and one notarized copy of the Assignment and Security Agreement between Excel Railcar Corporation and Harris Bank Naperville, dated November 11, 1994.
2. Check for \$21.00 payable to the "Interstate Commerce Commission" in payment of the recordation fee.
3. Original and one notarized copy of the Assignment and Security Agreement between Excel Railcar Corporation and Harris Bank Naperville, dated July 14, 1995.
4. Check for \$21.00 payable to the "Interstate Commerce Commission" in payment of the recordation fee.

Please return a stamped acknowledgment copy of both Agreements to us in the return envelope provided.

19927
FEB 11 1996 11:00 AM
SECURITIES AND EXCHANGE COMMISSION

ASSIGNMENT AND SECURITY AGREEMENT

This Assignment and Security Agreement is entered into as of November 11, 1994 between Excel Railcar Corporation, an Illinois corporation (the "Debtor") and Harris Bank Naperville (the "Bank").

RECITALS

The Bank and the Debtor have entered into a Credit Agreement (the "Loan Agreement") of even date herewith, pursuant to which Debtor will borrow amounts further evidenced by a Revolving Note in the principal amount of \$200,000 and a Term Note in the principal amount of \$332,419.85 (collectively the "Notes"), which loan is secured by all the assets of Debtor, including but not limited to the assets collaterally assigned hereunder.

The Debtor leases the covered hopper railway cars set forth on Exhibit A from General Electric Railcar Leasing Services Corporation, and intends to lease railway cars from Trinity Industries Leasing Company, pursuant to the lease agreements described on Exhibit A hereto, and subleases these railway cars to sublessees pursuant to the sublease agreements described on Exhibit B. The Debtor also owns the railcars listed on Exhibit C hereto.

The Bank's consummation of the transactions under the Loan Agreement is conditioned upon the Debtor's assigning to the Bank, as security for the Debtor's obligations to the Bank, all of the Debtor's right, title and interest in and to the Owned Cars, Leases and Subleases (as defined herein) and all proceeds deriving therefrom.

It is mutually agreed as follows:

1. **Definitions.** The following terms as used herein shall have the following meanings:

"Existing Leases": the railway car leases between Debtor and GE and Debtor and Trinity described on Exhibit A hereto, and all present or future amendments thereto and substitutions therefor.

"GE": General Electric Railcar Leasing Services Corporation.

"Leased Cars": all railway cars now or hereafter leased by Debtor as Lessee, including but not limited to those leased under the Existing Leases as described on Exhibit A hereto.

"Leases": all leases of Leased Cars (with Debtor as lessee), now existing or hereafter entered into, including but not limited to the Existing Leases.

"Owned Cars": all railway cars now or hereafter owned by Debtor, including but not limited to those set forth on Exhibit C hereto.

"Subleases": all leases of Owned Cars and subleases of Leased Cars, now existing or hereafter entered into, including but not limited to the subleases set forth on Exhibit B hereto, and all present and future amendments thereto and substitutions therefor.

"Sublessees": all persons or entities who now or hereafter lease Owned Cars from Debtor or sublease Leased Cars from Debtor, including but not limited to those sublessees set forth on Exhibit B hereto.

"Trinity": Trinity Industries Leasing Company.

2. Assignment and Grant of Security Interest. The Debtor, in order to secure the prompt performance of its obligations to the Bank under the Loan Agreement, the Notes, and all other obligations and liabilities of Debtor to Bank, whether now existing or hereafter arising, does hereby assign and transfer to and grant a security interest in favor of the Bank in the Owned Cars, the Leases and the Subleases, and all proceeds thereof and earnings; with respect thereto from whatever source, including, without limitation, all rentals, insurance and insurance proceeds, car hire payments, indemnity payments, termination payments, and all other monies due or to become due thereunder, and all rights of the Debtor to execute any election or option or to give any notice, consent, waiver or approval under or in respect of the Leases or Subleases, as well as all rights, powers or remedies on the part of the Debtor whether arising under the Leases, the Subleases or by statute, at law, in equity or otherwise, arising out of any default under the Leases or Subleases.

3. No Assumption of Debtor's Obligations. It is expressly agreed notwithstanding anything herein to the contrary, that the Debtor shall remain liable under the Leases and Subleases to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions of the Leases and Subleases, and Debtor does hereby covenant with Bank that it will keep and perform all of the obligations to be performed on the part of the Debtor under the Leases and Subleases and will save the Bank harmless from any failure to do so. The Bank shall have no obligation or liability under the Leases or Subleases by reason of or arising out of this Assignment and Security Agreement, nor shall the Bank be required or obligated in any manner, to perform or fulfill any obligation of the Debtor under or pursuant to the Leases or Subleases, to make any payment received by it, or to present or file payment of any amounts which may have been assigned to it or to which it may be entitled at any time. However, Bank may at its election, following an foreclosure of its security interest in any Leases

or Subleases and upon succeeding to the interest of the Debtor thereunder, assume the obligations of the lessee under such Leases or of the lessor under such Subleases that arise after the date of such succession. If Bank succeeds to the interest of Debtor under any Sublease, Bank will recognize the applicable Sublessee as the lessee of the Cars and will honor such Sublease so long as such Sublessee remains in compliance with the terms of such Sublease.

4. Bank May Act For Debtor.

a. The Debtor does hereby constitute the Bank the true and lawful attorney of the Debtor, irrevocably, with full power, upon the occurrence of any event of default under the Loan Agreement or Notes or a default hereunder, (in the name of the Debtor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due from the Sublessees under or arising out of the Subleases, or any document contemplated thereby, to endorse any checks or other instruments or orders in connection therewith and to file claims or take any actions or to institute any proceedings which the Bank may deem to be necessary or advisable in the premises. Debtor authorizes and empowers the Bank to collect and receive directly from the Sublessees all monies now due or to become due under the Subleases. If any assigned monies are received by the Debtor, the same will be received by the Debtor as trustee for the Bank and will be immediately delivered in kind to the Bank without commingling. In addition, the Bank shall have all of the rights and remedies afforded a secured party under the Uniform Commercial Code. Bank shall in no way be deemed to be under any duty to act for or on behalf of Debtor under the powers herein provided.

b. Notwithstanding the foregoing, so long as there is no default under the Loan Agreement or Notes, Debtor shall continue to collect all monies due from the Sublessees.

5. Representations, Warranties and Covenants of the Debtor. The Debtor hereby warrants and represents that, except as set forth in Exhibit D, it has not assigned, pledged, or otherwise encumbered, and hereby covenants that it will not assign, pledge, or otherwise encumber so long as this Assignment and Security Agreement shall remain in effect, any of its right, title or interest hereby assigned to anyone other than the Bank, and that it has full right and authority to enter into and perform this Assignment and Security Agreement in accordance with its terms. The Debtor will not, without the prior written consent of the Bank, agree to, consent to or permit any assignment with respect to any Owned Cars, Leases or Subleases. Debtor covenants to reimburse the Bank upon demand for any expense, including legal fees reasonably incurred by the Bank in the exercise of the powers conferred upon Bank hereunder, together with interest thereon at the rate of 15% per annum, or the highest lawful rate, whichever is the lesser, from the date upon which such expenses are incurred. Following the execution of this Agreement, as Debtor acquires any right, title and interest in any Owned Cars, Leased Cars,

Leases or Subleases, it shall promptly inform the Bank and provide information to the Bank sufficient to update Schedules A, B, or C as necessary.

6. Notice of Assignment. Debtor shall promptly give each Sublessee written notice of this Assignment and Security Agreement and provide Bank with evidence that it has given such notice to each Sublessee.

Debtor further agrees that it shall at the time of execution of each Sublease or any rider to any existing or future Sublease entered into after the date hereof, deliver such Sublessee a letter which shall provide the Sublessee with notice that such lease agreement is made subject to an assignment made by Excel Railcar Corporation to Harris Bank Naperville. Such Letter shall be acknowledged by the Sublessee.

Debtor will deliver to Bank the one copy of each Sublease (including each rider thereto) marked "Original", together with an acknowledged copy of the letter described in the preceding paragraphs, and will cooperate with Bank in filing (1) a counterpart of this Assignment and Security Agreement with the Interstate Commerce Commission in accordance with the Interstate Commerce Act and (2) all Uniform Commercial Code financing statements and continuations thereof, and take such other actions, all at its own expense, as may be required from time to time in order to perfect and continue the perfection of this Assignment and Security Agreement.

7. Default; Remedies. If an event of default has occurred under the Loan Agreement or if Debtor has defaulted under the terms of this Assignment and Security Agreement, Bank shall have the following remedies in addition to any other remedies it may have under the Agreement, the Uniform Commercial Code, in state law or in equity;

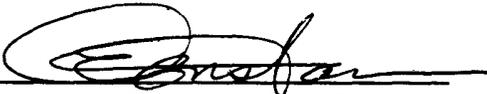
- a. to direct payment to Bank by all parties owing money to Debtor with respect to any Sublease or the Cars, including, without limitation, the Sublessees, and any railroad owing car hire payments;
- b. to give notice to each Sublessee that Bank is replacing Debtor as lessor under the Sublease and to continue to hold Debtor responsible for its obligations as lessor under the Sublease accruing prior to the date of such replacement;
- c. to exercise all rights under the Loan and Security Agreement.

No remedies provided herein or under the Agreement shall be exclusive of any other remedy available.

8. Miscellaneous. This Assignment and Security Agreement may be executed by the parties hereto in separate counterparts. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such a provision in any other jurisdiction. To the extent permitted by applicable law, the Debtor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No provision hereof may be changed, waived, or otherwise modified unless done in writing signed by the party against which the enforcement of the change, waiver or other modification is sought. This Assignment and Security Agreement shall in all respects be governed by and construed in accordance with the laws of the state of Illinois.

In WITNESS WHEREOF, the parties have executed the foregoing agreement as of the day and year first above written.

EXCEL RAILCAR CORPORATION

By 
Eugene R. Constance, President

Address: 112 Water Street
Naperville, Illinois 60540

HARRIS BANK NAPERVILLE

By 
Title: VICE PRESIDENT

Address: 503 North Washington Street
Naperville, Illinois 60566

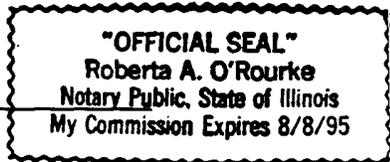
STATE OF ILLINOIS)
)
) SS
COUNTY OF DUPAGE)

On this 11th day of November, before me personally appeared Eugene R. Constance says that he is President of Excel Railcar Corporation, and that the foregoing Assignment and Security Agreement was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



NOTARY PUBLIC

My Commission expires: 8/8/95



STATE OF ILLINOIS)
)
) SS.
COUNTY OF DUPAGE)

On the 11th day of November, before me personally appeared Craig S. Anderson me personally known, who being by me duly sworn, says that he is Vice President of Harris Bank Naperville, and that the foregoing Assignment and Security Agreement was signed on behalf of said corporation by authority of its board of directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



NOTARY PUBLIC

My Commission expires: 8/8/95

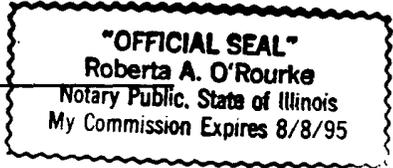


EXHIBIT A

A. Leases

1. Master Railcar Lease between General Electric Railcar Services Corp. and Excel Railcar Corporation dated January 31, 1991 ("GERSCO Car Leasing Agreement")
2. Master Railcar Lease between Trinity Industries Leasing Company and Excel Railcar Corporation dated August 25, 1994.

B. Leased Cars

Cars identified on (i) riders made to the GERSCO Car Leasing Agreement through the date hereof, and (ii) any riders made a part of the GERSCO Car Leasing Agreement after the date of this Agreement by the agreement of the parties from time to time.

EXHIBIT B

Subleases

1. Master Railcar Lease between Excel Railcar Corporation and Vitro Corporativo S.A. de C.V. effective as of January 15, 1994 (together with all riders made a part of such lease agreement).
2. Master Railcar Lease between Excel Railcar Corporation and Cementos Apasco S.A. de C.V. effective as of March 19, 1992 (together with all riders made a part of such lease agreement)
3. Master Railcar Lease between Excel Railcar Corporation and Cementos Mexicanos S.A. de C.V. effective as of December 1, 1992 (together with all riders made a part of such lease agreement).
4. Master Railcar Lease between Excel Railcar Corporation and Cementos Apasco S.A. de C.V. effective July 15, 1994 (together with all riders made a part of such lease agreement).
5. Master Railcar Lease between Excel Railcar Corporation and Cementos Mexicanos S.A. de C.V. effective as of October 20, 1994 (together with all riders made a part of such lease agreement).

EXHIBIT C

Owned Cars

See attached rider made a part hereof.

EXCEL RAILCAR CORPORATION

Railcars owned by EXCEL

I ERCX 4000 and 4001, two railcars

Equipped box cars, 60 foot insulated suction draft gear under frame (shock control) plug door opening with movable bulk heads (load dividers).

AAR settlement value \$20,000.00 per railcar

II ANAX 4000 through 4007, eight (8) railcars.

Covered Hopper Railcars 90 ton, 3819 cubic foot capacity, year built 1961 year rebuilt 1985.

AAR Settlement value \$32,000.00 per railcar

Present value, ten (10) railcars = \$296,000.00

Eugene R. Constance
November 9, 1994



EXCEL

EXHIBIT D

As of the date of this Agreement, the Debtor has an outstanding general lien against its assets in favor of First Bank of Downers Grove (formerly Citizens Bank of Downers Grove). The obligation underlying this lien is to be paid out of proceeds of the loan evidenced by the Term Note and will be released following such payoff. The Debtor also has outstanding liens in favor of G.E. and Trinity in connection with Debtor's obligations under the Existing Leases.

2

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Interstate Commerce Commission

February 5, 1996

Page 2

Please do not hesitate to contact us if you have any questions or comments concerning this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Maureen A. Drews".

Maureen A. Drews

MAD/md

Enclosures

cc: Elizabeth S. Perdue

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

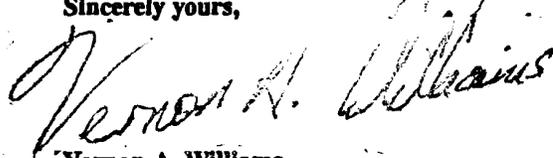
2/12/96

Maureen A. Drews
McBride Baker & Coles
500 West Madison Street, 40th Floor
Chicago, Illinois 60661-2511

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/12/96 at 10:10AM, and assigned recordation number(s) 19927 and 19928.

Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 42.00 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 typed 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 your document.

Signature

