

GREENSFELDER, HEMKER & GALE, P.C.

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GREENSFELDER, HEMKER & GALE  
A PARTNERSHIP INCLUDING  
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0-348A043

December 13, 1990

17122  
RECORDATION NO. \_\_\_\_\_ FILED IN

DEC 14 1990 - 1 45 PM

DOCUMENTS FOR RECORDATION

Ms. Mildred Lee, Recordations  
Interstate Commerce Commission  
Room 2303  
12th & Constitution Avenue Northwest  
Washington D.C., 20423

INTERSTATE COMMERCE COMMISSION

Re: Document For Recordation;  
Security Agreement

Dear Mildred:

I have enclosed an original and one verified copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Security Agreement (primary document) dated December 13, 1990. The names and addresses of the parties to the Security Agreement are as follows:

Debtor: Gregory B. and Connie S. Cundiff  
1104 North Smiley  
O'Fallon, Illinois 62269

Secured Party: First Bank of Illinois  
200 South Lincoln  
O'Fallon, Illinois 62269  
Attn: Douglas Distler

A description of the equipment covered by the document is as follows:

- (a) Locomotive No. 1233, SW9, Serial No. 29446
- (b) Locomotive No. RSM-7, NW2, Serial No. 125678C3735
- (c) Locomotive No. TRS-4159, GP7, Serial No. 12-567-A

DEC 14 1 08 PM '90  
MOTOR OPERATING UNIT

GREENSFELDER, HEMKER & GALE, P.C.

Ms. Mildred Lee, Recordations  
December 13, 1990  
Page 2

A fee of \$15.00 is enclosed for recording the Security Agreement. Please return at least one (1) filed stamped and recorded original Security Agreement to the undersigned at the address noted above.

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

Security Agreement between Gregory B. Cundiff and Connie S. Cundiff, his wife, as debtor, and First Bank of Illinois, as secured party, subjecting Locomotive No. 1233, SW9, Serial No. 29446, Locomotive No. RSM-7, NW2, Serial No. 125678C3735 and Locomotive No. TRS-4159, GP7, Serial No. 12-567-A to a first lien granted in favor of First Bank.

Very Truly Yours,

GREENSFELDER, HEMKER & GALE, P.C.

By

  
Vincent J. Garozzo

1357/203  
Enclosures

cc: Douglas Distler (w/enclosures)  
Sheldon K. Stock (w/o enclosures)

VERIFICATION

RECORDED NO. 17122 FILED NOS.

STATE OF MISSOURI )  
                          ) SS  
CITY OF ST. LOUIS )

DEC 14 1990 - 1:15 PM *YMF*

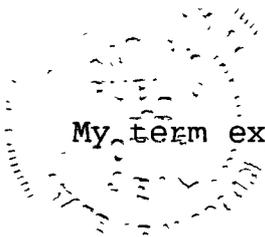
INTERSTATE COMMERCE COMMISSION

Vincent J. Garozzo, attorney, being duly sworn, deposes and states that he has compared the attached copy with the original document and has found the copy to be complete and identical in all respects to the original document.

*V J G*  
\_\_\_\_\_  
Vincent J. Garozzo

Subscribed and sworn to before me this 13<sup>th</sup> day of December, 1990.

*Earline C. Shell*  
\_\_\_\_\_  
Notary Public



EARLINE C SHELL  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COM. EXPIRES 6/12/93  
ST. LOUIS, MO

DEC 14 1990 11:22 PM

SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS SECURITY AGREEMENT ("Agreement") is made and entered into this 13<sup>th</sup> day of December, 1990, by and between GREGORY B. CUNDIFF and CONNIE S. CUNDIFF, his wife, residents of the State of Illinois ("Debtor") and FIRST BANK OF ILLINOIS, an Illinois state chartered banking corporation ("Secured Party").

RECITALS

A. Debtor and Secured Party desire to enter into that certain Loan Agreement ("Loan Agreement") pursuant to which Secured Party has agreed to loan to Debtor the principal sum of Four Hundred Thousand and No/100 Dollars (\$400,000) (the "Loan").

B. The Loan will be evidenced by that certain promissory note executed by Debtor and delivered to Secured Party (the "Note").

C. As a material inducement to Secured Party to make the Loan, Debtor has agreed to grant Secured Party a security interest in certain Collateral (as hereinafter defined) to secure payment of Debtor's obligations to Secured Party as provided in the Note.

NOW, THEREFORE, in consideration of the Premises set forth herein, Debtor and Secured Party agree as follows:

SECTION 1. Grant of Security. Debtor hereby assigns and pledges to Secured Party and grants to Secured Party a security interest in all of Debtor's right, title and interest in and to the following (the "Collateral"):

Locomotive No. 1233, SW9, Serial No. 29446  
Locomotive No. RSM-7, NW2, Serial No. 125678C3735  
Locomotive No. TRS-4159, GP7, Serial No. 12-567-A  
Case 580-D Super Back Hoe, Serial No. 9070198  
580-C Back Hoe (1978 Case), Serial No. 8957590

together with all machinery, equipment, engines, boilers, incinerators, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the ownership and operation of the foregoing, including replacements and additions thereto, all payments under insurance payable by reason of loss or damage or otherwise with respect to such property, and all products and proceeds thereof.

SECTION 2. Security for Obligations. The Collateral and this Agreement secure the payment of any and all sums due pursuant to the Note, any instruments evidencing the indebtedness of Debtor made pursuant to the Note and to further secure payment in full of any other indebtedness of Debtor, whether evidenced by instruments executed by Debtor or not, payable and owing to Secured Party as provided by the terms of any such instrument or other evidence of

indebtedness, and for all costs and expenses incurred in the collection of the same, including attorney's fees and for all advances made by Secured Party to discharge taxes or levies on, or made for repairs to, maintenance of, or insurance of, the Collateral, and for all money or other credit heretofore, now and/or hereafter advanced by Secured Party to or for the account of Debtor, and all other present or future, direct or contingent liabilities of Debtor to Secured Party of any nature whatsoever (collectively referred to as the "Obligations"). Secured Party reserves the right to offset all funds held by Secured Party against matured debts owing to Secured Party by Debtor without notice.

SECTION 3. Representations and Warranties. Debtor represents and warrants to Secured Party, which said representations and warranties shall survive the execution and delivery of this Agreement, that:

(a) Except for the security interest granted hereby, Debtor is the sole owner of the Collateral, free from any adverse lien, security interest or encumbrance; Debtor has good and lawful right to sell and encumber the Collateral; and that Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. If certificates of title are issued or outstanding with respect to any Collateral, Debtor shall cause the interest of Secured Party to be properly noted thereon, and shall forthwith deliver said certificates of title to Secured Party.

(b) This Agreement creates a valid security interest in the Collateral in favor of Secured Party securing the payment of the Obligations, and such security interest has attached and will be perfected upon the execution hereof and the filing of financing statements in the offices of the Secretary of State of Illinois and all other appropriate state and/or county offices where the Collateral may be located.

(c) The Debtor's chief and principal place of business is 1104 North Smiley, O'Fallon, Illinois 62269. Debtor agrees to promptly notify Secured Party in writing of any change in its chief and principal place of business.

(d) Debtor is the sole owner of the Collateral.

(e) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office.

(f) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the grant by Debtor of the security interest described herein, (ii) for the execution, delivery or performance of this Agreement by Debtor, or (iii) for

the perfection of or the exercise by Secured Party of its rights and remedies hereunder.

SECTION 4. Further Assurances. Debtor:

(a) Shall, from time to time and upon demand of Secured Party, promptly furnish to Secured Party such further information and shall execute such and deliver to Secured Party such financing statements, continuation statements, amendments, mortgages and other papers and shall do all such acts and things as Secured Party may at any time or from time to time request and/or as may be necessary or appropriate to establish and maintain a valid security interest in the Collateral as security for the Obligations, subject to no prior liens or encumbrances, or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral.

(b) Shall, as mutually agreed upon by Debtor and Secured Party from time to time, procure and maintain at Debtor's expense insurance upon the Collateral against fire, theft, and such other risks of loss or damage as Secured Party shall request. Such insurance shall (if mutually agreed upon) (a) be with an insurance carrier acceptable to Secured Party; (b) have a deductible amount of no more than \$500, unless Secured Party consents to such other amount; and (c) be in an amount no less than the replacement value of the Collateral. If insurance is provided, the insurance obtained by Debtor shall have a loss payable endorsement clause showing the proceeds thereof to be payable to Debtor and Secured Party as their interests may appear, and be in such form as Secured Party shall request and Debtor shall promptly furnish to Secured Party with a certificate or other evidence deemed satisfactory by Secured Party of compliance with the foregoing provisions. In the event Debtor and Secured mutually agree to such insurance and Debtor fails to provide such insurance coverage, Secured Party may, but is not obligated to, procure such insurance coverage in an amount equal to the outstanding balance of all indebtedness secured hereby and the cost thereof shall constitute an additional obligation of Debtor to Secured Party with interest thereon at the default rate set forth in the Note, due and payable to Secured Party upon demand therefor. Any unearned premium refund may in the discretion of Secured Party be used pay for other coverage obtained by Debtor or applied to the indebtedness secured hereby.

(c) Hereby assigns to Secured Party any money not in excess of the unpaid balance of any indebtedness secured hereby which may become payable under the insurance described above, including the return of any unearned premium refund, and directs any insurance company to make payments thereof directly to Secured Party, and the insurance proceeds or any part thereof may be applied by Secured Party at its option either to the reduction of the indebtedness secured hereby or to the restoration or repair of

the Collateral. Debtor hereby irrevocably makes, constitutes and appoints Secured Party as its attorney-in-fact to adjust and settle any loss which may occur and to endorse any draft, check, or other instrument for the payment of money issued in the name of Debtor. Upon the occurrence of an Event of Default (as hereinafter defined), Secured Party is hereby authorized to cancel any insurance coverage and credit any premium refunds against the unpaid balance of any indebtedness secured hereby.

(d) Shall keep the Collateral free from all taxes, liens and encumbrances. Any sum of money paid by Secured Party for Debtor's account in payment or discharge of taxes, liens or encumbrances on said Collateral shall be secured by and under this Agreement.

SECTION 5. Transfer and Other Liens. Debtor shall not:

(a) Sell, pledge, lease, assign (by operation of law or otherwise) or otherwise dispose, or offer to sell, pledge, lease, assign or otherwise dispose, of any of the Collateral or any interest therein without the prior written consent of Secured Party.

(b) Create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Collateral to secure any liability of any person or entity.

(c) Use the Collateral illegally or improperly or otherwise transfer or assign this Agreement, the Collateral or any portion of the foregoing, without the prior written consent of Secured Party.

SECTION 6. Secured Party Appointed Attorney-in-Fact. Upon the occurrence of an Event of Default, Debtor hereby irrevocably makes, constitutes and appoints Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the authority to:

(a) If an Event of Default exists, ask, demand, collect, sue for, recover, receive and give receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) Receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (a) above or as otherwise authorized; and

(c) If an Event of Default exists, file, settle or compromise any claims or take any action or institute any proceedings which Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Collateral.

SECTION 7. Secured Party May Perform. If Debtor fails to perform any of its obligations contained herein, Secured Party may itself perform, or cause performance of, such obligations, and the expenses of Secured Party incurred in connection therewith shall be payable by Debtor under Section 11(b) hereof.

SECTION 8. Secured Party's Duties. The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, Secured Party shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

SECTION 9. Events of Default. Debtor shall be in default under this Agreement upon the occurrence of any one of the following events or conditions ("Event of Default"):

(a) Debtor shall default in the due and punctual payment of any Obligation contained in or referred to in this Agreement, the Note or any other document or agreement evidencing any Obligation owed by Debtor to Secured Party; or

(b) Debtor shall be in default in the observance or performance of any agreement or covenant contained in this Agreement, the Note, or any other document or agreement evidencing any Obligation owed by Debtor to Secured Party, and such default or failure shall remain uncured for a period of ten (10) days after receipt by Debtor of notice of such default; or

(c) any warranty, representation or statement made or deemed made to Secured Party by or on behalf of Debtor proves to have been false or incorrect in any material respect on or as of the date made or deemed made; or

(d) any event which results in the acceleration of the maturity of the indebtedness of Debtor to Secured Party or to others under any indenture, agreement or understanding; or

(e) sale, encumbrance, theft, destruction or material damage, of or to any of the Collateral, or the making of any levy, seizure, or attachment thereof or thereon, except as permitted by Lender in advance in writing; or

(f) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by, or in the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor, or any guarantor for Debtor, or entry of judgment against them, or failure of any guarantor for Debtor to provide Secured Party with financial information promptly when requested by Secured Party.

SECTION 10. Remedies. If any Event of Default shall have occurred and be continuing:

(a) Secured Party may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a Secured Party on default under the Uniform Commercial Code (whether or not such Code applies to the affected Collateral) and also may (i) require Debtor to, and Debtor hereby agrees that it will at its expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at places to be designated in a notice given to Debtor by Secured Party which is reasonably convenient to both parties, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at Secured Party's offices or elsewhere, for cash, on credit or for future delivery and at such price or prices and upon such other terms as may be commercially reasonable. Debtor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Secured Party, be held by Secured Party as collateral for and then or at any time thereafter applied in whole or in part by Secured Party against all or any part of the Obligations in such order as Secured Party shall elect. Any surplus of such cash or cash proceeds held by Secured Party and remaining after payment in full of all the Obligations shall be paid over to Debtor or to whomsoever may lawfully be entitled to receive such surplus.

SECTION 11. Indemnity and Expenses. Debtor shall:

(a) Indemnify Secured Party from and against any and all claims, losses and liabilities growing out of or resulting from

this Agreement (including, without limitation, enforcement of this Agreement); and

(b) Upon demand pay to Secured Party the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which Secured Party may incur in connection with (i) the custody, preservation, use or operation of or the sale of, collection from or other realization upon, any of the Collateral after an Event of Default, (ii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iii) the failure by Debtor to perform or observe any of the provisions hereof.

SECTION 12. Amendments. No amendment or waiver of any provision of this Agreement nor consent to any departure by Debtor here from shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 13. Notices. Except as otherwise provided herein, all notices, requests and demands to or upon the respective parties hereto to be effective shall be transmitted in writing by telex, by telecopy, by hand delivery, by first-class mail, or by Federal Express, Express Mail or some other overnight courier service, addressed to the Secured Party or the Debtor at the address for such person as set forth below:

(i) if to the Debtor:

Gregory B. Cundiff  
1104 North Smiley  
O'Fallon, Illinois 62269

with a copy to:

Peper, Martin, Jensen, Maichel & Hetlage  
720 Olive  
St. Louis, Missouri 63101  
Attention: Kurt E. Johnson, Esq.

(ii) if to the Secured Party:

First Bank  
200 South Lincoln  
O'Fallon, Illinois 62269  
Attention: Douglas Distler, President

with a copy to:

Greensfelder, Hemker & Gale, P.C.  
10 S. Broadway  
Suite 1800  
St. Louis, Missouri 63102  
Attention: Sheldon K. Stock, Esq.

or at such other address as may be subsequently submitted by written notice of either party, or to an assignee of the Secured Party at the address designated by such assignee from time to time. Notice given pursuant to this Section 13 shall be deemed effective (a) upon receipt if sent via telex, telecopy or hand delivery, (b) four (4) days after the day it is mailed or upon receipt, whichever is earlier, if sent via first class mail, or (c) one (1) day after the day it is sent, if sent via Federal Express, Express Mail or any other overnight courier service.

SECTION 14. Continuing Security Interest; Transfer of Obligations. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until satisfaction in full of the Obligations, (b) be binding upon Debtor, its successors and assigns, and (c) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Secured Party may assign or otherwise transfer any Obligation held by it to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to Secured Party herein or otherwise. Upon the payment in full of the Obligations and the termination of any commitment by Secured Party with respect thereto, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Debtor. Upon any such termination, Secured Party will, at Debtor's expense and without any recourse upon or warranty by Secured Party, execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence such termination.

**SECTION 15. Construction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, AND MAY BE ENFORCED IN ANY COURT IN THE STATE OF MISSOURI.**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

SECURED PARTY

FIRST BANK OF ILLINOIS

By:   
Douglas Distler

Title: President

DEBTOR

  
Gregory B. Cundiff  
  
Connie S. Cundiff

STATE OF Missouri )  
City OF St. Louis ) ss.

On this 13<sup>th</sup> day of December, 1990, before me personally appeared Gregory B. Cundiff and Connie S. Cundiff, husband and wife, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Earlene C Shell  
Notary Public  
EARLENE C SHELL  
NOTARY PUBLIC STATE OF MISSOURI  
MY COMMISSION EXPIRES 6/12/93  
ST. LOUIS CITY

My term expires:

STATE OF Missouri )  
City OF St. Louis ) ss.

On this 13<sup>th</sup> day of December, 1990, before me appeared Douglas Distler, to me personally known, who, being by me duly sworn, did say that he is the President of First Bank of Illinois, an Illinois state chartered banking corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said Douglas Distler acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Earlene C Shell  
Notary Public

My term expires:

NOTARY PUBLIC STATE OF MISSOURI  
MY COMMISSION EXPIRES 6/12/93  
ST. LOUIS CITY