

1-141A00G

BankEast
The right direction for you.

BankEast
22 South Main Street
Rochester, New Hampshire 03867
603-332-4242
FAX 603-335-0275

17318 / B
RECORDATION NO. _____ FILED 1425

17318 / A
RECORDATION NO. _____ FILED 1425

MAY 21 1991 -10 30 AM
INTERSTATE COMMERCE COMMISSION

MAY 21 1991 -10 30 AM
INTERSTATE COMMERCE COMMISSION

17318
RECORDATION NO. _____ FILED 1425

May 16, 1991

MAY 21 1991 -10 30 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th and Constitution Ave N.W.
ATTN: Mildred Lee Room 2303
Washington DC 20423

Dear Ms. Lee:

Enclosed please find paperwork for recording to secure BankEast's interest in three (3) locomotives described in the attached.

If you have any questions, I can be reached at 603-335-0205.

Sincerely,



Julie Tompson, Supervisor
Commercial Loan Processing

/jat

16. MAY 22 01 17 AM



BankEast
22 South Main Street
Rochester, New Hampshire 03867
603-332-4242
FAX 603-335-0275

June 5, 1991

Mildred Lee, Room 2303
Interstate Commerce Commission
12th and Constitution Avenue NW
Washington, DC 20423

RE: File #17318 dated May 21, 1991
Russell Peterson and Cynthia Scott d/b/a Atlantic Northwestern Company

Dear Ms. Lee:

As we discussed by telephone today, enclosed please find a copy of the Loan and Security Agreement on the above captioned customer.

In addition, you had also requested a copy of the Assignment of lease referred to on our filing #17318. Our filing with you puts anyone inquiring about Mr. Peterson on notice that BankEast has an interest in his lease with JaxPort Terminal Railway Company. If anyone is in need of further information regarding this lease, they should contact Mr. Peterson or BankEast.

If you have any further questions or need further information, please put into writing exactly what you are looking for. We are more than willing to work with you, however, where you do not have a specific form to complete or format to follow for filing with your office, it is very difficult to know exactly what you are looking for.

Sincerely,

A handwritten signature in cursive script that reads "Julie".

Julie Tompson, Supervisor
Commercial Loan Processing

/jat

Interstate Commerce Commission
Washington, D.C. 20423

5/21/91

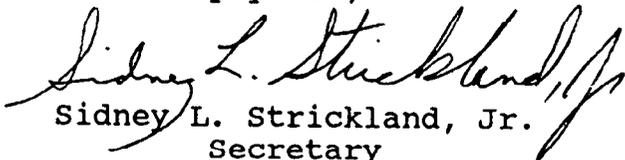
OFFICE OF THE SECRETARY

Julie Tompson
Supervisor Commercial Loan
Processing
Bank East
22 South Main St
Rochester, New Hampshire 03867

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 5/21/91 at 10:30am, and assigned recordation number(s) 17318, 17318-A B & C

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

1-168A005

BankEast
The right direction for you.

BankEast
22 South Main Street
Rochester, New Hampshire 03867
603-332-4242
FAX 603-335-0275

June 13, 1991

17318/B

Secretary
Interstate Commerce Commission
12th & Constitution Ave., N.W.
Washington, DC 20423

RECORDATION NO _____ FILED 1425

MAY 21 1991 - 10 20 AM

INTERSTATE COMMERCE COMMISSION

RE: Documents for Recordation

Dear Secretary:

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

This document is a *Loan & Security Agreement* mortgage dated May 16, 1991. The primary document to which this is connected is recorded under Recordation Number 17318, recorded on May 21, 1991.

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

Mortgagor: BankEast Commercial Lending 22 South Main Street Rochester, NH 03867	Mortgagee: PETERSON, Russell A. SCOTT, Cynthia L. d/b/a Atlantic North Western Company Route 16 Sanbornville, NH 03872
--	--

As description of the equipment covered by the document follows:

- One (1) GP-7 1500 HP Serial INOH #56 - ex BN-1579 Locomotive
- One (1) GP-7 1500 HP Serial INOH #51 - ex C & O 5705 Locomotive
- One (1) GP-9 1750 Locomotive HP EMP ANWC #1755 Locomotive

A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission for Recordation to me at the above address.

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

A mortgage between BankEast, Commercial Lending, 22 South Main Street, Rochester, New Hampshire and Russell A. Peterson, Cynthia L. Scott d/b/a Atlantic North Western Company, Route 16, Sanbornville, NH 03872 dated May 16, 1991 and covering: One (1) GP-7 1500 HP Serial INOH #56 - ex BN-1579 Locomotive, One (1) GP-7 1500 HP Serial INOH #51 - ex C & O 5705 Locomotive and One (1) GP-9 1750 Locomotive HP EMP ANWC #1755 Locomotive.

Very truly yours,

TFD
Timothy F. Dargan
Assistant Vice President

TFD/jat

Enclosures

JUN 17 10 46 AM '91

RECORDATION NO. 17318-B FILED 1991

MAY 21 1991 -10 00 AM

INTERSTATE COMMERCE COMMISSION

Certification of Original Document

I, do hereby certify that the attached document is a true copy of an instrument dated May 16, 1991 as I have compared the copy with the original and have found the copy to be complete and identical in all respects to the original document.

Dated: June 13, 1991


Notary Public
My Commission Expires April 5, 1994

LOAN AND SECURITY AGREEMENT

THIS AGREEMENT, made this 16th day of May, 19 91, by and between BANKEAST, of One Wall Street, Manchester, New Hampshire (hereinafter "Bank") and the undersigned Borrower or Borrowers (hereinafter "Borrower").

In consideration of one or more loans, letters of credit, or other financial accommodations made, or to be made, by Bank to Borrower, the parties hereto agree as follows:

1. GRANT OF SECURITY INTEREST; COLLATERAL.

1.1 The Borrower, in exchange for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, does hereby expressly grant to Bank a continuing security interest in, a general lien upon and a right of set-off against the following (hereinafter collectively called the "Collateral") (check appropriate box(es)).

All Accounts, Contract Rights, Chattel Paper, Documents and Instruments (as defined in R.S.A. 382-A:9-101 *et seq.*) accounts receivable, demand deposits, certificates of deposit, remittances, "cash collateral" (as defined in 11 U.S.C. Section 363(a)), contracts, documents, notes, bills, drafts, acceptances, choses in action, tax refunds, tax refund claims, insurance proceeds, and all other debts, obligations, and liabilities in whatever form, owing to Borrower from whatever source arising, the rights of reclamation and stoppage in transit, and all guarantees of the foregoing and security therefor, and all rights of an unpaid seller of goods or services whether now existing or subsequently arising, acquired, or created, together with all cash or non-cash proceeds of all of the foregoing ("Accounts")

All Goods, Inventory, merchandise, raw materials (in place or on order), all work-in-process, finished goods, and all other tangible property held for sale or lease or furnished or to be furnished under contracts of service, or used or consumed in Borrower's business, or consigned to others or held by others for return to Borrower, whether now owned or hereafter acquired or manufactured and wherever located, all the products thereof, and all substitutions, replacements, additions or accessions therefore and thereto, and all cash or non-cash proceeds of all of the foregoing, including insurance proceeds, ("Inventory")

All machinery, equipment, office equipment, appliances, furniture, fixtures, vehicles (including automotive equipment), along with all parts, tools, trade-ins, repairs, accessories, modifications, substitutions, and replacements therefore or thereto, whether now owned or hereafter acquired or constructed, together with all cash or non-cash proceeds of all of the foregoing, including insurance proceeds ("Equipment")

All general intangibles, including, but not limited to, all leases and rents, corporate names, trade names, trademarks, logograms, trade secrets, copyrights, patents, blue prints and plans, surveys, engineering reports and studies, designs and all licenses and permits, approvals, and all books, records, customer lists, ledger sheets, and files, including, but not limited to, all computer programs, tapes and related electronic data processing software, whether now existing or subsequently arising, or acquired, together with all cash or non-cash proceeds of all of the foregoing, ("Intangibles")

A purchase money security interest in:

One (1) GP-7 1500 HP Serial INOH #56 - ex BN-1579 Locomotive

One (1) GP-7 1500 HP Serial INOH #51 - ex C & O 5705 Locomotive

One (1) GP-9 1750 HP EMP ANWC #1755 Locomotive

along with all parts, tools, trade-ins, repairs, accessories, accessions, substitutions, modifications and replacements, therefore or thereto, whether now owned or hereafter acquired or constructed, together with all cash or non-cash proceeds of all of the foregoing, including insurance proceeds.

1.2 The security interest granted hereby is to secure punctual payment and faithful performance of a Note dated May 16, 19 91, in the original principal amount of

ONE HUNDRED THOUSAND AND NO/100----- Dollars
(\$ 100,000.00), and any and all debts, liabilities and obligations of Borrower to Bank

hereunder or any other agreement, note or instrument delivered in connection herewith, and also any and all other past, present and/or future debts, liabilities and obligations of Borrower to Bank of every kind and description, whether or not of the nature contemplated at the date hereof, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, including, but without implied limitation of the foregoing, any debt, liability or obligation of Borrower to others which Bank may have obtained by assignment or otherwise, any liability arising by reason of overdrafts or as endorser or surety, and further including, without limitation, all debts, interest, fees, charges, costs and expenses with respect to any and all debts, liabilities and obligations of Borrower to Bank including, but not limited to, attorneys' fees incurred by Bank in connection with the enforcement, collection or protection of Bank's rights hereunder and interests in the Collateral (all hereinafter called "Obligations"). The parties expressly agree that the security interest granted herein is intended to secure all present and future obligations of Borrower to Bank regardless of whether or not the nature and/or extent of those obligations are contemplated or foreseen by the parties as of the date first above written.

2. REPRESENTATIONS AND WARRANTIES.

To induce Bank to enter into this Agreement, the Borrower hereby warrants and represents, which warranties and representations shall each be material and continuing so long as any Obligations remain outstanding, as follows:

2.1 The Collateral is and, to the extent acquired hereafter, will be, lawfully owned by Borrower, free and clear of all liens, attachments, encumbrances, assignments, security interests and other claims, except as to the security interests created hereby and as are disclosed to Bank on Schedule A hereof, and Borrower will warrant and defend title to the same against the claims and demands of all persons;

2.2 Borrower has not granted, and will not grant, to anyone other than Bank, any security interest in the Collateral, and no Financing Statement or other instrument bearing the signature of, or otherwise authorized by Borrower, is on file in any public filing office except as may be noted on Schedule A,

2.3 None of the Collateral is or shall be obtained on consignment,

2.4 The Collateral is and shall be retained in Borrower's possession at its place(s) of business located at the address set forth on Schedule B hereof,

2.5 The Collateral is, and will be, used primarily for business purposes,

2.6 Borrower has no other business location(s) except as may be disclosed to Bank on Schedule B hereof. Borrower will give Bank prompt written notice of removal from, discontinuance of, or change in, the business address disclosed on Schedule B hereof. Borrower further represents that the business address appearing below its signature is the office where its records are kept concerning its Accounts;

- 2.7 Borrower's full and complete legal name is:
Russell A. Peterson and Cynthia L. Scott, d/b/a Atlantic North Western Company
the Borrower is a sole proprietorship ^{duly organized}
and validly existing and in good standing under the laws of the State of New Hampshire & Massachusetts
and is duly qualified and authorized to do business wherever the nature of its property or of its activities require such qualification and authorization, and has full power, authority and legal right to execute and deliver this Agreement, and any other agreement, note or instrument delivered in connection herewith, and when executed and delivered, it shall constitute a valid and legally binding obligation of Borrower enforceable in accordance with the terms hereof. Except as disclosed to Bank on *Schedule C* hereof, Borrower utilizes no tradenames in the conduct of its business, has not changed its name, been the surviving entity in a merger, or acquired any business. Borrower shall not conduct its business hereafter under any other tradename or trade style except upon ten (10) days prior written notice to Bank, and
- 2.8 No litigation, administrative action or other proceeding is either threatened, contemplated or pending before any court or administrative agency which could materially or adversely affect Borrower's financial condition, its operations or prospects, and Borrower is not a party to, or bound by, any contract, agreement, order or decree which (a) would require the consent of any party as a condition precedent hereto, or (b) could have a material adverse impact on the business of Borrower or the rights of Bank under this Agreement or under any other agreement, note or instrument delivered in connection herewith.

3. AFFIRMATIVE COVENANTS.

- Borrower hereby covenants and agrees with Bank so long as any Obligations remain outstanding that:
- 3.1 a. At Borrower's own expense, Borrower will: (i) keep the Collateral fully insured against such hazards as Bank may require, by insurers and in amounts acceptable to Bank, for the benefit of Borrower and Bank as their interests may appear; (ii) promptly deliver the insurance policies or certificates thereof to Bank and such policies shall contain provisions that no such insurance may be cancelled or decreased without thirty (30) days prior written notice to Bank, (iii) keep the Collateral in good condition at all times and maintain the same in accordance with all manufacturer's specifications and requirements; and (iv) notify Bank within ten (10) days of any claim made by Borrower, or any other person or entity, under a policy of insurance which covers the Collateral;
- b. Upon any failure of Borrower to comply with its obligations pursuant to §3.1 a above, Bank may, at its option, and without affecting any of its other rights or remedies provided herein or as a secured party under the Uniform Commercial Code, procure the insurance protection it deems necessary and/or cause repairs or modifications to be made to the Collateral, the cost of either or both of which shall be a lien against the Collateral added to the principal amount of the indebtedness secured hereby and payable upon notification that such funds were so advanced, with interest from the date of advance at the highest interest rate computed on the same basis as the Obligations; and
- c. Borrower hereby assigns to Bank any and all monies which may become due and payable under any policy insuring the Collateral, including return of unearned premiums, and directs any such insurance company to make payment directly to Bank, and authorizes Bank to apply such monies in payment on account of the Obligations secured hereby, whether or not due, or, at the sole option of Bank, toward replacement of the Collateral, and to remit any surplus to Borrower;
- 3.2 Borrower will indemnify and hold Bank harmless from and against any loss, liability, damage, costs, and expenses whatsoever arising from the use, operation, ownership, or possession of the Collateral or any part thereof;
- 3.3 Borrower will furnish Bank, prior to delivery of major items of Collateral to Borrower, copies of the shipping orders with respect to such Collateral which will specify the name of the manufacturer, a description of such items and the serial numbers thereof;
- 3.4 Borrower will duly pay and discharge all taxes, assessments, and governmental charges upon it or against the Collateral prior to the date on which penalties are attached thereto, unless and to the extent only that such taxes, assessments or charges, shall be contested in good faith and by appropriate proceedings and Borrower has posted adequate security for the payment of the same with Bank at Bank's request, or paid the same;
- 3.5 Borrower will sign and deliver to Bank such Financing Statements, Amendment Statements, Continuation Statements, and other related documents in form acceptable to Bank, as Bank may, from time to time, reasonably request, or as are necessary, in the opinion of Bank, to establish and maintain a valid perfected security interest in the Collateral, and Borrower will pay any related filing fees or costs with respect thereto and any fees for prior lien searches; Bank is hereby authorized to file a copy of this Agreement or any financing statement in accordance with N.H. R.S.A. §382-A:9-402, and further, Bank is authorized to file any such Financing Statement, Amendment Statement, Continuation Statement, and other related documents without the signature of Borrower to the full extent permitted by law;
- 3.6 Borrower shall upon demand by Bank (a) deliver and pledge to Bank, endorsed and/or accompanied by such instruments of assignment and transfer in such form as Bank may request, any and all instruments, documents and chattel paper as Bank may specify in its demand; and (b) keep and stamp, or otherwise mark, any and all documents, instruments and chattel paper hereafter acquired, wherever located, of every kind and description so as to reflect Bank's interest therein and promptly deliver the same to Bank;
- 3.7 Borrower shall furnish to Bank, within sixty (60) days after the last day of each fiscal year of Borrower, financial statements, including, but not limited to, a balance sheet, profit and loss statement, and other supporting schedules, each prepared in accordance with generally accepted accounting principles consistently applied with a report signed by an independent certified public accountant satisfactory to Bank. Additionally, Borrower shall promptly, and in a form satisfactory to Bank, furnish to Bank such other financial or operational information concerning Borrower's business, or any guarantor of Borrower, as Bank may reasonably request from time to time and/or as may be specifically set for on *Schedule D*;
- 3.8 Borrower shall permit Bank, through its authorized attorneys, accountants, and representatives, to inspect and examine the Collateral and the books, accounts, records, ledgers, and assets of every kind and description of Borrower with respect thereto at all reasonable times;
- 3.9 If Borrower shall now or hereafter maintain an employee benefit plan covered by Sec 4021(a) of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA") relating to plan termination insurance, it shall promptly:
- a. Notify Bank of filing of notice with the Pension Benefit Guaranty Corporation ("PBGC") pursuant to Sec 4041 of ERISA that the plan is to be terminated; and
- b. Notify Bank of the institution of proceedings by PBGC under Sec. 4042 of ERISA;
- 3.10 Borrower shall maintain the Collateral, and its other property, in good condition and repair (normal wear and tear excepted) and pay and discharge or cause to be paid and discharged when due, the cost of repairs to or maintenance of the same.

4. NEGATIVE COVENANTS.

Borrower hereby covenants and agrees with Bank that so long as any Obligations remain outstanding, without first obtaining the prior written consent of Bank and Borrower will **not**:

- 4.1 Fail to pay, as they become due and payable, all taxes and unemployment contributions and other charges levied or assessed against Borrower or its property by any governmental authority or fail to properly exercise any trust responsibilities imposed upon Borrower by reason of withholding from employees' pay, at its option, Bank may, in its discretion, deem necessary or desirable, to protect, maintain, preserve, collect, or realize upon any or all of the assets of the Borrower or its property.

- 4.2 Fail to comply with all statutes, regulations, ordinances, permits, variances, decrees, or orders of every federal, state, municipal, or other governmental authority which has or claims jurisdiction over Borrower, the Collateral, any of Borrower's assets, or any person or entity for which Borrower would be responsible,
- 4.3 Suffer the creation or existence of any mortgage, pledge, lien, attachment or other encumbrance on any property of Borrower, whether or not a purchase money security interest, and whether or not the same is senior or junior to any lien of Bank thereon (other than such as are described in *Schedule A* hereof and encumbrances in favor of Bank); **provided however**, that in the event of an attachment or lien junior in all respects to the security interest provided for herein, Borrower shall not be deemed in breach of this covenant if within thirty (30) days thereof the attachment or lien is discharged, or Borrower contests such attachment or lien in good faith in a court of proper jurisdiction and (i) deposits adequate security with Bank to satisfy said attachment should Bank, in its discretion, request such security, (ii) takes reasonable and diligent measures to defend against such attachment or lien; and (iii) within thirty (30) days after such action is finally judicially determined or Borrower concedes such attachment or lien to be valid, Borrower pays and discharges the same;
- 4.4 Remove the Collateral from its present location(s) as set forth in *Schedule B* hereof, sell, transfer, change the registration, if any, dispose of, attempt to dispose of, substantially modify, or abandon the Collateral or any part thereof (except in the ordinary course of Borrower's business); **provided however**, that Borrower may sell or otherwise dispose of obsolete or worn-out Collateral no longer used or useful in its business if Borrower shall first or substantially simultaneously with such sale or disposition replace the same with new property of substantially equal value which shall forthwith become subject to the security interest provided for herein,
- 4.5 Assert against Bank any claim or defense which Borrower may have against any seller of, or against any other person or entity with respect to, the Collateral or any part thereof,
- 4.6 Pay dividends, either in cash or kind, on any class of its capital stock, make any distribution on account of its stock, redeem, purchase or otherwise acquire, directly or indirectly, any of its stock without the prior written consent of Bank; or make any loans, advances or bonuses to any individual, or entity, (except reasonable and ordinary compensation); invest in or purchase any stock or securities of any individual or entity, pay inter-company fees, transfer property, conduct business with or enter into any transaction with any affiliate or subsidiary of Borrower for less than good and adequate consideration,
- 4.7 Enter into any merger, consolidation, recapitalization, stock split, reorganization or liquidation, or to suffer the transfer of any stock or security or transfer any general partnership or other interest in Borrower, except as provided herein,
- 4.8 Suffer the assumption, guarantee, endorsement, or other act by which it may or does or might become liable in connection with the obligations of any person or entity, with the exception of endorsement of negotiable instruments for deposit or collection or similar transactions in the normal and ordinary course of business,
- 4.9 Use, or permit the use of, the Collateral in violation of any statute, regulation, ordinance, order or applicable insurance policy,
- 4.10 Suffer any act of omission or commission which, had it been in existence or threatened on the date of this Agreement, would have constituted a breach or failure of any representation or warranty herein; or
- 4.11 Indirectly do or cause to be done any act which, if done directly by Borrower, would breach any representation, warranty or covenant contained in this Agreement

5. EVENTS OF DEFAULT

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

- 5.1 Failure to make payment of any principal, interest, or other charges in respect to any of the Obligations, and this Agreement, as and when due,
- 5.2 Breach of any representation or warranty, in that the same shall have been, is, or shall be untrue or materially misleading; or default in the observance or performance of any covenant or agreement set forth herein, or in any of the Obligations, or any agreement, note or instrument, now or hereafter arising, delivered in connection with the Obligations;
- 5.3 The Collateral or any part thereof shall be lost, stolen, damaged, destroyed, sold (other than in the ordinary course of business) or attached, liened, encumbered, seized, levied upon under legal process, except as provided for herein;
- 5.4 If the Bank shall deem itself insecure under N.H. R.S.A. §382-A.1-208, or shall deem the financial condition of Borrower unsatisfactory or to be materially impaired and shall give Borrower oral or written notice thereof;
- 5.5 Occurrence of an event of default as provided in the Obligations, or any agreement, note or instrument, now or hereafter arising, delivered in connection with the Obligations.

Upon the occurrence of an Event of Default, Bank shall have the rights and remedies described in Article 6 of this Agreement, and the Obligations shall immediately and without any further action of any kind, be due and payable, without notice, protest, presentment or demand, all of which are hereby expressly waived by Borrower.

6. REMEDIES.

Borrower agrees that upon the occurrence of an Event of Default, Bank shall have the following remedies:

- 6.1 Bank shall have the rights and remedies of a secured party under the Uniform Commercial Code and, in addition, all other rights and remedies available to it under applicable law, this Agreement or in any other agreement, note, instrument or guarantee delivered in connection with the Obligations;
- 6.2 Bank is hereby authorized and empowered, with the aid and assistance of any person or persons, to enter any premises where the Collateral or any part thereof is, or may be, placed, and to assemble, disassemble, dismantle, and/or remove the same such Collateral at public or private sale upon at least five (5) days prior written notice to Borrower of the date on, or after which, such sale may be conducted, and Borrower expressly agrees that said notice shall constitute fair and reasonable notice to Borrower, that said notice may be given regardless of whether or not Bank has taken actual possession of the Collateral, and that at the expiration of said notice period all rights of redemption in the Collateral shall be deemed waived by Borrower. The proceeds of each such sale shall first be applied by Bank toward the payment of all expenses of retaking including, but not limited to, payment by Bank for storage, preparing for such sale, advertising, selling, and all related charges and disbursements in connection therewith, including attorneys' fees, and then any surplus may be applied by Bank to the payment of any or all of the Obligations secured hereby then existing and whether due or not due; however, should the proceeds of any such sale be insufficient to fully pay all of the Obligations, Borrower hereby covenants and agrees to remain liable for any deficiency. Bank may require Borrower to assemble the Collateral and to make it available to Bank at a place to be designated by Bank which is reasonably convenient to the parties. Bank may, without any payment or hindrance, enter upon any real property where the Collateral or any part thereof may be located and, in connection with the enforcement of any right, remedy, power, or privilege conferred upon Bank hereunder, store the Collateral or any part thereof on such real property without liability for any rent or other payment in connection therewith. The commencement of any action, legal or equitable, shall not affect the security interest of Bank in the Collateral until the Obligations, or any judgment therefore, are paid in full;
- 6.3 Bank shall have the right of set-off, without notice to Borrower or any guarantor, against any and all deposits or other sums at any time or times credited by or due from Bank to Borrower or any guarantor, whether in a special account or other account represented by a certificate of deposit (whether or not matured), which deposits and other sums shall, at all times, constitute additional security for the Obligations and may be set-off against all or any part of the Obligations at any time; and
- 6.4 Where Accounts are part of the Collateral, Bank shall have the right at any time to notify any of Borrower's account or contract debtors, either in the name of Bank or Borrower, to make payment directly to Bank, and to advise any person or entity of Bank's security interest in and to the Accounts, and to collect all amounts due on account thereof. Borrower agrees that at Bank's request, Borrower will provide written notifications to any or all of Borrower's account or contract debtors regarding Bank's security interest in the Accounts and will request that such account or contract debtors forward payment thereof to Bank. The within obligations on the part of Borrower, being unique, shall be specifically enforceable by Bank.

7. RIGHTS AND REMEDIES CUMULATIVE.

Borrower hereby further represents, warrants, and agrees that all rights and remedies contained in this Agreement, and any other agreement, note, instrument or guarantee delivered in connection with the Obligations, are cumulative and

not exclusive and that a waiver by Bank of any breach of the terms, covenants, and conditions thereof shall not constitute a waiver of future breaches or defaults, and no failure or delay in the exercise of any options, powers, rights, or remedies, or partial or single exercise thereof, shall constitute a waiver thereof

8. POWER OF ATTORNEY.

Borrower does hereby irrevocably appoint Bank as attorney-in-fact, with full power of substitution, to execute proofs of claim, to endorse any drafts or other instruments for the payment of money, to execute releases, to negotiate settlements, to cancel any insurance referred to herein, and to do all other things necessary or required to effect a settlement under any insurance policy and to do any and all other things necessary to convert the Collateral into cash, at the sole risk, cost and expense of Borrower. All powers conferred upon Bank by this Agreement, being coupled with an interest, shall be irrevocable until the Obligations are satisfied in full. Neither Bank nor its agents shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law when acting in its capacity as such attorney-in-fact.

9. ASSESSMENT BY BANK.

Bank may, from time to time, without notice to the Borrower, sell, assign, transfer or otherwise dispose of all or any part of its interest in the Obligations and/or Collateral. In such event, each and every immediate and successive purchaser, assignee, transferee or holder of all or any part of the Obligations and/or Collateral shall have the right to enforce this Agreement, by legal action or otherwise, for its own benefit as fully as if such purchaser, assignee, transferee or holder were herein by name specifically given such rights. Bank shall have an unimpaired right to enforce this Agreement for its benefit to that portion of the Obligations of Borrower as Bank has not sold, assigned, transferred or otherwise disposed of.

10 GENERAL PROVISIONS.

- 10.1 This Agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated herein and may not be changed, modified, or discharged, in whole or in part, and no right or remedy of Bank hereunder or as a secured party under the Uniform Commercial Code, may be waived by Bank unless such change, modification, discharge, or waiver is in writing and signed on behalf of Bank by a duly authorized officer
- 10.2 The rights and benefits of Bank hereunder shall inure to the benefit of its successors and assigns and shall be binding upon the heirs, administrators, successors and assigns of Borrower. Borrower may not assign any of its rights or delegate any of its obligations hereunder without prior written consent of Bank.
- 10.3 This Agreement and the rights and obligations of Bank and Borrower hereunder shall be governed by and construed in accordance with the substantive laws of the State of New Hampshire and the courts of that state shall have exclusive jurisdiction over any actions between the parties hereto
- 10.4 In the event Bank seeks to take possession of any or all of the Collateral by court process, Borrower hereby, to the maximum extent permitted by applicable law, irrevocably waives any bond and any surety or security relating thereto required by any statute, court rule, or otherwise as an incident to such possession and waives any demand for possession prior to the commencement of any suit or action to recover with respect thereto.
- 10.5 Borrower agrees that the amount by which the value of the Collateral may exceed, from time to time, the outstanding Obligations of Borrower to Bank ("Equity Cushion") or any guarantees given to Bank for the Obligations, shall not, under any circumstances, be deemed to be adequate protection for the Bank in the event of any insolvency proceeding under 11 U.S.C. §101 *et seq*. Borrower acknowledges that the "Equity Cushion" that may exist is solely for the benefit of Bank to ensure the repayment in full of all Obligations hereunder, and Borrower expressly acknowledges that any Equity Cushion that may exist represents a benefit bargained for and acquired by the Bank in exchange for full and adequate consideration.
- 10.6 In the event Bank is at any time required to turn over, disgorge, or repay (whether to the undersigned, a Trustee in Bankruptcy, or to third parties) any payments previously received by Bank with respect to the Obligations (whether received from the undersigned or third parties), then the amount of the Obligations secured by the Collateral shall be increased by the amount so turned over or disgorged by Bank, plus reasonable expenses incurred by Bank in the process, to the same extent as if the amount in question, and expenses, had been advanced by Bank at the inception of the Obligations and had remained unpaid since that date, whether or not all Obligations had otherwise been paid at the date of turn over, all of which shall be due and payable immediately, without demand. If the Obligations had previously been paid in full, this Agreement (notwithstanding any of the terms hereof) shall be deemed revived and in full effect with respect to such payments.
- 10.7 To the extent possible, each provision of this Agreement shall be interpreted in a manner as to be valid, legal and enforceable under applicable law. If any provision of this Agreement shall be held invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby. This Agreement shall be governed and construed solely in accordance with the internal laws of the State of New Hampshire and the parties hereto agree that the courts of said state shall have sole and exclusive jurisdiction over any disputes arising hereunder or with respect to the enforcement of Bank's remedies upon the occurrence of an Event of Default.
- 10.8 The Obligations which this Agreement secures may also be secured by other security documents, mortgages, guarantees, and agreements and Bank shall have the absolute right, in its sole discretion, to determine which rights, remedies, security interests and liens it shall at any time pursue or take any action with respect thereto without in any way modifying or affecting any rights hereunder or thereunder.
- 10.9 To the extent permitted by applicable law, Borrower hereby covenants and agrees that in no event shall Bank become liable or responsible for Borrower's violation of any statute, regulation, ordinance, permit, variance, directive, or other of any federal, state, municipal or other governmental authority.
- 10.10 The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof

11. JURY TRIAL WAIVER.

Bank and Borrower upon advice of counsel and for the purpose of expediting the complete resolution of any disputes do hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim, arising out of or relating to any part of this Agreement, the Collateral, the Obligations or the actions of Bank in the enforcement thereof

IN WITNESS WHEREOF, Borrower has caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS: Julie Simpson

Russell A. Peterson - Borrower
~~XXXX~~ Cynthia L. Scott - Borrower
Title: _____
Address d/b/a Atlantic North Western Company
PO Box 665, Route 16
Sanbornville, NH 03872

ACCEPTED:

BANKEAST
By: Timothy E. Dargan
Title: Assistant Vice President

STATE OF NEW HAMPSHIRE
COUNTY OF Strafford, SS.

Before me, on this 16th day of May, 19 91, personally appeared Russell A. Peterson, Cynthia L. Scott and Timothy F. Dargan, duly authorized, who acknowledged that they executed this instrument as a free act and deed and for the purpose therein contained.

Julie Simpson
Notary Public / Justice of the Peace
Comm Expires on My Commission Expires April 5, 1994