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REGISTRATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION

**THE FIFTH THIRD BANK**

LEGAL DEPARTMENT

17230  
REGISTRATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION  
1-050A060

17230 / B  
REGISTRATION NO. \_\_\_\_\_ FILED 1425  
FEB 19 1991 -3 15 PM  
INTERSTATE COMMERCE COMMISSION

January 22, 1991

Ms. Mildred Lee  
INTERSTATE COMMERCE COMMISSION  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Please find enclosed herewith an original and certified set of documents by and between Laurinburg and Southern Railroad Company, located at P. O. Box 1929, Laurinburg, North Carolina 28362, Carolina Power and Light Company, located at P. O. Box 1551, Raleigh, North Carolina 27602 and The Fifth Third Bank Leasing Company, located at 38 Fountain Square Plaza, Cincinnati, Ohio 45263. The documents enclosed include the following:

- a. Promissory Note;
- b. Security Agreement;
- c. Assignment of Lease; and
- d. Notice and Acknowledgement of Assignment.

It is Fifth Third's intention to take a security interest in the equipment described in Schedule A of the Security Agreement. I have also enclosed a check in the amount of \$15.00 representing filing fees. Please return the original documents in the self-addressed envelope that I have enclosed. Should you have any questions, please feel free to call me at (513) 579-5193.

Thank you in advance for your cooperation in this matter.

Sincerely,

THE FIFTH THIRD BANK,

*Ann M. Blase*

Ann M. Blase  
Paralegal

NOTICE OPERATING UNIT  
FEB 19 3 04 PM '91

AMB:km  
Enclosures

## SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS SECURITY AGREEMENT is entered into as of the 27 day of Dec., 1990, by and between LAURINBURG AND SOUTHERN RAILROAD COMPANY, (the "Borrower") and FIFTH THIRD LEASING COMPANY, an Ohio corporation ("Fifth Third").

Section 1. Definitions:

1.1 Specific Definitions. The following definitions shall apply:

(a) "Equipment" means the equipment described in Schedule A attached hereto and made a part hereof.

(b) "Lien" means any security interest, mortgage, pledge, assignment, lien or other encumbrance of any kind, including interests of vendors or lessors under conditional sale contracts or capital leases.

(c) "Loan" means the loan made to Borrower by Fifth Third and evidenced by the Credit Documents (as defined below)

(d) "Obligations" means all loans, advances, indebtedness and other obligations of Borrower owed to bank of every description whether now existing or hereafter arising (including those owed by Borrower to others and acquired by bank by purchase, assignment or otherwise) and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, whether or not secured by additional collateral, and including without limitation obligations to perform or forbear from performing acts, all amounts represented by letters of credit now or hereafter issued by bank for the benefit of or at the request of Borrower, and all expenses and attorney's fees incurred by bank under this Agreement or any other document or instrument related thereto.

(e) "Operative documents" has the meaning assigned to that term in the Assignment of Lease (as defined below)

1.2 Other Definitions. Capitalized terms not defined herein have the meanings set forth in the Note of even date herewith or the Assignment of Lease (the "Assignment of Lease") between Borrower and Fifth Third of even date herewith (Collectively the "Credit Documents"). All other undefined terms shall have the meaning given to them by the Uniform Commercial Code.

Section 2. Security.

2.1 Security Interest of Fifth Third. To induce Fifth Third to make the Loans, and as security for all Obligations, Borrower hereby assigns to Fifth Third as Collateral and grants to

Fifth Third a continuing first priority pledge and security interest in the following property of Borrower (the "Collateral"), whether now owned or existing or hereafter acquired or arising and regardless of where it is located:

(a) the Equipment;

(b) all interest of the Borrower in and to the Operative Documents; and

(c) all proceeds and products of Collateral and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering Collateral, all tort or other claims against third parties arising out of damage or destruction of the Collateral, all property received wholly or partly in trade or exchange for Collateral, all leases of Collateral and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition, of the Collateral or any interest therein; and

(d) all instruments, documents, securities, money or other property, owned by Borrower or in which Borrower has an interest, which now or hereafter are at any time in the possession or control of Fifth Third or any affiliate of Fifth Third or in transit by mail or carrier to or in the possession of any third party acting on behalf of Fifth Third, without regard to whether Fifth Third received the same in pledge, for safekeeping, as agent for collection or transmission or otherwise or whether Fifth Third had conditionally released the same, and any deposit accounts of Borrower with Fifth Third or any affiliate of Fifth Third, including all demand, time, savings, passbook or other accounts.

2.2 Provisions Concerning Equipment. (a) Borrower warrants and represents that the Borrower has informed Fifth Third of all places where any of the Equipment is located or has been located at any time during the past four months. No Equipment will be permanently moved to any location not disclosed to Fifth Third but Equipment may be moved from one such location to another.

(b) Borrower will or will cause its Lessee to keep and maintain the Equipment in good operating condition and repair, make all necessary replacements so that its value and operating efficiency is maintained and preserved. Borrower will immediately notify Fifth Third of any material loss or damage to the Collateral.

(c) Borrower shall immediately deliver to Fifth Third all certificates of title or applications for title or the like for any Equipment covered by certificates of title. Borrower will take all steps necessary to perfect Fifth Third's Lien in such assets.

(d) Borrower shall not permit any item of Equipment to become a fixture to real estate or accession to other property

and the Equipment is now and shall at all times remain and be personal property, except with the prior written consent of Fifth Third. If any of the Collateral is or may become a fixture, Borrower shall obtain from all persons with an interest in the relevant real estate such waivers or subordinations as the Fifth Third reasonably requires.

2.3 Liens. Borrower has good and marketable title to the Collateral, and the Liens granted to Fifth Third in this Agreement are fully perfected first priority Liens in the Collateral with priority over the rights of every person other than Borrower in the Collateral and subject only to the rights of Borrower's lessee. Borrower is the owner of all personal property in its possession, and all assets of Borrower are owned free, clear and unencumbered, except for the Lien of Fifth Third and except for Liens imposed by law which secure amounts not yet due and payable.

2.4 Further Assurances. (a) Borrower will execute and deliver to Fifth Third at Fifth Third's request all financing statements, continuation statements and other documents that Fifth Third may reasonably request, in form satisfactory to Fifth Third, to perfect and maintain perfected Fifth Third's security interest in the Collateral and to fully consummate all transactions contemplated under this Agreement. Borrower hereby irrevocably makes, constitutes and appoints Fifth Third (and any of Fifth Third's officers, employees or agents designated by Fifth Third) as Borrower's true and lawful attorney with power to sign the name of Borrower on any such documents.

(b) Fifth Third may inspect and verify Borrower's books and records at any time or times hereafter, during usual business hours, in order to verify the amount or condition of the Collateral, or any other matter relating to the Collateral or Borrower's financial condition. Borrower will promptly deliver to Fifth Third copies of all books and records requested by Fifth Third.

2.5 Other Amounts Deemed Loans. If Borrower fails to pay any tax, assessment, government charge or levy or to maintain insurance within the time permitted by this Agreement or the Credit Documents, or to discharge any Lien prohibited hereby, or to comply with any other obligation, Fifth Third may, but shall not be required to, pay, satisfy, discharge or bond the same of the account of Borrower, and to the extent permitted by law and all monies so paid out shall be secured by the Collateral.

2.6 Borrower Remains Liable. Borrower remains liable under any contracts and agreements included in the Collateral to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, and Fifth Third will not have any obligation or liability under such contracts and agreements by reason of this Agreement or otherwise.

Section 3 Events of Default and Remedies.

3.1 Events of Default. Any of the following events shall be an Event of Default:

(a) any representation or warranty made herein by Borrower is incorrect when made or reaffirmed; or

(b) Borrower fails to keep its assets insured as required herein or in the Credit Documents, or material uninsured damage to or loss, theft or destruction of the Collateral occurs; or

(c) Borrower fails to observe or perform any covenant, condition or agreement herein, and such default continues for 30 days after written notice thereof to Borrower by Fifth Third; or

(d) an Event of Default occurs under any Credit Document or any document or agreement evidencing or securing Obligations.

3.2 Remedies. If any Event of Default shall occur and be continuing, in addition to the remedies provided in the Credit Agreement:

(a) Fifth Third may resort to the rights and remedies of a secured party under the Uniform Commercial Code including the right to enter any premises of Borrower, with or without legal process and take possession of the Collateral and remove it and any records pertaining thereto and/or remain on such premises and use it for the purpose of collecting, preparing and disposing of the Collateral;

(b) Fifth Third may ship, reclaim, recover, store, finish, maintain and repair the Collateral, and may sell the Collateral at public or private sale, and Borrower shall be credited with the net proceeds of such sale only when they are actually received by Fifth Third any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Borrower 10 days prior to such disposition;

(c) Borrower shall upon request of Fifth Third assemble the Collateral and any records pertaining thereto and make them available at a place designated by Fifth Third; or

(d) Fifth Third may use, in connection with any assembly or disposition of the Collateral, any trademark, trade name, tradestyle, copyright, patent right, trade secret or technical process used or utilized by Borrower.

3.3 No Remedy Exclusive. No remedy set forth herein is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy given under this

Agreement or the Credit Agreement or now or hereafter existing at law or in equity or by statute.  
Section 4 Miscellaneous Provisions.

4.1 Miscellaneous. No delay or omission to exercise any right shall impair any such right or be a waiver thereof, and a waiver on one occasion shall be limited to that particular occasion. This Agreement may be amended only in writing signed by the party against whom enforcement of the amendment is sought. This Agreement may be executed in counterparts. If any part of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby.

4.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties hereto; however, Borrower may not assign any of its rights or delegate any of its obligations hereunder. Fifth Third (and any subsequent assignee) may transfer and assign this Agreement or may assign partial interests or participation in the Loans to other persons.

4.3 Subsidiaries. If Borrower has any Subsidiaries at any time during the term of this Agreement, the term "Borrower" in each representation, warranty and covenant herein shall mean "the Borrower and each Subsidiary individually and in the aggregate," and Borrower shall cause each Subsidiary to be in compliance therewith.

4.4 Notices. Any notices under or pursuant to this agreement shall be deemed duly sent when delivered in hand or when mailed by registered or certified mail, return receipt requested, to the addresses then provided for in the Notices section of the Assignment of Lease.

4.5 Governing Law; Jurisdiction. This Agreement will be governed by the domestic laws of the State of Ohio. Borrower agrees that the state and federal courts in Hamilton County, Ohio have exclusive jurisdiction over all matters arising out of this Agreement, and that service of process in any such proceeding shall be effective if mailed to Borrower at its address described in the Notices section of the Credit Agreement. FIFTH THIRD AND BORROWER HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the Borrower and the Fifth Third have executed this Security Agreement by their duly authorized officers as of the date first above written.

WITNESSES:

R. Pearson  
Asst Sec/Treas

LAURINBURG AND SOUTHERN RAILROAD COMPANY

By: [Signature]  
Its: President

FIFTH THIRD LEASING COMPANY

By: [Signature]

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF Scotland

BE IT REMEMBERED, that on this 17<sup>th</sup> day of December, 1990, before me a Notary Public in and for said County, State, personally appeared MURPHY EVANS the President of Laurinburg and Southern Railroad Company, and acknowledged the signing thereof to be his/her voluntary act as such officer and the voluntary act of said corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

[Signature]  
Notary Public

My Commission Expires April 12, 1993

STATE OF OHIO  
COUNTY OF HAMILTON

BE IT REMEMBERED, that on this 21 day of Dec., 1990, before me a Notary Public in and for said County, State, personally appeared DAVID JACKSON the Jr VP of Fifth Third Leasing Company, and acknowledged the signing thereof to be his/her voluntary act as such officer and the voluntary act of said corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

[Signature]  
Notary Public

SCHEDULE A

Equipment

1. General Motors Electro Motive Division, Engine type NW-2, 125 Ton, 1000 Horse Power Switching Locomotive, Builder Number 7522.
2. General Electric Company, 70 Ton, 600 Horse Power Switching Locomotive, Builder Number 29298.
3. American Locomotive Company, Engine type S-2, 115 Ton, 1000 Horse Power Switching Locomotive, Builder Number 76169.
4. General Motors Electro Motive Division, Engine type SW-1, 100 Ton, 600 Horse Power Switching Locomotive, Builder Number 1041.
5. American Locomotive Company, Engine type S-4, 115 Ton, 1000 Horse Power Switching Locomotive, Builder Number 80063.
6. American Locomotive Company, Engine type S-4, 115 Ton, 1000 Horse Power Switching Locomotive, Builder Number 79518.
7. General Motors Electro Motive Division, Engine Type SW-1, 100 Ton, 6000 Horse Power Switching Locomotive, Builder Number 7505.

**A Fifth Third Bancorp Bank**

Note Retain Customer Copy for your records

2

OFFICER No. 140

500,000.00

NOTE

December 19, 19 90  
(Effective Date)

City Cincinnati, State Ohio

On or before the Due Date below, the undersigned for value received, promise to pay to the order of Fifth Third Leasing Company, 38 Fountain Square Plaza, Cincinnati, OH (hereinafter referred to as "Bank" or "Holder") at its Office

in Cincinnati (Name and Address of Bank) the sum of Five Hundred Thousand and 00/100 Dollars (hereinafter referred to as the "Borrowing") or the balance of Unpaid Principal referred to and set forth in the schedule appearing on the reverse side hereof, if less than the Borrowing

The principal sum outstanding shall bear interest per annum at the rate of 11.3 % ~~Yield on the Prime Rate~~ ~~the rate announced by the Bank~~ ~~to the Prime Rate~~ ~~above Effective Date~~ ~~in the event of a change in said Prime Rate, the rate of this note shall be changed immediately to the rate which shall be greater than the new Prime Rate by the amount stated in this clause~~

Prior to the Due Date, Bank may (but is not obligated to) lend to the undersigned such amounts as may from time to time be requested by the undersigned provided that the principal amount borrowed shall not at any time exceed the Borrowing and further provided that no Event of Default as defined herein shall exist

Principal ~~shall be due and payable~~ and interest shall be due and payable:

at Maturity  in Installments Installments in the amount of \$ 10,856.00 shall be due on the twentieth day of each  MONTH  QUARTER

beginning December 20 19 90 with a final payment on November 20, 1995 of the principal amount then owing

~~These and the bank payable on the~~  Month  Quarter  At Maturity

The undersigned has deposited with Bank the following as collateral security for the payment of this and every liability or liabilities of the undersigned to Holder, however created, direct or contingent, due or to become due, whether now or hereafter existing, and whether the same may have been or shall be participated in, in whole or part, by others by trust agreement or otherwise, or in any manner acquired by or accruing to Holder, whether by agreement with or by assignment or endorsement to said undersigned, by any one whomsoever, the following property (hereinafter referred to as "Collateral"), to wit

All equipment is defined in that certain Security Agreement between the undersigned and

Bank of even date herewith and all Operative Documents as defined in that certain

Assignment of Lease between the undersigned and the Bank of even date herewith.

together with any stock dividends thereon or any warrants or other securities hereafter issued as part of any recapitalization, either in exchange for or as an addition to any of the property listed, and the undersigned agrees to deliver such additional stock dividends, or warrants, or securities to Holder immediately upon receipt thereof, and further, to secure the payment of said note and liabilities, the undersigned hereby pledges, assigns and transfers any and all other property of every kind and description of the undersigned now or hereafter and howsoever in the possession or control of, or pledged or mortgaged to Holder, and authorizes Holder, at any time without notice to the undersigned, to transfer or cause to be transferred into its own name, or the name of its nominee or nominees, any or all of said foregoing described stock, bonds, securities or other property and/or liabilities, whether matured or not, and the undersigned agrees that Holder may at any time call for additional security satisfactory to it

Events of Default

This obligation, and all other obligations of the undersigned to Holder, shall be and become immediately due and payable at the option of the Holder, without any demand or notice whatsoever, upon the occurrence of any of the following described events, each of which shall constitute a default

- 1) Any failure to make any payment when due of the principal or interest on this obligation, or the occurrence of any event of default as therein defined on any other obligation for borrowed money of the undersigned
- 2) The death or dissolution of the undersigned or any endorser or guarantor, or if the undersigned is a partnership, the death or dissolution of a general partner
- 3) Any failure to submit to Holder current financial information upon request
- 4) The creation of any lien (except the lien to Bank herein created) or the issuance of an attachment against or seizure of any of the property of, or the entry of a judgment against, the undersigned
- 5) In the judgment of Holder, any adverse change occurs in the ability of the undersigned to repay this debt, or the Holder deems itself insecure
- 6) An assignment for the benefit of the creditors of, or the commencement of any bankruptcy, receivership, insolvency, reorganization, or liquidation proceedings by or against the undersigned or any endorser or guarantor hereof
- 7) The institution of any garnishment proceedings by attachment, levy or otherwise, against any deposit balance maintained or any property deposited with the Holder hereof by the undersigned or any endorser or guarantor hereof
- 8) Holder has called for additional security and the undersigned has not furnished satisfactory additional security on demand

Upon the occurrence of an Event of Default herein described Holder may, at its option declare this note and all other liabilities of the undersigned, to be fully due and payable in their aggregate amount together with accrued interest

In addition to any other remedy permitted by law, the Holder shall have a lien on and a security interest in the deposit balances of any of the undersigned, and may at any time, without notice, apply the same to this note or such other liabilities, whether due or not, and Holder may, at its option, proceed to enforce and protect its rights by an action at law or in equity or by any other appropriate proceedings Notwithstanding any other legal or equitable rights of Holder, Holder, in the event of default, is (a) hereby irrevocably appointed and constituted attorney in fact, with full power of substitution, to exercise all rights of ownership with respect to Collateral including, but not limited to, the right to collect all income of other distributions arising from and to exercise all voting rights connected with Collateral, and (b) is hereby given full power to collect, sell, assign, transfer and deliver all of said Collateral or any part thereof, or any substitutes therefor, or any additions thereto, through any private or public sale without either demand or notice to the undersigned, or any advertisement, the same being hereby expressly waived, at which sale Holder is authorized to purchase said property or any part thereof, free from any right of redemption on the part of the undersigned, which is hereby expressly waived and released In case of sale for any cause, after deducting all costs and expenses of every kind, Holder may apply, as it shall deem proper, the residue of the proceeds of such sale toward the payment of any one or more or all of the liabilities of the undersigned, whether due or not due, to Holder, after such application and the return of any surplus, the undersigned agrees to be and remains liable to Holder for any and every deficiency after application as aforesaid upon this and any other liability

If any payment is not paid when due (whether by acceleration or otherwise) or within 10 days thereafter, undersigned agrees to pay to Holder a late payment fee as provided for in any loan agreement or 1 1/2% of the payment amount, whichever is greater Additionally, if this Note is not paid in full at maturity (whether by acceleration or otherwise) or within 10 days thereafter, the undersigned agrees to pay to Holder a fixed charge of \$25 00, or the undersigned agrees that holder may increase the above stated interest rate by 6%, whichever is greater Under no circumstances shall said interest rate be raised to a rate which shall be in excess of the maximum rate of interest allowable under the state and/or federal usury laws in force at the time of such change

WAIVER No failure on the part of Holder to exercise any of its rights hereunder shall be deemed a waiver of any such rights or of any default Demand, presentment, protest, notice of dishonor and notice of default are hereby waived. The undersigned agrees to pay all costs of collection, including reasonable attorneys' fees, upon default

JOINT AND SEVERAL LIABILITY If there be more than one undersigned, the word "undersigned" as used herein shall mean "all of the undersigned, or any of them," and in such event the obligations of the undersigned are joint and several

JURY WAIVER: The undersigned, and any endorser or guarantor hereof, waive the right to a trial by jury of any matters arising out of this note or the transactions contemplated hereby.

This note is subject to the terms and conditions of a loan agreement dated N/A between the undersigned and Bank

Each and every obligor hereunder authorizes any attorney of record to appear for them in any court of record in the State of Ohio, after this Note becomes due and payable whether by its terms or upon default, waive the issuance and service of process, and release all errors, and confess a judgment against them in favor of the Holder, for the principal amount of this Note plus interest at the Note rate, together with court costs and attorneys' fees Stay of execution and all exemptions are hereby waived If this Note is referred to an attorney for collection, and the payment is obtained without the entry of a judgment, the obligors shall pay to Holder its attorneys' fees

**WARNING - BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

DATE DUE November 20, 1995 LAURINBURG AND SOUTHERN RAILROAD COMPANY

ADDRESS 204 Railroad Street X Murphy Evans

Laurinburg, North Carolina 28352 Murphy Evans, President

NOTE NO \_\_\_\_\_

