

**Goldstein & Manello, P.C.**  
Counsellors at Law

WASA 102  
April 10/30  
4/11/91

265 Franklin Street  
Boston, Massachusetts 02110  
Telephone 617 439-8900  
Telecopier 617 439-8988  
Telex 94 0476

Member of the G&M Law Group,  
an affiliation of New England  
law firms.

Joseph B Manello  
Gerard D Goldstein  
Richard J Snyder  
Stephen M Homig  
Carl K King  
Gary R Greenberg  
Anthony D Martin  
Robert Somma  
Robert B Carpenter  
Robert D Cultice  
Jeffrey L Musman  
Michael E Mecasas  
Warren I Green  
Janet E Bostwick  
Michael Unger

Joseph S Ayoub, Jr  
Ralph K Stone  
Michael F Callahan  
George W Mykulak  
Donald C Hillman  
Mark A Berthiaume  
Louis J Scerra, Jr  
James A Lightman  
Stephanie Pax Flanigan  
Michael Kevorkian  
Alice S Kurtz  
Charles A Ognibene  
Jonathan L Moll  
Michael H Riley  
Lawrence R Kullig

Lauren Jennings  
Paul J Levenson  
David J Reier  
Alexander M McIntyre, Jr †  
Vicki L Kaufman  
Arthur L Streeter  
Brooks S Thayer  
David A Seigel  
Christopher A Matherly  
Karen L Ling  
Richard M Gilbert  
David Wisen  
David J Officer  
Diane R Witonsky  
Daniel H Conroy

Of Counsel  
Joseph S Ayoub, Sr

†admitted in Louisiana only

April 2, 1991

BY FEDERAL EXPRESS

1-093A022

Mr. Sidney L. Strickland, Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, DC 20423

17273  
APR 3 1991 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

APR 3 10 54 PM '91

Re: James Stoetzel Associates, Inc.

Dear Sir:

I have enclosed two originals of the Chattel Mortgage described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a chattel mortgage and security agreement, a primary document, dated as of April 1, 1991.

The names and addresses of the parties to this document are:

Mortgagor: James Stoetzel Associates, Inc.  
(a Massachusetts corporation)  
2 Elm Square  
Andover, Massachusetts 01810

Mortgagee: New Heritage Bank  
(a Massachusetts trust company)  
454 Essex Avenue  
Lawrence, Massachusetts 01842

*C. D. [Signature]*

FED X 1314  
4/3/91

**Goldstein & Manello, P.C.**

Counsellors at Law

Mr. Sidney L. Strickland, Secretary

April 2, 1991

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

All railroad box cars now owned or hereafter acquired by Mortgagor including, without limitation, One Hundred Forty-Seven (147) 50' 7", 70-ton capacity, Type XL, Plate B Box Cars manufactured in 1974 by Pullman Standard Car Manufacturing Company, Association of American Railroads ("AAR") Mechanical Design - XL, AAR Car Type Code - A432, Reporting Marks DH 24001-24150 Series.

Also enclosed is a check in the amount of \$15.00 representing your recording fee. Please return the original documents and any extra copies not needed by the Commission to: Charles A. Ognibene, Esq., Goldstein & Manello, P.C. 265 Franklin Street, Boston, MA 02110.

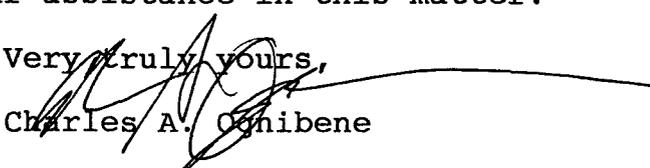
A short summary of this document to appear in the index is as follows:

Mortgage and Security Agreement given by James A. Stoetzel Associates, Inc., 2 Elm Square, Andover, Massachusetts 01810, to New Heritage Bank, 454 Essex Street, Lawrence, Massachusetts 01840, dated March 29, 1991, covering all railroad box cars now owned or hereafter acquired by mortgagor, including 147 Box Cars, manufactured in 1974 by Pullman Standard Car Manufacturing Company, AAR Mechanical Design - XL, AAR Car Type Code A432, Reporting Marks DH 24001-24150

Please note that this firm represents New Heritage Bank and has delivered this letter and the enclosed documents to you at its direction.

If any further information is required, please call me at (617) 439-8900. Thank you for your assistance in this matter.

Very truly yours,

  
Charles A. Ognibene

CAO/dac: 4195u

Enclosures

cc: Edward F. McCormick and Steven K. Ventre  
Richard J. Snyder, Esq.  
Joseph B. Manello, Esq.

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/3/91

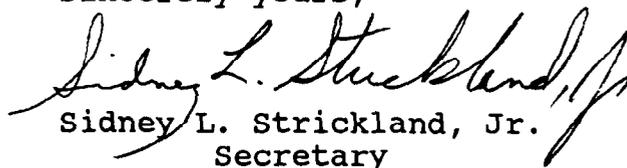
OFFICE OF THE SECRETARY

Charles A. Ognibene Esq  
Goldstein & Manello, P.C.  
265 Franklin Street  
Boston, MA. 02110

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 4/3/91 at 11:05am, and assigned recordation number(s). 17273

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17273  
RECORDING NO. \_\_\_\_\_ FILED 1483

APR 3 1991 -11 05 AM

INTERSTATE COMMERCE COMMISSION

CHATTEL MORTGAGE

This Chattel Mortgage is made as of April 1, 1991, by and between JAMES STOETZEL ASSOCIATES, INC., a Massachusetts corporation with its principal place of business at 2 Elm Square, Andover, Massachusetts 01810, herein referred to as Mortgagor, and NEW HERITAGE BANK, a Massachusetts trust company with an office at 454 Essex Street, Lawrence, Massachusetts 01842, herein referred to as Mortgagee.

Mortgagor hereby mortgages to Mortgagee and its assigns all railroad box cars now owned or hereafter acquired by Mortgagor, including, without limitation, those One Hundred Forty-Seven (147) 50' 7", 70-ton capacity, Type XL, Plate B Box Cars manufactured in 1974 by Pullman Standard Car Manufacturing Company, further described on Exhibit A hereto, and all spare parts, accessories, additions, accessions and substitutions thereto and therefor, and all proceeds thereof, all herein referred to as Collateral, and hereby grants a security interest in such Collateral to Mortgagee as security for the timely payments, performance, and observance of all obligations and liabilities of Mortgagor to Mortgagee, liquidated or unliquidated, owing from at any time, each of every kind, nature, and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, all liabilities, obligations, and covenants under (i) that certain Loan Agreement dated the date hereof between Mortgagor and Mortgagee, including future advances made to Mortgagor pursuant to the terms thereof; (ii) that certain Promissory Note in the original face amount of Six Hundred Seventy-Nine Thousand Dollars (\$679,000.00) dated the date hereof and made by Mortgagor to the order of Mortgagee pursuant to said Loan Agreement; (iii) that certain Demand Promissory Note in the original face amount of Two Hundred Thousand Dollars (\$200,000.00), dated February 21, 1989, and made by Mortgagor to the order of Mortgagee, and (iv) this Chattel Mortgage.

Mortgagor agrees and covenants for itself and its successors and assigns with Mortgagee as follows:

1. To pay timely and perform all obligations secured hereby.
2. That it is the lawful owner of the Collateral.
3. That the Collateral is free from any and all encumbrances and claims, except that in favor of Mortgagee.
4. That it has the right to mortgage the Collateral.

5. That it will warrant and defend forever the Collateral and title thereto to Mortgagee, its successors, and assigns against all the liens and claims of other persons.

6. To keep the Collateral insured against fire and other casualty in a sum not less than Six Hundred Thousand Dollars (\$600,000), for the benefit of Mortgagee, in the form and in the insurance company approved by Mortgagee.

7. Not to sell, assign, pledge, lease, or otherwise dispose of the Collateral, or remove the Collateral from the premises where they are now located, without the prior, express, and written consent of Mortgagee.

8. To pay any and all taxes or assessments that may be levied on or against the Chattel Mortgage or on or against the obligations secured hereby.

9. All other similar goods and chattels and all additions to the stock of goods that shall be acquired by Mortgagor, shall be subject to this Chattel Mortgage.

10. That the Collateral is now located at the Delaware and Hudson Railway Company Yard, Oneonta, New York.

11. That it will execute and deliver to Mortgagee any writings and do all things necessary, effectual or requested by Mortgagee to carry into effect the provisions and intent of Chattel Mortgage, or to vest more fully in or assure to Mortgagee (including, without limitation, all steps to create and perfect) the mortgage of and security interest in the Collateral intended hereby to facilitate the collection of the Collateral.

Until default in payment, observance, or performance of any agreements of Mortgagor, Mortgagor shall be entitled to retain possession of the Collateral, and to use and enjoy it.

If Mortgagor fails to make when due any payment on either of the above-referenced Promissory Notes, or fails to comply with any of the terms or conditions set forth in this instrument, or if there occurs any Event of Default under the above-described Loan Agreement, then, at the election of the Mortgagee, without notice, the then unpaid balance of this note shall immediately become due and payable, and Mortgagee, in addition to any other rights and remedies that it may have, may cause the Collateral to be seized and held until the entire amount due under this instrument is paid, or may, at its option cause the Collateral to be seized and sold under executory or other process to the highest bidder. Mortgagor expressly waives notice, demand for payment, and appraisalment in connection with any such executory proceedings. Further,

Mortgagee may take and maintain possession of the Collateral wherever located or may remove the same to such other place or places as Mortgagee may determine. Upon the Mortgagee's demand, Mortgagor shall assemble the Collateral and make it available to Mortgagee at a place designated by Mortgagee and reasonably convenient to Mortgagee and Mortgagor. Mortgagee will give Mortgagor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition is to be made. The requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Mortgagor first hereinabove set forth at least five days before the time of sale or other intended disposition. Expenses of retaking, holding, preparing for sale, selling or similarly relating to realization on the Collateral shall include reasonable attorneys' fees and other legal costs and expenses incurred by Mortgagee. Without limiting the foregoing, Mortgagee shall have all the rights of a secured party under the Uniform Commercial Code of Massachusetts.

Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's true and lawful attorney, with full power of substitution, at the sole cost and expense of Mortgagor but for the sole benefit of Mortgagee upon the occurrence of a default described above, to convert the Collateral into cash, including, without limitation, by the sale (either public or private) of all or any portion or portions of the Collateral and to prosecute, defend, compromise or release any action relating to the Collateral. Mortgagee shall not be obliged to do any of the acts or exercise any of the powers hereinabove authorized, but if Mortgagee elects to do any such act or exercise any such power, it shall not be accountable for more than it actually receives as a result of such exercise of power, and it shall not be responsible to the Mortgagor except for willful misconduct in bad faith. All powers conferred upon Mortgagee by this Chattel Mortgage, being coupled with an interest, shall be irrevocable so long as any obligation of Mortgagor to Mortgagee shall remain unpaid.

Time is of the essence of this Mortgage and the obligations secured hereby, and no waiver by Mortgagee of any breach of or default under this instrument by Mortgagor shall be deemed a waiver of any other breach or default thereafter occurring.

The rights of Mortgagee under this instrument are subject to the condition that if Mortgagor satisfies in full all obligations secured by this instrument, Mortgagee shall terminate this mortgage upon request of Mortgagor.

This Chattel Mortgage shall inure to the benefit of Mortgagee and its successors and assigns. Mortgagee's rights hereunder shall be in addition to, and not exclusive of, those

set forth in that certain Security Agreement dated the date hereof and made by Mortgagor in favor of Mortgagee and those set forth in all other agreements providing security and guaranties for the obligations secured thereby. This Chattel Mortgage shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

All costs and expenses incurred by Mortgagee in connection with the enforcement of this instrument and its rights hereunder, including attorneys' fees, shall be due on demand from Mortgagor to Mortgagee, which sum shall be secured by this Chattel Mortgage.

The invalidity of any provision of this instrument shall not affect the validity of any other provision. In the event that any provision of this instrument is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties independently of the invalid provision.

Mortgagor acknowledges receipt of a signed copy of this instrument.

In witness whereof, the parties have executed this instrument under seal, in triplicate at Boston, Commonwealth of Massachusetts, the day and the year first written above.

WITNESS:

Robert B. Briggs  
Carl Benda

JAMES STOETZEL ASSOCIATES, INC.

By: James R. Stoetzel PRESIDENT  
James R. Stoetzel, its duly  
authorized President

ATTEST: James R. Stoetzel  
Clerk

[SEAL]

Robert B. Briggs  
Carl Benda

NEW HERITAGE BANK

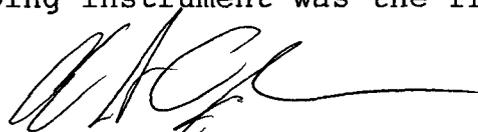
By: Steven H. Ventre  
Its A.V.P.

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

March 29, 1991

On this 29<sup>th</sup> day of March, 1991, before me personally appeared the above-named James Stoetzel, to me personally known, who being by me duly sworn, says that he is the President of JAMES STOETZEL ASSOCIATES, INC., a Massachusetts corporation, 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 that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Charles A. Conzine, Notary Public  
My Commission Expires:

CHARLES A. CONZINE, Notary Public  
My Com. Expires June 27, 1991

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

March 29, 1991

On this 29<sup>th</sup> day of March, 1991, before me personally appeared the above-named Steven K. Ventre, to me personally known, who being by me duly sworn, says that he is the Assistant Vice President of NEW HERITAGE BANK, a Massachusetts trust company, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said trust company.



Charles A. Conzine, Notary Public  
My Commission Expires:

CHARLES A. CONZINE, Notary Public  
My Com. Expires June 27, 1991

EXHIBIT A

TO CHATTEL MORTGAGE BETWEEN

JAMES STOETZEL ASSOCIATES, INC. AND NEW HERITAGE BANK

One Hundred Forty-Seven (147) Cars generally described as follows:

Manufactured - 1974 by Pullman Standard Car  
Manufacturing Company

Associated of American Railroads (AAR) Mechanical  
Design - XL

AAR Car Type Code - A432

Reporting Marks - DH 24001-24150 Series

Inside Length - 50'-7"

Inside Width - 9'-5"

Inside Height - 10'-6"

Side Door Width - 10'

Side Door Height - 9'-10"

Cubic Feet Capacity - 5051 Level Full

Load Capacity - 150,000 Pounds