

# MASLON EDELMAN BORMAN & BRAND

MARVIN BORMAN  
CHARLES QUAINANCE, JR.  
NEIL I. SELL  
ROBERT A. ENGELKE  
MARTIN G. WEINSTEIN  
WILLIAM E. MULLIN  
WILLIAM Z. PENTELOVITCH  
JOSEPH ALEXANDER  
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COOPER S. ASHLEY  
RONALD A. EISENBERG  
MARY R. VASALY  
EDWIN CHANIN  
CLARK T. WHITMORE

3300 NORWEST CENTER  
MINNEAPOLIS, MINNESOTA 55402-4140

(612) 672-8200  
FAX (612) 672-8397

WAYNE S. MOSKOWITZ  
MALLORY K. MULLINS  
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RUSSELL F. LEDERMAN  
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JAMES F. HANNEMAN  
JEANMARIE T. SALES  
RICHARD A. SWARTZ  
CHRISTOPHER D. ANDERSON

HYMAN EDELMAN  
RETIRED

SAMUEL H. MASLON  
1901-1988

January 19, 1993

3-032A007

The Secretary  
Interstate Commerce Commission  
Washington D.C. 20423

RECORDATION NO. 18110 FILED 1425

FEB 1 1993 12:05 PM

Re: Signal Bank, Inc. - Secured Party  
Minnesota Zephyr Limited - Debtor  
Our File No. 92-1212

INTERSTATE COMMERCE COMMISSION

Dear Secretary:

I have enclosed an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a security agreement, a primary document, dated November 13, 1992.

The names and addresses of the parties to the document are as follows:

Debtor: Minnesota Zephyr Limited  
601 North Main  
Stillwater, Minnesota 55082

Secured Party: Signal Bank, Inc.  
1270 Yankee Doodle Road  
Eagan, Minnesota 55121

The following equipment is covered by the Security Agreement:

1. Pullman 1949 Coach Car a/k/a the "Northern Winds Car," SN 5275.
2. Pullman 1949 Coach Car a/k/a the "Stillwater Car," SN 5257.
3. Pullman 1949 Coach Car a/k/a the "Lakewinds Car," SN 5262.
4. 1949 Dome Car a/k/a the "St. Croix Car," SN 2210.

1993 6/4 R

January 19, 1993

Page 2

5. 1938 Dome Lounge Car ex-Amtrak a/k/a the "Grand Dome Car," SN 1289.
6. 1976 Ex-Maintenance of Way Baggage Car, SN MZPX 1087.
7. Model FP-7 16-567BC, 1950-1951, 1,500 HP EMD Diesel-Electric Locomotive, SN 787.
8. Model FP-9, 1950-1951 EMD Diesel-Electric Locomotive, SN 788.
9. All other railroad rolling stock and related railway equipment.

A fee of \$16 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

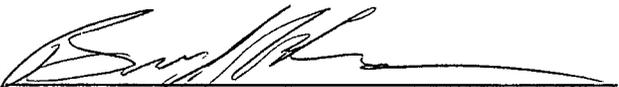
Maslon Edelman Borman & Brand  
3300 Norwest Center  
Minneapolis, Minnesota 55402-4140  
Attention: Brian J. Klein, Esq.

A short summary of the document to appear in the index is as follows:

Security Agreement dated November 13, 1992, by and between Minnesota Zephyr Limited, as Debtor, and Signal Bank, Inc., as Secured Party, covering two locomotives, six railway cars, and any and all other railroad rolling stock and related railway equipment owned by Debtor.

Very truly yours,

MASLON EDELMAN BORMAN & BRAND

BY:   
Brian J. Klein  
Attorneys for Signal Bank, Inc.

BJK/slf

cc: Mr. James Louwagie (w/encl.)  
Mr. David Paradeau (w/encl.)  
Mr. Anthony Gleekel, Esq. (w/encl.)

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SAMUEL H. MASLON  
1901-1988

January 26, 1993

3-032A007

Interstate Commerce Commission  
12th and Constitution Avenue N.W.  
Washington D.C. 20423

Attention: Mildred Lee  
Room 2303

Re: Signal Bank, Inc. - Secured Party  
Minnesota Zephyr Limited - Debtor  
Our File No. 92-1212

Dear Mrs. Lee:

Pursuant to our telephone conversation, enclosed please find our check in the amount of \$16.00 representing the filing fee in connection with the filing of a security agreement for the above-captioned matter. As an aide, I have enclosed a copy of our previous letter to you. I appreciate your telephone call and apologize for any inconvenience this may have cause.

Very truly yours,

  
Brian J. Klein

BJK/slf  
Enclosure

FEB 1 12 59 PM '93  
NOTOR OPERATING UNIT

# MASLON EDELMAN BORMAN & BRAND

MARVIN BORMAN  
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Interstate Commerce Commission  
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January 26, 1993  
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9. All other railroad rolling stock and related railway equipment.

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3300 Norwest Center  
Minneapolis, Minnesota 55402-4140  
Attention: Brian J. Klein, Esq.

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MASLON EDELMAN BORMAN & BRAND

BY:   
Brian J. Klein  
Attorneys for Signal Bank, Inc.

BJK/slf

cc: Mr. James Louwagie (w/encl.)  
Mr. David Paradeau (w/encl.)  
Mr. Anthony Gleekel, Esq. (w/encl.)

Interstate Commerce Commission  
Washington, D.C. 20423

2/1/93

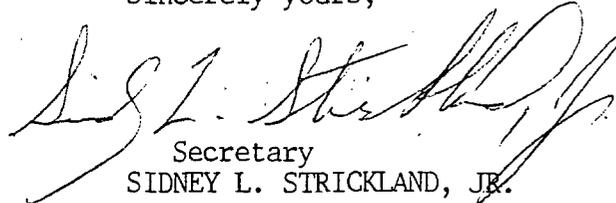
OFFICE OF THE SECRETARY

Brian J. Klein  
Maslon Edelman, Borman & Brand  
3300 Norwest Center  
Minneapolis, Minnesota 55402-4140

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 **2/1/93** at **1:05pm**, and assigned  
recordation number(s). **18110**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

①  
2/1/93

FEB 1 1993 9:05 PM

**SECURITY AGREEMENT  
(All Personal Property) INTERSTATE COMMERCE COMMISSION**

THIS SECURITY AGREEMENT, is made as of this 13th day of November, 1992, by MINNESOTA ZEPHYR LIMITED, a Minnesota corporation (the "Debtor") in favor of SIGNAL BANK, INC., a Minnesota corporation with its banking house located in Eagan, Minnesota ("Secured Party").

In order to secure the payment of that certain \$812,000 Real Estate Construction Note of even date herewith executed by the Debtor and payable to the order of Secured Party (the "Note"), and each and every other debt, liability and obligation of every type and description which Debtor may now or at any time hereafter owe to Secured Party (whether such debt, liability or obligation now exists or is hereafter created or incurred, whether it arises under or is evidenced by this Agreement or any other present or future instrument or agreement or by operation of law, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or sole, joint, several or, joint and several) (said Note and all such other debts, liabilities and obligations of Debtor to Secured Party herein collectively referred to as the "Secured Obligations"), Debtor hereby agrees as follows:

1. SECURITY INTEREST AND COLLATERAL. In order to secure the payment and performance of the Secured Obligations, Debtor hereby grants to Secured Party a security interest (herein called the "Security Interest") in and to the following property (hereinafter collectively referred to as the "Collateral"):

any and all goods, machinery, equipment, rolling railway stock and related equipment, including, without limitation, that certain eight (8) unit train commonly known as the "Minnesota Zephyr", furniture, improvements, inventory, accounts, vehicles, prepaid insurance, supplies, patents, patent rights, copyrights, trademarks, tradenames, including without limitation the name "Minnesota Zephyr", royalty rights, contract rights, instruments, chattel paper and general intangibles, now owned or hereafter acquired by Debtor;

together with all substitutions and replacements for and products and proceeds of any of the foregoing property and, in the case of all tangible Collateral, together with (i) all accessories, attachments, parts, equipment, accessions and repairs now or hereafter attached or affixed to or, used in connection with any such goods, and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods.

2. REPRESENTATIONS, WARRANTIES AND AGREEMENTS. Debtor hereby represents and warrants to, and covenants and agrees with, Secured Party as follows:

- (a) The Collateral will be used primarily for business purposes. The Collateral which constitutes certificated equipment and vehicles is described on Exhibit A attached hereto.
- (b) If any part or all of the tangible Collateral will become so related to particular real estate as to become a fixture, the Debtor will promptly advise the Secured Party as to real estate concerned and the record owner thereof and execute and deliver any and all instruments necessary to perfect the Security Interest therein and to assure that such Security Interest will be prior to the interest therein of the owner of the real estate.
- (c) Debtor's principal place of business and chief executive office is and will continue to be located in Stillwater, Minnesota. Debtor's records concerning its accounts are kept at such address. During the preceding one (1) year Debtor has not changed its name or operated or conducted business under any trade name or "d/b/a" which is different from its corporate name. Debtor shall promptly notify Secured Party of any change in such name or if it operates or conducts business under any trade name or "d/b/a" which is different from such name.
- (d) Debtor has (or will have at the time Debtor acquires rights in Collateral hereafter acquired or arising) and will maintain absolute title to each item of Collateral free and clear of all security interests, liens and encumbrances, except the Security Interest and such other security interests as are permitted by the Secured Party in writing (the Security Interest and such other security interests permitted by the Lender are hereinafter collectively referred to as the "Permitted Interests"), and will defend the Collateral against all claims or demands of all persons other than Secured Party and those holding Permitted Interests. Debtor will not sell or otherwise dispose of the Collateral or any interest therein, except that, until an Event of Default (as defined in the Note) occurs, Debtor may sell any inventory constituting Collateral to buyers in the ordinary course of its business.
- (e) The tangible Collateral is presently located in the state of Minnesota. Debtor will not permit any

Collateral to be located in any state (and, if a county filing is required, in any county) in which a financing statement covering such Collateral is required to be, but has not in fact been, filed.

- (f) All rights to payment and all instruments, documents, chattel papers and other agreements constituting or evidencing Collateral are (or will be when arising or issued) the valid, genuine and legally enforceable obligation, subject to no defense, set-off or counterclaim (other than those arising in the ordinary course of business) of each account debtor or other obligor named therein or in Debtor's records pertaining thereto as being obligated to pay such obligation. Debtor will not agree to any modification, amendment or cancellation of any such obligation without Secured Party's prior written consent, and will not subordinate any such right to payment to claims of other creditors of such account debtor or other obligor.
- (g) Debtor will (i) keep all tangible Collateral in good repair, working order and condition, normal depreciation excepted, and will, from time to time, replace any worn, broken or defective parts thereof; (ii) other than taxes and other governmental charges contested in good faith and by appropriate proceedings, promptly pay all taxes and other governmental charges levied or assessed upon or against any Collateral or upon or against the creation, perfection or continuance of the Security Interest; (iii) keep all Collateral free and clear of all security interests, liens and encumbrances except the Permitted Interests; (iv) at all reasonable times, permit Secured Party or its representatives to examine or inspect any Collateral, wherever located, and to examine, inspect and copy Debtor's books and records pertaining to the Collateral and its business and financial condition; (v) keep accurate and complete records pertaining to the Collateral and pertaining to Debtor's business and financial condition and will submit to Secured Party such periodic reports concerning the Collateral and Debtor's business and financial condition as Secured Party may from time to time reasonably request; (vi) promptly notify Secured Party of any loss of or material damage to any Collateral or of any adverse change, known to Debtor, in the prospect of payment of any sums due on or under any instrument, chattel paper or account constituting Collateral; (vii) if Secured Party at any time so requests promptly deliver to Secured Party any instrument, document

or chattel paper constituting Collateral, duly endorsed or assigned by Debtor to Secured Party; (viii) at all times keep all tangible Collateral insured against risks of fire (including so called extended coverage), theft, collision (in case of collateral consisting of motor vehicles or other moving vehicles) and such other risks and in such amounts as Secured Party may reasonably request, and notify the Bank in writing of any loss or damage to the Collateral or any part; (ix) from time to time execute such financing statements or other documents as Secured Party may reasonably deem required to be filed in order to perfect the Security Interest and, if any Collateral is covered by a certificate of title, execute such documents as may be required to have the Security Interest properly noted on a certificate of title; (x) pay when due or reimburse Secured Party on demand for all costs of collection of any of the Secured Obligations and all other out-of-pocket expenses (including in each case all reasonable attorneys' fees) incurred by Secured Party in connection with the creation, perfection, satisfaction or enforcement of the Security Interest or the execution or creation, continuance or enforcement of this Agreement or any or all of the Secured Obligations; (xi) execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings which Secured Party may at any time reasonably request in order to secure, protect, perfect or, enforce the Security Interest and Secured Party's rights under this Agreement; (xii) not use or keep any Collateral, or permit it to be used or kept, for any unlawful purpose or in violation of any federal, state or local law, statute or, ordinance; and (xiii) not permit any tangible Collateral to become part of or to be affixed to any real property, without first assuring to the reasonable satisfaction of Secured Party that the Security Interest will be prior and senior to any interest or lien then held or thereafter acquired by any mortgagee of such real property or the owner or purchaser of any interest therein. If Debtor at any time fails to perform or observe any agreement contained in this Section 2(g), and if such failure shall continue for a period of ten (10) calendar days after Secured Party gives Debtor written notice thereof (or, in the case of the agreements contained in clauses (viii) and (ix) of this Section 2(g), immediately upon the occurrence of such failure, without notice or, lapse of time) Secured Party may (but need not) perform or observe

such agreement on behalf and in the name, place and stead of Debtor (or, at Secured Party's option, in Secured Party's own name) and may (but need not) take any and all other actions which Secured Party may reasonably deem necessary to cure or correct such failure (including, without limitation, the payment of taxes, the satisfaction of security interests, liens or encumbrances (other than Permitted Interests), the performance of obligations under contracts or agreements with account debtors or other obligors, the procurement and maintenance of insurance, the execution of financing statements, the endorsement of instruments, and the procurement of repairs, transportation or insurance); and, except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Debtor shall thereupon pay Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with or as a result of Secured Party's performing or observing such agreements or taking such actions, together with interest thereon from the date expended or incurred by Secured Party at the rate provided for in the Note. To facilitate the performance or observance by Secured Party of such agreements of Debtor, Debtor hereby irrevocably appoints (which appointment is coupled with an interest) Secured Party, or its delegate, as the attorney-in-fact of Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Debtor, any and all instruments, documents, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by Debtor, under this Section 2.

3. ASSIGNMENT OF INSURANCE. Debtor hereby assigns to Secured Party, as additional security for the payment of the Secured Obligations, any and all proceeds derived from, or due or to become due under, any and all policies of insurance in connection with any loss or damage to any of the Collateral, and Debtor hereby directs the issuer of any such policy to pay any such moneys to the Secured Party and Borrower jointly. Provided no Event of Default has occurred and is then continuing, the Debtor shall have the right to repair or replace any of its damaged or destroyed Collateral. Secured Party may (but need not), in its own name or in Debtor's name, execute and deliver proofs of claim, receive all such moneys (subject to Borrower's rights), endorse checks and

other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy.

4. COLLECTION OF ACCOUNTS. Pursuant to Minn. Stat. Section 336.9-502, Secured Party may, prior to or after the occurrence of an Event of Default, notify any account debtor or any obligor on an instrument to make payment directly to a post office box specified by and under the sole control of Secured Party, whether or not Secured Party was theretofore making collections with respect thereto, and Secured Party shall be entitled to take control of any proceeds thereof. If so requested by Secured Party, Debtor shall insert appropriate language on each invoice directing its customers to make payment to such post office box.

5. REMEDIES. Secured Party may exercise any one or more of the following rights or remedies if any or all of the Secured Obligations are not paid when due: (i) exercise and enforce any or all rights and remedies available after default to a secured party under the Uniform Commercial Code, including but not limited to the right to take possession of any Collateral, proceeding without judicial process or by judicial process (without a prior hearing or notice thereof, which Debtor hereby expressly waives), and the right to sell, lease or otherwise dispose of or use any or all of the Collateral; (ii) Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties; and (iii) exercise or enforce any or all other rights or remedies available to Secured Party by law or agreement against the Collateral, against Debtor or against any other person or property. If notice to Debtor of any intended disposition of Collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in Section 6 hereof) at least ten (10) calendar days prior to the date of intended disposition or other action.

6. MISCELLANEOUS. This Agreement does not contemplate a sale of accounts or chattel paper, and, as provided by law, Debtor is entitled to any surplus and shall remain liable for any deficiency. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Secured Party. A waiver signed by Secured Party shall be effective only in the specific instance and for the purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Secured Party's rights or remedies. All rights and remedies of Secured Party shall be cumulative and may be exercised singularly or concurrently, at Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor shall be deemed sufficiently given if deposited in the United States mails, registered or, certified,

postage prepaid, or personally delivered to Debtor at its last known address. Secured Party's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Secured Party exercises reasonable care in physically safe keeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Secured Party need not otherwise preserve, protect, insure or care for any Collateral. Secured Party shall not be obligated to preserve any rights Debtor may have against any other party, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective heirs, representatives, successors and assigns and shall take effect when signed by Debtor and delivered to Secured Party, and Debtor waives notice of Secured Party's acceptance hereof. Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. Except to the extent otherwise required by law, this Agreement shall be governed by the laws of the State of Minnesota and, unless the context otherwise requires, all terms used herein which are defined in Articles 1 and 9 of the Uniform Commercial Code, as in effect in said state (including but not limited to the terms "inventory", "equipment", "instrument", "document" "goods", "chattel paper", "account" and "account debtor") shall have the meanings therein stated. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other, provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Secured Obligations.

IN WITNESS WHEREOF, Debtor has executed and delivered to Secured Party this Security Agreement as of the day and year, first above written.



**EXHIBIT A**

(Description of Certificated Equipment and Vehicles)

<u>Manufacturer</u>	<u>Model</u>	<u>Year</u>	<u>Brief Description of Collateral</u>	<u>Serial #</u>
Pullman		1949	Coach Car a/k/a the "Northern Winds Car"	SN 5275
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