

# WEINBERG AND GREEN

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WRITER'S DIRECT DIAL NUMBER

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January 21, 1993 **18140**  
RECORDATION NO. \_\_\_\_\_ FILED 1425

MAR 1 1993 3:10 PM 3-060A063

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

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 U. S. Code.

This document is a Mortgage, a primary document dated January 21, 1993.

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

Mortgagee: Maryland Midland Railway, Inc.  
41 North Main Street  
Union Bridge, Maryland 21791

Mortgagee: Carroll County Bank and Trust Company  
45 West Main Street  
Westminister, Maryland 21157

A description of the equipment covered by the document follows: a) rebuilt GP38DC locomotive, new MMID No. 300, original registration no. 2016, originally registered as B&O 3816, frame no. 7060-17, serial no. 33334; b) rebuilt GP380C locomotive, new MMID No. 301, original registration no. 2031, originally registered as B&O 3831, frame no. 7060-32, serial no. 33349; c) rebuilt GP38DC locomotive, new MMID No. 302, original registration no. 2090, originally registered as C&O 3892, frame no. 7060-93, serial no. 33723.

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation

MAR 1 3 05 PM '93  
OFFICE OF RECORDS UNIT

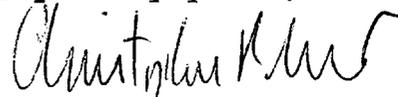
WEINBERG AND GREEN

Interstate Commerce Commission  
January 21, 1993  
Page 2

to Christopher R. West, Esquire, Weinberg and Green, 100 South Charles Street, Baltimore, Maryland 21201.

A short summary of the document to appear in the index follows: Mortgage between Maryland Midland Railway, Inc., P. O. Box A, Union Bridge, Maryland 21791 and Carroll County Bank and Trust Company, 45 West Main Street, Westminster, Maryland 21157 dated January 21, 1993 and covering three rebuilt GP38DC locomotives.

Very truly yours,



Christopher R. West  
Attorney for Carroll County  
Bank and Trust Company

COP12:0738Q/0336/jnb

Enclosure

Interstate Commerce Commission

Washington, D.C. 20423

3/2/93

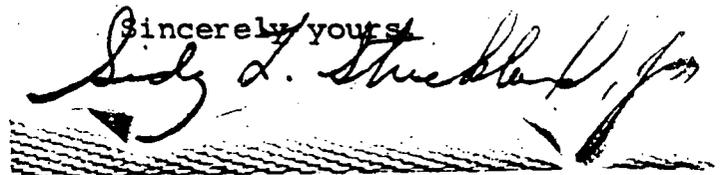
OFFICE OF THE SECRETARY

Christopher R. West Esq.  
Weinberg And Green  
100 South Charles Street  
Baltimore, Maryland 21201

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 3/1/93 at 3:10pm, and assigned re-  
recording number(s). 18140

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

SE-30  
(7/79)

MORTGAGE AND SECURITY AGREEMENT

JAN 1 1993 3:10 PM

INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE AND SECURITY AGREEMENT ("Agreement") is made this 21st day of January, 1993, by and between MARYLAND MIDLAND RAILWAY, INC., a Maryland corporation ("Borrower"), and CARROLL COUNTY BANK AND TRUST COMPANY ("Bank").

RECITALS

WHEREAS, Borrower has requested Bank to make a loan to Borrower in the principal amount of Four Hundred Fourteen Thousand Nine Hundred Dollars (\$414,900.00); and

WHEREAS, Bank is willing to make such loan to Borrower upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Borrower and Bank do hereby agree as follows:

1. CONSTRUCTION AND DEFINITION OF TERMS

All terms used herein without definition which are defined by the Maryland Uniform Commercial Code shall have the meanings assigned to them by the Maryland Uniform Commercial Code unless and to the extent varied by this Agreement. All accounting terms used herein without definition shall have the meanings assigned to them as determined by generally accepted accounting principles. Whenever the phrase "satisfactory to Bank" is used in this Agreement such phrase shall mean "satisfactory to Bank in its sole discretion." The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

1.01 "Banking Day" shall mean any day that banks in the State of Maryland are not required or permitted to be closed.

1.02 "Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and complete.

1.03 "Closing" shall mean the first date on which funds are advanced to Borrower hereunder.

1.04 "Collateral" shall mean all right, title and interest of Borrower in and to three rebuilt GP-38 locomotives with the following MMID Nos.: 300, 301 and 302, and all documents and documents of title relating to any of the foregoing, together

with all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions therefor or thereto in any form whatsoever, all property and funds of Borrower (including deposit accounts of Borrower), both now owned and hereafter acquired, now or hereafter in Bank's possession, all property and assets of Borrower in or on which Bank has, or may in the future acquire or be granted, a Lien, whether related or unrelated to this Agreement, whether or not now contemplated, whether or not any instrument or agreement relating thereto specifically refers to this Agreement and whether or not the obligation secured is of the same character or class as Borrower's obligations hereunder, and all proceeds (cash and non-cash, including insurance proceeds), products, substitutions, renewals and replacements of all of the foregoing in any form whatsoever and all books, records and data processing materials in any form (including tapes, disks and the like) documenting, describing or in any way relating to any or all of the foregoing, whether in the possession of Borrower or any other person.

1.05 "Event of Default" shall mean any of the events described in **Section 7** hereof.

1.06 "Indebtedness" shall include all items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement in accordance with generally accepted accounting principles, and shall also include all contingent liabilities.

1.07 "Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of setoff, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

1.08 "Notes" shall mean the three promissory note of Borrower in the forms attached hereto as **Exhibit A**, and all renewals, replacements and extensions thereof.

1.09 "Obligations" shall include the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Bank by Borrower under this Agreement, the Notes, the Other Agreements and otherwise, all present and future obligations and liabilities of Borrower to Bank for the payment of money under this Agreement, the Notes, the Other Agreements and otherwise (extending to all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Notes, the Other Agreements and otherwise), whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not now

contemplated, whether or not any instrument or agreement relating thereto specifically refers to this Agreement and whether or not of the same character or class as Borrower's obligations under this Agreement or the Notes, including, without limitation, overdrafts in any checking or other account of Borrower at Bank and claims against Borrower acquired by assignment to Bank, whether or not secured under any other document, agreement or statutory or common law provision, as well as all renewals, refinancings, consolidations, re-castings and extensions of any of the foregoing.

1.10 "Other Agreements" shall mean any and all agreements, contracts, promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, guaranties, instruments and documents now and hereafter existing between Bank and Borrower, executed and/or delivered pursuant to this Agreement or guaranteeing, securing or in any other manner relating to any of the Obligations, including, without limitation, the instruments and documents referred to in **Subsection 4.01** hereof.

1.11 "Permitted Liens" shall mean (a) Liens of Bank, (b) Liens for taxes not delinquent or for taxes being diligently contested in good faith by Borrower by appropriate proceedings, subject to the conditions set forth in **Subsection 5.02** hereof, (c) mechanic's, workman's, materialman's, landlord's, carrier's and other like Liens arising in the ordinary course of business with respect to obligations which are not due or which are being diligently contested in good faith by Borrower by appropriate proceedings, provided such Liens did not arise in connection with the borrowing of money or the obtaining of advances or credit and do not, in Bank's discretion, in the aggregate materially detract from the value of Borrower's assets or materially impair the use thereof, and (d) Liens specifically consented to by Bank in writing.

1.12 "person" shall include natural persons, corporations, associations, partnerships, joint ventures, trusts, governments and agencies and departments thereof and every other entity of every kind.

1.13 "Subsidiary" shall include any corporation at least a majority of the outstanding Voting Stock of which is owned, now or in the future, by Borrower and/or by one or more Subsidiaries.

## 2. MORTGAGE

3.01 Grant and Assignment. As security for the payment and performance of all of the Obligations, whether or not any instrument or agreement relating to any Obligation specifically refers to this Agreement or the security interest created hereunder, Borrower hereby mortgages the Collateral to

Bank and assigns, pledges and grants to Bank a continuing security interest in the Collateral. Bank's mortgage and security interest shall continually exist until (a) all Obligations have been paid in full, (b) there exists no commitment by Bank which could give rise to any Obligations and (c) all appropriate termination statements have been filed terminating the mortgage and security interest granted Bank hereunder, whether or not all Obligations shall at any time or from time to time be reduced to zero. Borrower shall make notations, satisfactory to Bank, on its books and records disclosing the existence of Bank's mortgage and security interest in the Collateral. Bank shall have no liability or duty, either before or after the occurrence of an Event of Default hereunder, on account of loss of or damage to, or to collect or enforce any of its rights against, the Collateral, or to preserve any rights against account debtors or other parties with prior interests in the Collateral, the sole duty of Bank in this regard being to exercise reasonable care with respect to tangible Collateral in its actual possession.

2.02 Covenants and Representations Concerning Collateral. With respect to all of the Collateral, Borrower covenants, warrants and represents that:

(a) No mortgage or financing statement covering any of the Collateral is on file in any public office or land or financing records, including the Interstate Commerce Commission, except for financing statements in favor of Bank and financing statements with respect to any Permitted Liens described in the Permitted Liens Exhibit and Borrower is the legal and beneficial owner of all of the Collateral, free and clear of all Liens, except for Permitted Liens.

(b) The mortgage and security interest granted Bank hereunder shall constitute a first priority Lien upon the Collateral. Borrower will not, except in the ordinary course of business, transfer, discount, sell, grant or assign any interest in the Collateral nor, without Bank's prior written consent, permit any other Lien to be created or remain thereon except for Permitted Liens.

(c) Borrower will maintain the Collateral in good order and condition, ordinary wear and tear excepted, and will use, operate and maintain the Collateral in compliance with all laws, regulations and ordinances and in compliance with all applicable insurance requirements and regulations. Borrower will promptly notify Bank in writing of any litigation involving or affecting the Collateral which Borrower knows or has reason to believe is pending or threatened. Borrower will promptly pay when due all taxes and all transportation, storage, warehousing and other such charges and fees affecting or arising out of or relating to the Collateral and shall defend the Collateral, at Borrower's expense, against all claims and demands of any persons claiming any interest in the Collateral adverse to Borrower or Bank.

(d) At all reasonable times Bank and its agents and designees may enter the Business Premises (as hereinafter defined) and any other premises of Borrower and inspect the Collateral and all books and records of Borrower (in whatever form).

(e) Borrower will maintain comprehensive casualty insurance on the Collateral against such risks, in such amounts, with such loss deductible amounts and with such companies as may be satisfactory to Bank, and each such policy shall contain a clause or endorsement satisfactory to Bank naming Bank as loss payee or mortgagee and a clause or endorsement satisfactory to Bank that such policy may not be cancelled or altered and Bank may not be removed as mortgagee without at least 30 days prior written notice to Bank. In all events, the amounts of such insurance coverages shall conform to prudent business practices and shall be in such minimum amounts that Borrower will not be deemed a co-insurer under applicable insurance laws, regulations, policies or practices. Borrower hereby assigns to Bank and grants to Bank a security interest in any and all proceeds of such policies and authorizes and empowers Bank to adjust or compromise any loss under such policies and to collect and receive all such proceeds. Borrower hereby authorizes and directs each insurance company to pay all such proceeds directly and solely to Bank and not to Borrower and Bank jointly. Borrower authorizes and empowers Bank to execute and endorse in Borrower's name all proofs of loss, drafts, checks and any other documents or instruments necessary to accomplish such collection, and any persons making payments to Bank under the terms of this paragraph are hereby relieved absolutely from any obligation or responsibility to see to the application of any sums so paid. After deduction from any such proceeds of all costs and expenses (including attorney's fees) incurred by Bank in the collection and handling of such proceeds, the net proceeds may be applied, at Bank's option, either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Bank, or as a credit against such of the Obligations, whether matured or unmatured, as Bank shall determine in Bank's sole discretion.

(f) All books and records pertaining to the Collateral are located at the Business Premises and Borrower will not change the location of such books and records without the prior written consent of Bank.

(g) All of the Collateral (except for any vehicles of Borrower and Collateral which may be temporarily located at jobsites of Borrower) is, and, unless Bank shall consent otherwise in writing, shall remain located at the Business Premises.

(h) Borrower shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as Bank may request to vest

in and assure to Bank its rights hereunder or in any of the Collateral, including, without limitation, the execution and delivery of financing statements, financing statement amendments and/or continuation statements, and Borrower agrees to pay all taxes, fees and costs (including attorney's fees) paid or incurred by Bank in connection with the preparation and filing or recordation thereof.

(i) A carbon, photographic or other reproduction of this Agreement or any financing statement signed by Borrower in connection with this Agreement shall be sufficient as a financing statement.

(j) Whenever required by Bank, Borrower shall promptly deliver to Bank, with all endorsements and/or assignments required by Bank, all instruments, chattel paper, guaranties and the like received by Borrower constituting, evidencing or relating to any of the Collateral or proceeds of any of the Collateral.

(k) Borrower shall deliver to Bank within ten days after the end of each monthly accounting period of Borrower a Certified written schedule and aging of accounts receivable and a Certified written schedule and aging of accounts payable as of the end of such accounting period in such form, containing such information and accompanied by such documents as may from time to time be required by Bank, and accompanied by such evidence as may from time to time be required by Bank of the existence, date of creation and amount of, and the names and addresses of account debtors and account payees with respect to, accounts receivable and accounts payable.

### 3. REPRESENTATIONS AND WARRANTIES

To induce Bank to enter into this Agreement, Borrower represents and warrants to Bank that:

3.01 Good Standing. Borrower is a corporation duly organized, legally existing and in good standing under the laws of the State of its incorporation, has the power to own its property and to carry on its business and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

3.02 Authority. Borrower has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, all of which have been duly authorized by all necessary and proper corporate and other action, and no consent or approval of any person, including, without limitation, stockholders of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

3.03 Binding Agreements. This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject only to laws affecting the rights of creditors generally and application of general principles of equity.

3.04 No Conflicting Agreements. The execution, delivery and performance by Borrower of this Agreement and the borrowings hereunder will not (a) violate (i) any provision of law or any order, rule or regulation of any court or agency of government, (ii) any award of any arbitrator, (iii) the Charter or Bylaws of Borrower, or (iv) any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which Borrower or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of Borrower except for Liens created in favor of Bank under or pursuant to this Agreement.

3.05 Litigation. Except as heretofore disclosed to Bank in writing, there are no judgments, injunctions or similar orders or decrees, claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any property of Borrower, at law or in equity, by or before any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could result in any material adverse change in the business, operations, prospects, properties or in the condition, financial or otherwise, of Borrower, and Borrower is not, to Borrower's knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could have a material adverse effect on Borrower.

3.06 Taxes. Borrower has paid or caused to be paid all federal, State and local taxes to the extent that such taxes have become due and has filed or caused to be filed all federal, State and local tax returns which are required to be filed by Borrower.

3.07 Title to Properties. Borrower has good and marketable title to all of its properties and assets (including the Collateral) and all of the properties and assets of Borrower are free and clear of Liens, except for Permitted Liens.

3.08 Place of Business. Borrower's chief executive office and only place of business is located at P. O. Box <sup>1920</sup>~~1920~~, Union Bridge, Maryland 21791 (the "Business Premises"). Borrower will

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not change such location(s) or have or maintain any other place of business without Bank's prior written consent.

3.09 Financial Information. All financial statements, schedules, reports and other information supplied to Bank by or on behalf of Borrower heretofore and hereafter are and will be true and complete.

3.10 Subsidiaries. Except for Subsidiaries hereafter formed or acquired with Bank's prior written consent, there are and will be no Subsidiaries.

3.11 Licenses and Permits. Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like required by federal, State and local laws of the jurisdictions in which Borrower conducts its business and each remains valid and in full force and effect.

3.12 Broker's or Finder's Commissions. No broker's or finder's fee or commission is or will be payable in connection with this Agreement or the transactions contemplated hereby, and Borrower agrees to save harmless and indemnify Bank from and against any claim, demand, action, suit, proceeding or liability for any such fee or commission, including any costs and expenses (including attorney's fees) incurred by Bank in connection therewith. The provisions of this Subsection shall survive the termination of this Agreement and Bank's security interest hereunder and the payment of all other Obligations.

3.13 Outstanding Indebtedness. Borrower has no outstanding Indebtedness except as permitted by Subsection 7-016.01 hereof and there exists no default under the provisions of any instrument evidencing such Indebtedness or under the provisions of any agreement relating thereto.

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#### 4. CONDITIONS OF LENDING

Unless Bank shall otherwise agree, Bank shall have no obligation to advance any funds to Borrower hereunder unless each of the following conditions precedent shall be satisfied as provided below:

4.01 Documents. There shall have been delivered to Bank, appropriately completed and duly executed (when applicable), the following, each in form and substance satisfactory to Bank:

(a) The Notes.

(b) A certificate of the Secretary of Borrower substantially in the form attached hereto as **Exhibit B** unless otherwise determined by Bank.

(c) Evidence satisfactory to Bank that all insurance coverages and all insurance clauses or endorsements required pursuant to this Agreement and the Other Agreements are in effect, together with copies of all insurance policies and endorsements.

(d) A written opinion of counsel to Borrower, dated as of Closing and addressed to Bank, substantially in the form attached hereto as **Exhibit C** unless otherwise determined by Bank.

(e) Such financing statements as may be required by Bank.

4.02 No Default. At Closing and at the time of every subsequent advance under this Agreement, Bank shall be fully satisfied that (a) all of the covenants, conditions, warranties and representations set forth herein and in the Other Agreements have been complied with and are true and complete on and as of such time with the same effect as though such covenants, conditions, warranties and representations had been made on and as of such time, (b) no Event of Default nor any event which, upon the giving of notice and/or the lapse of time, could constitute an Event of Default shall have occurred, and (c) the documents and matters required to be executed, delivered, opined and/or Certified pursuant to **Subsection 4.01** hereof shall be in full force and effect and/or true and complete, as the case may be.

4.03 Legal Matters. At Closing, all legal matters in connection therewith or incidental thereto shall be fully satisfactory to Bank's counsel.

## 5. AFFIRMATIVE COVENANTS

Borrower covenants and agrees with Bank that, until (a) all Obligations have been paid in full, (b) there exists no commitment by Bank which could give rise to any Obligations, and (c) all appropriate termination statements have been filed terminating the mortgage and security interest granted Bank hereunder, Borrower will:

5.01 Financial Statements. Furnish to Bank in writing: (a) as soon as available but in no event more than 90 days after the end of each fiscal year of Borrower, a statement of income and retained earnings and statement of cash flows of Borrower for such year, and a balance sheet of Borrower as at the end of such year, setting forth in each case in comparative form corresponding figures for the preceding fiscal year of Borrower, all in detail and scope satisfactory to Bank, prepared in accordance with generally accepted accounting principles consistently applied and prepared in accordance with the standards established by the American Institute of Certified Public Accountants and accompanied by a certificate of the chief

financial officer of Borrower stating whether any event has occurred which constitutes an Event of Default or which could constitute an Event of Default with the giving of notice and/or the lapse of time and, if so, stating the facts with respect thereto; and (b) as soon as available but in no event more than ninety days after the end of each fiscal year of Borrower a copy of Borrower's tax returns filed with federal and state authorities with respect to Borrower's most recent fiscal year.

5.02 Taxes. Pay and discharge all taxes, assessments and governmental charges upon Borrower its income and properties, prior to the date on which penalties attach thereto unless and to the extent only that the same are being diligently contested by Borrower in good faith by appropriate proceedings, provided, however, that (a) Bank shall have been given reasonable prior written notice of intention to contest, (b) nonpayment of the same will not, in Bank's sole discretion, materially impair any of the Collateral or Bank's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations, (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of nonpayment of the same and (d) Borrower establishes reasonable reserves for any liabilities being contested and for expenses arising out of such contest.

5.03 Corporate Existence, Continuation of Business and Compliance with Laws. Maintain its corporate existence in good standing; continue, and cause each Subsidiary to continue, its business operations as now being conducted; and comply with all applicable federal, State and local laws, rules, ordinances, regulations and orders unless and to the extent only that the validity or applicability thereof is being diligently contested by Borrower in good faith by appropriate proceedings, provided, however, that (a) Bank shall have been given reasonable prior written notice of intention to contest, (b) such noncompliance will not, in Bank's sole discretion, materially impair any of the Collateral or Bank's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations, (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of such noncompliance and (d) Borrower establishes reasonable reserves for any liabilities or expenses which may arise out of such noncompliance and contest.

5.04 Litigation. Promptly notify Bank in writing of any action, suit or proceeding at law or in equity by or before any court, governmental agency or instrumentality which could result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower.

5.05 Extraordinary Loss. Promptly notify Bank in writing of any event causing extraordinary loss or depreciation of the value of Borrower's assets (whether or not insured) and the facts with respect thereto.

5.06 Books and Records. Keep and maintain, proper and current books and records in accordance with generally accepted accounting principles consistently applied and permit access by Bank to, reproduction by Bank of and copying by Bank from, such books and records during normal business hours.

5.07 Maintenance of Properties. Maintain all properties and improvements necessary to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

5.08 Patents, Franchises, etc. Maintain, preserve and protect all licenses, patents, franchises, trademarks and trade names of Borrower or licensed by Borrower which are necessary to the conduct of the business of Borrower as now conducted, free of any conflict with the rights of any other person.

5.09 Insurance. Maintain with insurers and in amounts satisfactory to Bank such insurance against such risks and with such loss deductible amounts as may be satisfactory to Bank.

5.10 Evidence of Insurance. Deliver to Bank from time to time, and periodically if Bank shall so require, evidence satisfactory to Bank that all insurance and endorsements required pursuant to this Agreement and the Other Agreements are in effect.

5.11 Further Assurances and Corrective Instruments. Promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, to Bank from time to time such supplements hereto and such financing statements and other instruments and documents as may be requested by Bank to protect and preserve the Collateral, Bank's mortgage and security interest therein, perfection of Bank's mortgage and security interest and/or Bank's rights and remedies hereunder.

5.12 Financial Information. Deliver to Bank promptly upon Bank's request, and periodically if Bank shall so require, such written statements, schedules or reports (which shall be Certified if required by Bank) in such form, containing such information and accompanied by such documents as may be satisfactory to Bank from time to time concerning the Collateral, Borrower's financial condition or business operations or any other matter or matters, including, without limitation, copies of federal, State and local tax returns of Borrower and permit Bank, its agents and designees, to discuss Borrower's financial condition and business operations with Borrower's officers and employees.

5.13 Use of Proceeds. Use the proceeds of advances made hereunder only for the purchase of three used locomotives, and to pay the costs, expenses and fees payable by Borrower under this Agreement and the Other Agreements.

5.14 Notice of Event of Default. Immediately notify Bank of the occurrence of any Event of Default or any event which, with the giving of notice and/or the lapse of time, could constitute an Event of Default and the facts with respect thereto.

5.15 Annual Listing of Customers. Furnish to Bank in writing not less than once each calendar year a list of the names and addresses of all customers of Borrower as well as a schedule of the percentage of total shipments carried by Borrower attributable to each customer.

## 6. NEGATIVE COVENANTS

Borrower covenants and agrees with Bank that, until (a) all Obligations have been paid in full, (b) there exists no commitment by Bank which could give rise to any Obligations and (c) all appropriate termination statements have been filed terminating the mortgage and security interest granted Bank hereunder, Borrower will not, directly or indirectly, without Bank's prior written consent:

6.01 Liens. Create, incur, assume or permit to exist, directly or indirectly, any Lien upon any of Borrower's *collateral* properties or assets, now owned or hereafter acquired by Borrower, other than Permitted Liens. *PLW*  
*km*

6.02 Merger, Sale of Assets, etc. Enter into or be a party to any merger or consolidation; sell, assign, transfer, convey or lease any interest in all or any substantial part of its property except in the ordinary course of Borrower's business as now being conducted; purchase or otherwise acquire all or substantially all of the assets of any other person, or any shares of stock of, or similar interest in, any other person.

6.03 Guaranties. Guarantee or otherwise in any way become or be responsible for obligations or Indebtedness of any other person, whether by agreement to purchase the Indebtedness of any other person, by agreement for the furnishing of funds to any other person for the purchase of goods, supplies or services, or by way of stock purchase, capital contribution, advance or loan for the purpose of paying or discharging Indebtedness of any other person, or otherwise, except that Borrower may endorse negotiable drafts for collection in the ordinary course of business.

6.04 Fiscal Year. Change Borrower's fiscal year.

6.05 Subsidiaries. Form or acquire any Subsidiary.

6.06 Change of Name. Change the name of Borrower or permit any Subsidiary to change such Subsidiary's name.

6.07 Trade Names. Use any trade name other than Borrower's true corporate name or permit any Subsidiary to use any trade name other than such Subsidiary's true corporate name.

7. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) Any representation or warranty made herein, in any of the Other Agreements or in any statement, report, certificate, opinion, financial statement or other document furnished or to be furnished in connection with this Agreement or the Other Agreements shall be false or misleading in any material respect.

(b) Failure of Borrower to pay any of the Obligations, including, without limitation, any sum due Bank under this Agreement or any of the Other Agreements, when and as the same shall become due, whether at the due date thereof, by demand, by acceleration or otherwise.

(c) Default by Borrower with respect to any Indebtedness of Borrower to any person or with respect to any Lien or document securing any Indebtedness of Borrower to any person after expiration of any applicable grace period but whether or not any required notice has been given and a determination by Bank, in good faith but in its sole discretion, that the same could have a material adverse effect on Borrower, the Collateral, Bank's rights with respect to the Collateral or the prospect for full and punctual payment and performance of all of the Obligations.

(d) Failure of Borrower or any other person to observe or perform any warranty, covenant, condition or agreement to be observed or performed by Borrower or such other person under this Agreement or any of the Other Agreements.

(e) Borrower shall (i) admit in writing its insolvency or its inability to pay its debts as they mature, (ii) make a general assignment for the benefit of creditors, (iii) commence a case under or otherwise seek to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, statute or proceeding, or (iv) by any act indicate its consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for Borrower or a substantial part of its property, or suffer any such receivership, trusteeship or proceeding to continue undismissed for a period of 30 days.

(f) Borrower shall become a debtor in any case under any chapter of the United States Bankruptcy Code.

(g) Dissolution of, or entry of any order, judgment or decree for the dissolution of, Borrower.

(h) Entry of any judgment, order, award or decree against Borrower and a determination by Bank, in good faith but in its sole discretion, that the same, when aggregated with all other judgments, orders, awards and decrees outstanding against Borrower could have a material adverse effect on Borrower, the Collateral, Bank's rights with respect to the Collateral or the prospect for full and punctual payment and performance of all of the Obligations, if the same shall not have been discharged or execution thereof stayed within 30 days after entry thereof or discharged within 30 days after the expiration of any such stay, and if the same is not fully covered by applicable insurance (which shall not include any bonding or other arrangement in connection with which Borrower may be liable for indemnification to any extent).

(i) Injunction or restraint of Borrower in any manner from conducting its business in whole or in part and a determination by Bank, in good faith but in its sole discretion, that the same could have a material adverse effect on Borrower, the Collateral, Bank's rights with respect to the Collateral or the prospect for full and punctual payment and performance of all of the Obligations, if the same shall not have been terminated or stayed within 10 days after entry thereof or terminated within 10 days after the expiration of any such stay.

(j) Any assets of Borrower shall be attached, levied upon, seized or repossessed or come into the possession of a trustee, receiver or other custodian.

(k) A determination by Bank, in good faith but in its sole discretion, that any material adverse change has occurred in the financial condition of Borrower, in the value of the Collateral or in the prospect for full and punctual payment and performance of all of the Obligations.

(l) Borrower shall be or become insolvent (as defined in Section 101(26) of the United States Bankruptcy Code) or unable to pay its debts as they mature.

## 8. RIGHTS AND REMEDIES

8.01 Rights and Remedies of Bank. Upon and after the occurrence of an Event of Default, Bank may, without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to the rights and remedies available to Bank under the Other Agreements, the rights and remedies of a secured party under the Uniform

Commercial Code and all other rights and remedies available to Bank under applicable law, all such rights and remedies being cumulative and enforceable alternatively, successively or concurrently:

(a) Declare the Notes, all interest accrued and unpaid thereon and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand for payment, protest or notice of any kind, all of which are hereby expressly waived.

(b) Institute any proceeding or proceedings to enforce the Obligations and any Liens of Bank.

(c) Take possession of the Collateral, and for that purpose, so far as Borrower may give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom without any liability for suit, action or other proceeding, BORROWER HEREBY WAIVING ANY AND ALL RIGHTS TO PRIOR NOTICE AND TO JUDICIAL HEARING WITH RESPECT TO REPOSSESSION OF COLLATERAL, and require Borrower, at Borrower's expense, to assemble and deliver the Collateral to such place or places as Bank may designate.

(d) Operate, manage and control the Collateral (including use of the Collateral and any other property or assets of Borrower in order to continue or complete performance of Borrower's obligations under any contracts of Borrower), or permit the Collateral or any portion thereof to remain idle or store the same, and collect all rents and revenues therefrom and sell or otherwise dispose of any or all of the Collateral upon such terms and under such conditions as Bank, in its sole discretion, may determine, and purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law.

(e) Cease making advances hereunder and under any other commitments or credit accommodations of Bank to Borrower and stop and retract the making of any advance hereunder or thereunder which may have been requested by Borrower.

8.02 Power of Attorney. Effective upon the occurrence of an Event of Default, Borrower hereby designates and appoints Bank and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority to execute proofs of claim and loss; to execute any endorsements, assignments or other instruments of conveyance or transfer; to adjust and compromise any claims under insurance policies; to execute releases; and to perform all other acts necessary and advisable, in Bank's sole discretion, to carry out and enforce this Agreement and the Other Agreements. All acts of said attorney or designee are hereby ratified and approved by Borrower and said attorney or designee shall not be liable for any acts of

commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid or unperformed or there exists any commitment by Bank which could give rise to any Obligations.

8.03 Notice of Disposition of Collateral. It is mutually agreed that commercial reasonableness and good faith require Bank to give Borrower no more than 5 days prior written notice of the time and place of any public disposition of Collateral or of the time after which any private disposition or any other intended disposition is to be made.

8.04 Costs and Expenses. Borrower agrees to pay to Bank on demand the amount of all expenses, including attorney's fees and court costs, paid or incurred by Bank in exercising or enforcing or consulting with counsel concerning any of its rights hereunder, under the Other Agreements or under applicable law, together with interest on all such expenses paid by Bank at the highest rate and calculated in the manner provided in the Notes. The provisions of this Subsection shall survive the termination of this Agreement and Bank's mortgage and security interest hereunder and the payment of all other Obligations.

## 9. MISCELLANEOUS

9.01 Performance for Borrower. Borrower agrees and hereby authorizes that Bank may, in Bank's sole discretion, but Bank shall not be obligated to, whether or not an Event of Default shall have occurred, advance funds on behalf of Borrower, without prior notice to Borrower, in order to insure Borrower's compliance with any covenant, warranty, representation or agreement of Borrower made in or pursuant to this Agreement or any of the Other Agreements, to continue or complete, or cause to be continued or completed, performance of Borrower's obligations under any contracts of Borrower, to cover overdrafts in any checking or other accounts of Borrower at Bank or to preserve or protect any right or interest of Bank in the Collateral or under or pursuant to this Agreement or any of the Other Agreements, including, without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower; provided, however, that the making of any such advance by Bank shall not constitute a waiver by Bank of any Event of Default with respect to which such advance is made nor relieve Borrower of any such Event of Default. Borrower shall pay to Bank upon demand all such advances made by Bank with interest thereon at the highest rate and calculated in the manner provided in the Notes. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted Bank hereunder; provided, however, that the provisions of this Subsection shall survive the termination of this Agreement and Bank's mortgage and security interest hereunder and the payment of all other Obligations.

9.02 Expenses. Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to Bank on demand the amount of all expenses paid or incurred by Bank (including the fees and expenses of its counsel) in connection with the preparation of all written commitments of Bank antedating this Agreement, this Agreement and the Other Agreements and all documents and instruments referred to herein and all expenses paid or incurred by Bank in connection with the filing or recordation of all financing statements and instruments as may be required by Bank at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify Bank from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by Bank in connection with this Agreement. The provisions of this Subsection shall survive the termination of this Agreement and Bank's mortgage and security interest hereunder and the payment of all other Obligations.

9.03 Applications of Collateral. Except as may be otherwise specifically provided in this Agreement, all Collateral and proceeds of Collateral coming into Bank's possession may be applied by Bank to any of the Obligations, whether matured or unmatured, as Bank shall determine in its sole discretion.

9.04 Waivers by Borrower. Borrower hereby waives, to the extent the same may be waived under applicable law: (a) notice of acceptance of this Agreement; (b) all claims, causes of action and rights of Borrower against Bank on account of actions taken or not taken by Bank in the exercise of Bank's rights or remedies hereunder, under the Other Agreements or under applicable law; (c) all claims of Borrower for failure of Bank to comply with any requirement of applicable law relating to enforcement of Bank's rights or remedies hereunder, under the Other Agreements or under applicable law; (d) all rights of redemption of Borrower with respect to the Collateral; (e) in the event Bank seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (f) presentment, demand for payment, protest and notice of non-payment and all exemptions; (g) any and all other notices or demands which by applicable law must be given to or made upon Borrower by Bank; (h) settlement, compromise or release of the obligations of any person primarily or secondarily liable upon any of the Obligations; (i) trial by jury in any action or proceeding of any kind or nature in connection with any of the Obligations, this Agreement or any of the Other Agreements; and (j) substitution, impairment, exchange or release of any collateral security for any of the Obligations. Borrower agrees that Bank may exercise any or all of its rights and/or remedies hereunder, under the Other

Agreements and under applicable law without resorting to and without regard to any collateral security or sources of liability with respect to any of the Obligations.

9.05 Waivers by Bank. Neither any failure nor any delay on the part of Bank in exercising any right, power or remedy hereunder, under any of the Other Agreements or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

9.06 Bank's Setoff. Bank shall have the right, in addition to all other rights and remedies available to it, whether or not an Event of Default shall have occurred, to set off against any Obligations due Bank any debt owing to Borrower by Bank, including, without limitation, any funds in any checking or other account now or hereafter maintained by Borrower at Bank. Borrower hereby confirms Bank's right to banker's lien and setoff, and nothing in this Agreement or any of the Other Agreements shall be deemed a waiver or prohibition of Bank's right of banker's lien and setoff.

9.07 Confession of Judgment. Borrower hereby authorizes any attorney at law to appear for Borrower before any court, having jurisdiction, within the United States or elsewhere, and, after one or more declarations filed, confess judgment against Borrower as of any time after any of the Obligations are due (whether by demand, stated maturity, acceleration or otherwise) for the unpaid balance of the Obligations, including interest, court costs, late charges, expenses and attorney's fees not to exceed fifteen percent (15%) of the amount of such Obligations, for collection and release of all errors, and without stay of execution, and inquisition and extension upon any levy on real estate is hereby waived and condemnation agreed to, and the exemption of personal property from levy and sale is also hereby expressly waived and no benefit of exemption shall be claimed under any exemption law now in force or which may be hereafter adopted.

9.08 Modifications. No modification or waiver of any provision of this Agreement or any of the Other Agreements, and no consent by Bank to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.

9.09 Notices. Any notice or other communication in connection with this Agreement, if by registered or certified mail, shall be deemed to have been given when received by the party to whom directed, or, if by mail but not registered or

certified, when deposited in the mail, postage prepaid, provided that any such notice or communication shall be addressed to a party hereto as provided below (or at such other address as such party shall specify in writing to the other parties hereto):

(a) if to Borrower, at

P. O. Box <sup>1000</sup> #  
Union Bridge, Maryland 21791;

*PWJ*  
*2/22*

(b) if to Bank, at

45 West Main Street  
Westminister, Maryland 21157

9.10 Applicable Law and Consent to Jurisdiction.

The performance and construction of this Agreement and the Other Agreements shall be governed by the internal laws of the State of Maryland. Borrower agrees that any suit, action or proceeding instituted against Borrower with respect to any of the Obligations, the Collateral, this Agreement or any of the Other Agreements may be brought in any court of competent jurisdiction located in the State of Maryland. By its execution hereof, Borrower hereby irrevocably waives any objection and any right of immunity on the ground of venue, the convenience of the forum or the jurisdiction of such courts or from the execution of judgments resulting therefrom. Borrower hereby irrevocably accepts and submits to the jurisdiction of the aforesaid courts in any such suit, action or proceeding.

9.11 Survival; Successors and Assigns. All

covenants, agreements, representations and warranties made herein and in the Other Agreements shall survive the execution and delivery hereof and thereof, shall survive Closing and shall continue in full force and effect until all Obligations have been paid in full, there exists no commitment by Bank which could give rise to any Obligations and all appropriate termination statements have been filed terminating the security interest granted Bank hereunder. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Other Agreements shall inure to the benefit of Bank, its successors and assigns. Borrower may not assign this Agreement or any of its rights hereunder without the prior written consent of Bank.

9.12 Severability. If any term, provision or

condition, or any part thereof, of this Agreement or any of the Other Agreements shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other

term, provision or condition, and this Agreement and the Other Agreements shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

9.13 Merger and Integration. This Agreement and the attached Exhibits contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein, shall be valid or binding.

9.14 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

9.15 Headings. The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and shall not be used or deemed to limit or diminish any of the provisions hereof.

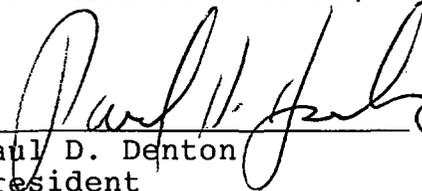
9.16 Recitals. The Recitals hereto are hereby incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the date first above written.

ATTEST/WITNESS:

  
\_\_\_\_\_

MARYLAND MIDLAND RAILWAY, INC.

By:  (SEAL)  
Paul D. Denton  
President

BORROWER

CARROLL COUNTY BANK AND TRUST  
COMPANY

  
\_\_\_\_\_

By:  (SEAL)  
Edward M. Miller  
Vice President

BANK

ACKNOWLEDGEMENT

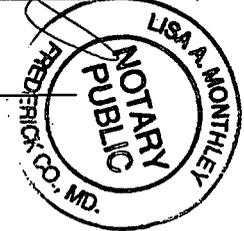
STATE OF MARYLAND

COUNTY OF CARROLL, ss:

On this 21st day of January, 1993, before me personally appeared Paul D. Denton, to me personally known, who being by me duly sworn, says that he is the President of Maryland Midland Railway, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed 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.

Lisa A. Monthley (SEAL)  
Notary Public

My commission expires on 8-14-95



CERTIFICATE BY NOTARY PUBLIC

STATE OF MARYLAND

COUNTY OF CARROLL

On this 21st day of January, 1993, I hereby certify that I have compared the attached copy of the Mortgage and Security Agreement by and between Maryland Midland Railway, Inc. and Carroll County Bank and Trust Company with the original copy of such Mortgage and Security Agreement, and I have found the copy to be complete and identical in all respects to the original document.

Lisa A. Monthley (SEAL)  
Notary Public

My commission expires on 8-14-95

