

Haight, Gardner, Poor & Havens 2-037A023

195 Broadway · New York, NY 10007 · (212) 341-7000

February 6, 1992

17699
REGISTRATION NO. FILED 1992

FEB 6 1992 2:00 PM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Loan and Security Agreement dated as of January 31, 1992
between National Railway Equipment Company, as Debtor and
U.S. Concord, Inc., as Lender

Dear Mr. Secretary:

I have enclosed four original counterparts and one certified 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 Loan and Security Agreement dated as of January 31, 1992 between National Railway Equipment Company, an Illinois corporation (the "Debtor") and U.S. Concord, Inc., a New York Corporation (the "Lender").

This document is a primary document.

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

Debtor

National Railway Equipment Company
14400 S. Robey Street
P.O. Box 2270
Dixmoor, Illinois 60426

Lender

U.S. Concord, Inc.
c/o Concord Merchant Funding
70 Valley Stream Parkway
Malvern, Pennsylvania 19355

EB 6 2 27 PM '92
MOTOR OPERATING UNIT

Handwritten signature: Cheryl H. Sely

HAIGHT, GARDNER, POOR & HAVENS

Office of the Secretary,
Interstate Commerce Commission
February , 1992
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A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
CNW 4701	GP38-2	General Purpose Locomotive
CNW 4702	GP38-2	General Purpose Locomotive
CNW 4703	GP38-2	General Purpose Locomotive
CNW 4704	GP38-2	General Purpose Locomotive
CNW 4705	GP38-2	General Purpose Locomotive
CNW 4706	GP38-2	General Purpose Locomotive
CNW 4707	GP38-2	General Purpose Locomotive
CNW 4708	GP38-2	General Purpose Locomotive
CNW 4709	GP38-2	General Purpose Locomotive
CNW 4710	GP38-2	General Purpose Locomotive
CNW 4711	GP38-2	General Purpose Locomotive

A fee of US \$16.00 is enclosed. Please return the original and all counterparts not needed by the Commission for recordation to Haight, Gardner, Poor & Havens, 195 Broadway, New York, NY 10007, Telephone No.: (212) 341-7000, c/o Haight, Gardner, Poor & Havens, 1300 I Street NW, Suite 470E, Washington, DC 20005, Telephone No.: (202) 962-3880.

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

A Loan and Security Agreement dated as of January 31, 1992 between National Railway Equipment Company, an Illinois corporation (the "Debtor") and U.S. Concord, Inc., a New York corporation (the "Lender") providing for a loan by the Lender to the Debtor to be secured by eleven (11) general purpose locomotives, type GP38-2, unit nos. CNW 4701, 4702, 4703, 4704, 4705, 4706, 4707, 4708, 4709, 4710 and 4711 and by the proceeds to be paid by Chicago and North Western Transportation Company (the "Lessee"), as Lessee under a Lease of Railway Equipment Agreement between the Lessee and the Debtor, as Lessor, dated as of November 1, 1991.

HAIGHT, GARDNER, POOR & HAVENS

Office of the Secretary,
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A notary public has compared the copy of the enclosed document with the original and has found the copy to be completed and identical in all respects to the original document and has certified it.

Very truly yours,

U.S. CONCORD, INC.

By: HAIGHT, GARDNER, POOR & HAVENS,
Special New York Counsel to U.S. CONCORD, INC.

By: 

RFL/sjg
Enclosures

a:\sec2.ltr

(12)

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REGISTRATION NO. FILED 1992

FEB 6 1992 2:35 PM
INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

Dated as of January 31, 1992

BETWEEN

NATIONAL RAILWAY EQUIPMENT COMPANY,

DEBTOR

AND

U.S. CONCORD, INC.,

LENDER

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Acknowledgements

- EXHIBIT A Description of Equipment
- EXHIBIT B Form of Secured Promissory Note
- EXHIBIT C Description of Opinion of Counsel
 for the Debtor
- EXHIBIT D Description of Opinion of Counsel
 for the Lessee
- EXHIBIT E Form of Notice and Acknowledgement
 of Assignment

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of January 31, 1992 between NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation (the "Debtor") and U.S. CONCORD, INC., a New York corporation (the "Lender").

W I T N E S S E T H:

WHEREAS, the Debtor is the owner of eleven (11) general purpose locomotives which have been, or will be prior to the Closing Date, remanufactured, which locomotives are more fully described in Exhibit A hereto (such locomotives, as remanufactured, hereinafter called individually, an "Item of Equipment" and collectively, the "Equipment");

WHEREAS, the Debtor has entered into the Lease with the Lessee;

WHEREAS, the Debtor proposes to finance the cost of remanufacturing the Equipment by issuing one note on a nonrecourse basis to the Lender, and to secure its obligations under the note by a grant hereunder to the Lender of a security interest in the Equipment and the Lease;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. DEFINITIONS.

Unless the context otherwise requires, for all purposes of this Agreement the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Agreement" shall mean this Loan and Security Agreement as the same may be amended, supplemented or modified, from time to time.

"Basic Rent" shall mean quarterly rental as provided for in Section 3 of the Lease.

"Business Day" shall have the meaning specified in Section 9.1 hereof.

"Casualty Occurrence" shall have the meaning specified in Section 4.2 hereof.

"Casualty Occurrence Payment" shall have the meaning specified in Section 4.3 hereof.

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"Casualty Occurrence Payment Date" shall have the meaning specified in Section 4.3 hereof.

"Certificate of Inspection and Acceptance" shall mean the Certificate of Acceptance issued pursuant to Section 2 of the Lease.

"Closing Date" shall have the meaning specified in Section 2.1 hereof.

"Collateral" shall have the meaning specified in Section 3 hereof.

"Commitment" shall have the meaning specified in Section 2.1 hereof.

"Default" means any event or condition that given notice, the lapse of time or both may constitute an Event of Default.

"Dollars" and "\$" mean the lawful and freely transferable currency of the United States of America.

"Equipment" shall have the meaning specified in the Recitals hereof.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Event of Default" shall have the meaning specified in Section 6.1 hereof.

"Excepted Rights in Collateral" shall have the meaning specified in Section 3.3 hereof.

"Financing Agreements" shall mean, collectively, the agreements set forth in Section 2.3(a) hereof.

"GAAP" shall mean at any time the generally accepted United States accounting principles at such time.

"ICC" shall mean the Interstate Commerce Commission of the United States.

"Installment Payment Date" shall mean each date when an installment of principal and interest is due and payable under the Note.

"Item of Equipment" shall have the meaning specified in the Recitals hereof.

"Lease" shall mean the Lease of Railroad Equipment Agreement dated as of November 1, 1991 between the Debtor and the Lessee, as amended from time to time.

"Lease Event of Default" shall mean an event of default as defined and set forth in Section 10 of the Lease.

"Lessee" shall mean Chicago and North Western Transportation Company, a Delaware corporation, as lessee under the Lease.

"Loan" means the loan made by the Lender to the Debtor pursuant to Section 2 hereof evidenced by the Note.

"Note" shall mean the secured promissory note executed and delivered hereunder by the Debtor substantially in the form of Exhibit B annexed hereto.

"Notice and Acknowledgement of Assignment" shall mean the Notice of Acknowledgement of Assignment executed by the Lender, the Debtor and the Lessee, substantially in the form of Exhibit E annexed hereto.

"Permitted Investment" shall mean (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 by Standard & Poor's Corporation ("STP") or prime-1 by NCO--Moody's Commercial Paper Division of Moody's Debt Participants Service, Inc., or equivalent ratings of the successor of either of them, or (iii) certificates of deposit or banker's acceptances of domestic banks having total assets in excess of \$1,000,000,000 and which has outstanding at least one issue of securities rated in at least one of the three highest categories by STP or Moody's Investors Service, Inc., in each case maturing in not more than ninety-five (95) days from the date of such investment.

"Person" shall mean and include any individual, business trust, partnership, joint venture, firm, corporation, association, joint stock company, trust or other enterprise or any government or political agency sub-division or agency, department or instrumentality thereof.

"Premium" shall mean from time to time, the following amounts:

<u>PERIOD</u>	<u>AMOUNT OF PREMIUM</u>
1. From the date hereof To March 31, 1993	\$646,721.34
2. From April 1, 1993 To March 31, 1994	\$592,827.89
3. From April 1, 1994 To March 31, 1995	\$538,934.45
4. From April 1, 1995 To March 31, 1996	\$485,041.00
5. From April 1, 1996 To March 31, 1997	\$431,147.56
6. From April 1, 1997 To March 31, 1998	\$377,254.11
7. From April 1, 1998 To March 31, 1999	\$323,360.67
8. From April 1, 1999 To March 31, 2000	\$269,467.22
9. From April 1, 2000 To March 31, 2001	\$215,573.78
10. From April 1, 2001 To March 31, 2002	\$161,680.33
11. From April 1, 2002 To March 31, 2003	\$107,786.89
12. From April 1, 2003 and thereafter	\$53,893.45

"Responsible Officer" shall mean the President, the Vice-President and the Chief Financial Officer, or any Person instructed by the Lender to have principal executive responsibility for the administration of this transaction.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Subsidiary" shall mean with respect to the Debtor, any corporation, association, partnership or other business entity which is engaged in the manufacture, selling or leasing of locomotives and for parts therefor at least a majority of the

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shares of the Voting Stock of which shall at the time be owned, directly or indirectly, by the Debtor and/or by one or more Subsidiaries. The term "Subsidiary" when used in the context of the statements referred to in Sections 2.5(a)(xi) and 2.5(a)(xxvi) hereof which describe the Lessee and its Subsidiaries on a consolidated and consolidating basis shall not be limited to corporations engaged in the manufacture, selling or leasing of locomotives, but shall include all subsidiaries required to be consolidated with the Lessee under GAAP.

"Voting Stock", as applied to the stock of any corporation, shall mean stock of any class or classes (however designated) having ordinary voting power for the election of a majority of the directors of such corporation, other than stock having such power only by reason of the happening of a contingency.

Section 2. ISSUANCE OF THE NOTE.

2.1. Commitment of the Lender. (a) Subject to fulfillment of the conditions specified in Sections 2.3 and 2.4 hereof, on or before March 16, 1992 the Lender shall make a secured loan (the "Loan") to the Debtor in a principal amount up to Five Million Three Hundred Eighty-Nine Thousand Three Hundred Forty-Four Dollars and Fifty-Eight Cents (\$5,389,344.58) (the "Commitment") on three Business Days designated by the Debtor, by the giving of written or telegraphic, telex or telecopy notice (the "Notice of Borrowing") of such date, and the amount of such secured Loan to the Lender not fewer than five (5) days before such designated date (each such date herein referred to as a "Closing Date"), provided that the portion of the Loan to be advanced to the Debtor on each Closing Date shall never be greater than the product of (y) Four Hundred Eighty-Nine Thousand Nine Hundred Forty Dollars and Forty-Two Cents (\$489,940.42), and (z) the total number of Items of Equipment with respect to which the conditions to lending set forth in Sections 2.3 and 2.4 have been satisfied or waived. The Loan shall be evidenced by one Note, substantially in the form of Exhibit B, dated the initial Closing Date, in the principal amount of Five Million Three Hundred Eighty-Nine Thousand Three Hundred Forty-Four Dollars and Fifty-Eight Cents (\$5,389,344.58), payable to the Lender.

2.2. Closing. On each Closing Date, the Lender shall make available to the Debtor, or its order, provided adequate instructions have been timely furnished to the Lender, in immediately available funds the amount of the secured Loan being made on such date.

2.3. Conditions Precedent to the Initial Closing Date. The obligation of the Lender to make available a portion of its

Commitment on the initial Closing Date shall be subject to the fulfillment of the following conditions on or prior to such Closing Date to the satisfaction of the Lender:

(a) Fully executed counterparts of this Agreement, the Lease, the Note, and the Notice and Acknowledgement of Assignment (collectively, the "Financing Agreements") shall have been delivered to the Lender.

(b) The Lease, this Agreement and the Notice and Acknowledgement of Assignment shall have been duly filed and recorded contemporaneously with the ICC in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and in such other places within the United States as may be reasonably requested by the Lender as necessary for the protection of the title of the Debtor to, or the security interest of the Lender in, the Equipment.

(c) The Lender shall have received an original executed counterpart of the Lease with the following language written on its cover page:

To the extent that this Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart containing the acknowledgment thereof executed by U.S. Concord, Inc., on the signature page thereof.

(d) The Lender shall have received confirmation that the due filing of Uniform Commercial Code-1 financing statements in the State of Illinois has been provided for.

(e) The Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section 2.3 including, without limitation, certificates of officers of the Debtor, public officials and others, and legal opinions as the Lender may reasonably require to establish to its satisfaction the fulfillment of such conditions.

(f) The Lender shall have received a closing fee of \$50,000.00.

2.4. Conditions Precedent to Each Closing Date. The obligation of the Lender to make available a portion of its Commitment on each Closing Date, including the initial Closing Date, shall be subject to fulfillment of the following further

conditions on or prior to such Closing Date to the satisfaction of the Lender:

(a) The Lender shall have received confirmation that any further filing and recording reasonably requested by the Lender, in addition to the Lease, and this Agreement, in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and any other applicable laws shall have been duly effected to protect the title of the Debtor to, and the security interest of the Lender in, the Items of Equipment being delivered on such Closing Date.

(b) The Lender shall have received the certificates of insurance or self insurance that the Lessee is required to provide pursuant to Section 2(i) of the Notice and Acknowledgement of Assignment and Section 7 of the Lease naming the Lender as additional insured and loss payee, as the case may be.

(c) The Lender shall have received certified copies of the organizational documents and the appropriate corporate proceedings of the board of directors of the Debtor and of the Lessee with respect to the authorization of the Financing Agreements and the other instruments contemplated herein and therein and with respect to the execution, delivery and performance thereof by the respective party and appropriate certificates of the Secretary or an Assistant Secretary of the Debtor and the Lessee showing the incumbency and the specimen signatures of the officers of the Debtor and the Lessee executing the agreements and instruments referred to herein, each such certificate to be dated the Closing Date.

(d) The Lender shall have received copies of the following:

(i) an executed Certificate of Inspection and Acceptance with respect to the Items of Equipment as contemplated by Section 2 of the Lease.

(ii) an executed certificate from the Debtor to the effect that each Item of Equipment has been remanufactured in compliance with, and on the Closing Date shall meet all safety and other standards established by, the Federal Railroad Administration.

(iii) an appraisal by Norman W. Seip & Associates, Erie, Pa. in form and substance satisfactory to the Lender and to Residual Base Finance Corporation ("RESIDCO"), stating, inter alia, that the average fair market value of

each Item of Equipment described in the Certificate of Inspection and Acceptance (described in (iii) above) is \$565,000.

(e) The representations and warranties of the Debtor contained herein, and of each such party in any certificate delivered pursuant thereto and hereto shall be true and correct on and as of each Closing Date as though made on and as of such Closing Date.

(f) On the Closing Date there shall be (A) no default, or event which, but for the lapse of time or the giving of notice or both, would be such a default, hereunder or under the Lease or under any other lease or loan agreement to which the Debtor or the Lessee is a party wherein the outstanding aggregate rental payments or the aggregate principal amount of borrowed money is greater than or equal to \$1,000,000, (B) no event constituting a Casualty Occurrence, as such is defined in Section 4.2 hereof, has occurred and (C) no material adverse change shall have occurred in the business, assets or financial condition or prospects of either the Debtor or of the Lessee; and the Lender shall have received from the Debtor a certificate to such effect, dated the Closing Date and signed by a duly authorized representative of the Debtor.

(g) The Lender shall have received a signed opinion, dated the Closing Date, of (i) Richard F. Loritz, Esq., Illinois and special ICC counsel to the Debtor, covering the matters described in Exhibit C annexed hereto and (ii) such legal counsel for the Lessee as is acceptable to the Lender covering the matters described in Exhibit D annexed hereto, in form and substance satisfactory to the Lender.

(h) The Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section 2.4 including, without limitation, certificates of officers of the Lessee, the Debtor, public officials and others, and legal opinions as the Lender may reasonably require to establish to its satisfaction the fulfillment of such conditions.

(i) The Debtor shall have paid the fees (in an amount not to exceed \$30,000) and expenses to date of Haight, Gardner, Poor & Havens, special New York counsel to the Lender. Such fees shall be paid by the Debtor out of the Loan advanced to the Debtor on each Closing Date.



2.5. Representations, Warranties and Covenants.

(a) Debtor. The Debtor represents, warrants and covenants that:

(i) Incorporation. The Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and has all requisite corporate power and authority under such laws to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted. The Debtor is duly licensed or qualified to do business as a foreign corporation in good standing in each jurisdiction in which such qualification is required.

(ii) Corporate Power. The Debtor has full corporate power and authority to execute, deliver and perform the Financing Agreements.

(iii) Authority of Debtor. Enforceability. This Agreement, the Notice and Acknowledgement of Assignment and the Lease have each been duly authorized, executed and delivered by the Debtor and constitute the legal, valid and binding obligations of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except to the extent that enforcement is subject to general principles of equity (including but not limited to all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(iv) The Note. The Note has been duly authorized by the Debtor, and, when executed and delivered by the Debtor on the initial Closing Date, will constitute the legal, valid and binding obligation of the Debtor enforceable against it in accordance with the terms thereof, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except to the extent that enforcement is subject to general principles of equity (including but not limited to all matters of public policy) regardless of whether such enforceability is considered in a proceeding in equity or at law.

(v) Governmental Authority. No authorization, consent or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery or performance by

the Debtor of the Financing Agreements or for the creation and perfection of the first priority security interest on the Collateral intended to be created in favor of the Lender hereunder except for the filing of this Agreement and the Lease with the ICC pursuant to 49 U.S.C. Section 11303 and the Uniform Commercial Code-1 filings in the State of Illinois.

(vi) No Conflicts. Neither the execution, delivery or performance by the Debtor of the Financing Agreements, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of the Debtor, or any order, writ, injunction or decree of any court or governmental authority against the Debtor or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which the Debtor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties except for the security interest granted herein.

(vii) Securities Act of 1933. Neither the Debtor nor, to its knowledge, anyone acting on its behalf has directly or indirectly offered the Note, or similar securities or beneficial interests relating to the Equipment, for sale to, or solicited any offer to acquire any of the same from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any interest in the Collateral, other securities or beneficial interests in the Equipment with, any Person so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act of 1933. The Debtor will not offer any interest in the Collateral, the Note, or other securities or beneficial interests in the Equipment to, or solicit any offer to buy any thereof from, any other Person or approach or negotiate with any other Person in respect thereof, so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of said Securities Act.

(viii) Acquisition of Interest in Equipment. The Debtor has acquired its interest in the Equipment for its own account and with its general corporate assets and no funds used to acquire any Item of Equipment have been furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related

trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (viii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(ix) No Amendments to the Lease. The Debtor hereby ratifies and confirms the Lease and warrants and represents that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than the Lender, and that it will not, so long as the assignment hereunder shall remain in effect, except as provided in this Agreement, accept any payment from the Lessee, enter into any agreement amending or supplementing the Lease, execute any waiver or modification of, or consent under, the terms of the Lease, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder without the prior written consent of the Lender thereto and that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease, or of any of the rights created by the Lease, or the assignment hereunder.

(x) Litigation. There are no actual, pending or, to the knowledge of any officer of the Debtor, threatened legal actions, arbitrations, or other proceedings involving the Debtor or the Lessee which might have an adverse effect on the validity or enforceability of this Agreement, the Note, the Lease or the Notice and Acknowledgement of Assignment.

(xi) Reports. The Debtor has caused to be furnished to the Lender the following: the Lessee's 1990 annual report for 1990, (the "1990 Annual Report") and the Lessee's quarterly report for the quarter ended September 30, 1991 (the "September 30, 1991 Report"), and unaudited consolidating financial statements for the Lessee providing segment information as to its locomotives segment, including consolidating balance sheets, consolidating statements of income, and consolidating statements of cash flow. All of such documents as of the respective dates thereof, fairly present the consolidated financial condition of the Lessee and its Subsidiaries as at the respective dates thereof and the consolidated results of its and their operations for the respective periods covered thereby, all in accordance with GAAP (but in the case of unaudited statements, subject to

the absence of footnotes and year end adjustments). None of such documents contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading and since September 30, 1991 there has been no material adverse change in such financial condition or operations.

(xii) Tax Liens. No tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which appropriate reserve in accordance with GAAP consistently applied have been provided on their books.

(xiii) Investment Company. The Debtor is not an "investment company" as such term is defined under the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder, nor will the making of the Loan hereunder by the Lender on the terms and conditions hereunder provided and the use of the proceeds therefrom by the Debtor result in any violation by the Debtor or any of its affiliates of any of the provisions of the Investments Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

(xiv) Value of Equipment. The aggregate fair market value of the Equipment will be no less than \$6,215,000 as of each Closing Date, and the average fair market value of each Item of Equipment will be not less than \$565,000 as of each Closing Date.

(xv) Margin Regulations G, T, U, X. The making of the Loan hereunder by the Lender on the terms and conditions hereunder provided and the use of the proceeds therefrom by the Debtor are not prohibited by Regulations G, T, U or X of the Board of Governors of the Federal Reserve System.

(xvi) Due Performance of the Lease. The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements herein set forth, in the Lease, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns to the same extent as through each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the

Lease were fully set out in an amendment or supplement to this Agreement.

(xvii) Ownership of Collateral. No Liens. The Debtor has good and marketable title to the Collateral, free and clear of all liens (other than by, through or under the Lease and other than the security interest granted herein); and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons whatsoever except persons claiming by, through or under the Lessee or the Lender. The Debtor agrees to pay or discharge, at its own cost and expense, any and all claims, liens or charges (other than those arising by, through or under the Lessee or the Lender) on or with respect to the Collateral. The Debtor further agrees to indemnify and hold harmless the Lender from and against any direct loss, costs or expenses (including legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such claim, lien, or charge. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which the Debtor is named and which the Debtor has signed, as debtor or mortgagor, now on file at the Interstate Commerce Commission, at the Registrar General of Canada or in any other public office in the United States or in Canada covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

(xviii) Further Assurances. The Debtor will, at no expense to the Lender, do, execute, acknowledge and deliver every and all further acts, deeds, conveyances, transfers and assurances (a) for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired and (b) as the Lender may consider necessary or appropriate for giving full effect to this Agreement or for securing the rights of the Lender hereunder. Without limiting the foregoing but in furtherance of the security interest herein granted in the revenues and other sums due and to become due under the Lease, the Debtor covenants and agrees that it will cause the Lessee and each other lessee of any Item of Equipment to be notified of such assignment and direct the Lessee and any such lessee, to make all payments of such revenues and other sums due and to become due under the Lease, other than the Excepted Rights in Collateral, as the Lender may direct, and cause the Lessee and each such lessee to execute and deliver an acknowledgement of assignment, substantially in the form of the Notice and Acknowledgement of Assignment attached as

Exhibit E and otherwise in form and substance satisfactory to the Lender.

(xix) The Lease. (a) The Debtor will not, without the prior written consent of the Lender:

(1) declare a default or exercise the remedies of the Debtor under, or terminate or modify or accept a surrender of, or offer or agree to, any termination or modification or surrender of, or take or omit to take any action which might result in an alteration or impairment of, the Lease or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the rights created by the Lease or any part thereof; or

(2) receive or collect or permit the receipt or collection of any payment of Basic Rent under the Lease prior to the date for payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Lender hereunder) any Basic Rent then due or to accrue in the future under the Lease in respect of the Equipment; or

(3) sell, mortgage, transfer, assign or hypothecate (other than to the Lender hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

(b) The Debtor will furnish the Lender promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Debtor under the Lease, or furnished by the Debtor to the Lessee under the Lease to the extent that same shall not have been furnished to the Lender pursuant to the Lease.

(xx) Power of Attorney. The Debtor hereby constitutes the Lender and its successors and assigns, the true and lawful attorney of the Debtor, irrevocably and with full power of substitution for and in the name, place and stead of the Debtor or otherwise, to demand, collect, receive, receipt for, sue for, compound and compromise and give acquittance for, any and all rents, income, profits, moneys and claims for sums which are assigned under Sections 3.1 and 3.2 hereof, to endorse any checks or other instruments or orders in connection therewith, to make all

waivers and agreements and to file any claims (including without limitation any proof of claim in any bankruptcy proceeding commenced by or against the Lessee) or take any actions or institute any proceedings with respect thereto which the Lender may deem necessary or advisable in its sole and complete discretion. Anything herein contained to the contrary notwithstanding, neither the Lender nor its successors or assigns shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time by virtue of this Agreement. Upon written request from the Debtor, such request to be made no more frequently than once in any six month period, the Lender shall account to the Debtor for any and all rents, income, moneys and claims for sums received by the Lender pursuant to the grant of security herein.

(xxi) Payment of Commissions. The Debtor warrants that it will pay or cause to be paid all appropriate brokers commissions or finders fees in connection with the acquisition of the Equipment and the other transactions contemplated thereby. The Debtor agrees that the Lender has no obligation to pay such fees and it agrees to indemnify the Lender for any and all sums whatsoever required to be expended by the Lender in payment of such claims by brokers provided that the Debtor shall be under no obligation to indemnify the Lender for fees incurred solely as a result of acts by the Lender.

(xxii) Notice of Event of Default. The Debtor further covenants and agrees that it will give the Lender prompt written notice of any event or condition constituting a Default or an Event of Default hereunder or under the Lease if the Debtor has actual knowledge of such event or condition.

(xxiii) Remanufacturing of Equipment. On each Closing Date the Equipment shall have been remanufactured in compliance with, and shall meet all safety and other standards established by the Federal Railroad Administration.

(xxiv) Use of Equipment. The Equipment will be used by the Lessee only upon lines or railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over lines upon which such railroad company or companies have trackage rights or rights

for operation of their trains, and upon connecting with other carriers in the usual interchange of traffic in the continental United States. The Equipment will be located at all times only in the United States, notwithstanding any provision of the Lease or any other agreement; provided, however, with the prior express written consent of the Lender, and subject to such conditions as Lender may require, the Equipment may be used in Canada or Mexico for a period of time not exceeding a total of ninety (90) days in any calendar year.

(xxv) Right to Inspect the Collateral. The Debtor shall at any reasonable time, on demand by the Lender, cause the Collateral to be exhibited to the Lender (or persons designated by the Lender) for purposes of inspection.

(xxvi) Reporting Requirements. The Debtor will furnish to the Lender: (i) as soon as available and in any event within ninety (90) days after the end of each of the first three quarters of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and its consolidated Subsidiaries as of the end of such quarter and consolidated statements of income and retained earnings of the Lessee and its consolidated Subsidiaries as of the end of such quarter and statements of income and retained earnings of the Lessee and its consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, and unaudited financial statements relating to its manufacture, selling or leasing of locomotives and for parts therefor, in each case prepared in accordance with GAAP and certified by the chief financial officer or president of the Lessee; (ii) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the Lessee, consolidated financial statements of the Lessee and its consolidated Subsidiaries for such year, in each case prepared in accordance with GAAP and certified by Arthur Andersen & Co. or other independent public accounts acceptable to the Lender in their reasonable judgment, and unaudited financial statements relating to its manufacture, selling or leasing of locomotives and for parts therefor certified by the chief financial officer or president of the Lessee; and (iii) promptly after the sending or filing thereof copies of all reports and registration statements, if any, filed by the Lessee or any Subsidiary with the Securities and Exchange Commission or any national securities exchange. The Debtor shall promptly furnish to the Lender such other information respecting the financial condition or operations of the Debtor and of the Lessee or

any of their respective Subsidiaries as the Lender may, from time to time reasonably request.

(b) Lender. The Lender represents and warrants that:

(i) The Lender understands that the Note has not been registered under the Securities Act of 1933, as amended, and that the Note must be held indefinitely unless subsequent disposition thereof is registered under said Act or is a transaction exempt from registration.

(ii) The Note to be issued to the Lender pursuant hereto is being acquired by it with its general corporate assets, and no funds used to acquire the Note will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) or any separate account in which any employee benefit plan has any interest. As used in this paragraph (ii), the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to them in ERISA.

(iii) The acceptance of the Note by the holder shall constitute a reaffirmation as of the date of acquisition of the representations and warranties contained in this Section 2.5(b).

(iv) The Lender agrees that so long as no Default or Event of Default has occurred and is continuing it will give the Debtor, promptly after any Responsible Officer of the Debtor has actual knowledge of a Lease Event of Default, written notice of the occurrence of any such event; provided, however, that the Lender shall be under no obligation to make any inquiry with respect to the existence of a Lease Event of Default or to give such notice with respect to any such event known, or which could reasonably be expected to be known, to Debtor.

2.6 Taxes. (a) Withholding. If any withholding of a Tax (defined below) for which the Debtor is required by paragraph (b) to indemnify the Lender is required in connection with any payment pursuant to this Agreement or the Note, the Debtor shall pay such additional amount as may be necessary to make the net amount actually received by the recipient equal to the total amount the recipient would have received if no withholding had been required.

(b) Tax indemnity. The Debtor shall indemnify the Lender for all taxes, fees and other governmental charges (collectively, "Taxes", and individually a "Tax") payable in

connection with the execution, delivery, recording, performance or enforcement of this Agreement and the Note or otherwise in connection with the transactions described in this Agreement and the Note, excluding Taxes imposed by the United States Federal Government on the net income of the Lender.

(c) After-tax basis. Each indemnity pursuant to this Section 2.6 shall be in an amount which, after taking into account (i) all Taxes required to be paid by the Lender entitled to the indemnity as a result of the receipt or accrual of the indemnity and (ii) any Tax savings realized by the Lender as a result of deductions, credits or other allowances resulting from the payment or accrual of the Tax for which the Indemnity has been demanded, shall be equal to the total amount of the indemnity that the Debtor would be required to pay if the Lender were not subject to Taxes as a result of the receipt or accrual of the indemnity.

(d) When due. Each payment required to be made by the Debtor to the Lender pursuant to this Section 2.6 shall, except as otherwise provided herein, be due thirty (30) days following the Debtor's receipt of the Lender's written demand for the payment accompanied by a written statement of the Lender describing in reasonable detail the computation of the indemnity being demanded.

(e) Information. The Debtor shall provide, at its own expense, such information as may be reasonably requested by the Lender or required to enable the Lender to fulfill its tax filing, audit and litigation requirements with respect to the transactions described in this Agreement and the Note.

Section 3. GRANT OF SECURITY.

The Debtor, in order to secure the prompt payment of the principal of, Premium (if any) and interest on the Note issued hereunder, and to secure the payment of all other indebtedness of the Debtor to the Lender pursuant to this Agreement and the performance and observance of all covenants and conditions in each of the Financing Agreements, and for the benefit of the Lender and any other holders of the Note, does hereby convey, warrant, mortgage, pledge, assign and grant to the Lender, its successors and assigns, for the security and benefit of each holder of the Note a first priority security interest in all of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 3.1 and 3.2 hereof whether now owned or hereafter acquired, and all proceeds thereof, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof (all of which properties, rights, interests and privileges

hereby mortgaged, assigned and pledged, or intended so to be, are collectively referred to as the "Collateral").

3.1 Equipment Collateral. Collateral includes the Equipment described in the Certificate of Inspection and Acceptance delivered on the initial Closing Date and each subsequent Closing Date forming part of the Equipment identified in Exhibit A attached hereto and made a part hereof and in any amendments or additions to such exhibit hereafter attached hereto and filed herewith together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, or proceeds of any and all of said Equipment, together with all the rents, issues, income, profits, avails and other proceeds (including insurance proceeds) therefrom.

3.2 Lease Collateral. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under the Lease, including any extensions of the term of the Lease with respect to the equipment identified in Schedule A to the Lease, and each Certificate of Inspection and Acceptance, any other lease entered into with respect to the Equipment, whether pursuant to Sections 4.4 and 6.2(g) hereof or otherwise together with all rights, powers, privileges, options and other benefits of the Debtor under the said Lease and any other lease, including, without limitation, but subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof:

(1) the immediate and continuing right to receive and collect all Basic Rent and loss value payments, insurance proceeds, casualty payments, condemnation awards, requisition payments and other payments, proceeds, tenders and security now or hereafter payable to or receivable by the Debtor under said Lease or pursuant thereto and under any other lease or pursuant thereto, together with the immediate and continuing right to receive and collect same;

(2) the right to make all consents, waivers and agreements and to enter into any amendments relating to the Lease and any other lease or any provision thereof; provided, however, that the Lender shall be under no obligation to take such actions; provided, further, that, so long as no Default or Event of Default has occurred and is continuing hereunder or under the Lease, the Lender shall take such actions upon consultation with the Debtor; and

(3) the right to take such action upon the occurrence of an Event of Default under said Lease and each other lease or an event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under said Lease and each other lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease and each other lease or by law, and to do any and all other things whatsoever which the Debtor or its successors and assigns is or may be entitled to do under the Lease and each other lease;

it being the intent and purpose hereof that, subject always to the exceptions, reservations and limitations contained in Section 3.3 hereof, the assignment and transfer to the Lender of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Lender shall have the right to collect and receive Basic Rent and loss value payments, insurance proceeds, condemnation awards and other payments for application in accordance with the provisions of Sections 5 and 6 hereof at all times during the period from and after the date of this Agreement until the indebtedness hereby secured has been fully paid and discharged.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Debtor shall remain liable under the Lease and each other lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Lender and the holders of the Note shall have no obligation or liability under the Lease or any other lease by reason of or arising out of the assignment hereunder, nor shall the Lender or the holder of the Note be required or obligated in any manner to perform or fulfill any obligations of the Debtor under or pursuant to the Lease or any other lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

3.3 Excepted Rights in Collateral. There are expressly excepted and reserved from the security interest and operation of this Agreement the following described properties, rights, interests and privileges (hereinafter the Excepted Rights in Collateral) and nothing herein or in any other agreement contained shall constitute an assignment of the Excepted Rights in Collateral to the Lender:

(a) all payments of any indemnity under Section 6 of the Lease which by the terms of the Lease are payable to the Debtor for its own account;

(b) all rights of the Debtor under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Debtor on account of any such indemnities or payments due pursuant to said Section 6 of the Lease; and

(c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Section 7 of the Lease which by the terms of the Lease are payable directly to the Debtor for its own account.

Section 4. POSSESSION, CASUALTY OCCURRENCE, REPLACEMENT OF EQUIPMENT, OBSOLESCENCE, USE AND RELEASE OF PROPERTY.

4.1 Possession of Collateral. So long as no Default or Event of Default, has occurred and is continuing, the Debtor shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement and the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

4.2 Casualty Occurrence. In the event that an Item of Equipment shall (i) become, in the reasonable opinion of the Lessee, worn out from any cause whatsoever (except by reason of a breach of the obligations of the Lessee under the Lease), (ii) suffer an event which involves an actual, constructive or compromised total loss as a result of an insurance settlement or be returned permanently to the builder thereof in connection with a warranty or patent indemnity settlement; (iii) be destroyed or damaged beyond economic repair such that the Lessee will lose the use thereof for a period equal to the lesser of sixty (60) consecutive days and the number of days then remaining in the term of this Lease for such Item; (iv) be stolen or disappear so that the Lessee will lose the use thereof for a period equal to the lesser of sixty (60) consecutive days and the number of days remaining in the term of this Lease for such Item; (v) be condemned, confiscated, seized or title taken for use by a foreign government for a period equal to the lesser of one hundred eighty (180) consecutive days and the number of days

remaining in the term of this Lease for such Item or by a government of or in the United States (the "Government") for a stated period which shall exceed the then remaining term of this Lease for such Item or for an indefinite period (or, if such taking, requisition or condemnation shall occur during a renewal term, for a stated period which shall exceed such then remaining renewal term or for an indefinite period) (a "Casualty Occurrence"), the Debtor shall promptly and fully notify the Lender with respect to the Casualty Occurrence.

4.3 Casualty Occurrence Payment. On the first Installment Date falling after a Casualty Occurrence (or on the next following Installment Date, if such first Installment Date falls fewer than fifteen (15) days after such Casualty Occurrence) (the "Casualty Occurrence Payment Date") the Debtor, subject to Section 4.4 hereof shall pay to the Lender an amount (the "Casualty Occurrence Payment") equal to 1/11th of the then unpaid principal amount of the Note. Except as otherwise permitted by Section 4.4 hereof, upon the Lender's full and final receipt of the Casualty Occurrence Payment, and if no Default or Event of Default shall have occurred and be continuing, the Item of Equipment which has become a Casualty Occurrence shall be released from the security interests created hereby or pursuant hereto, and thereafter the amount of principal and interest due and payable under the Note on the remaining Installment Dates shall be reduced by 1/11th. Provided that Lender shall have received all amounts due and payable under this Section 4.3 and no Default or Event of Default has occurred and is continuing hereunder or under the Lease, all amounts of Casualty Value (as defined in the Lease) received by the Lender in excess of amounts due and payable under this Section 4.3 shall be released to the Debtor.

4.4 Replacement of Items of Equipment. Notwithstanding Section 4.3 hereof, as long as no Default or Event of Default shall have occurred and be continuing, the Debtor may elect, by written notice to the Lender given no fewer than fifteen (15) days prior to the Casualty Occurrence Payment Date, to replace the Item of Equipment which has suffered the Casualty Occurrence with another locomotive (the "Replacement Unit") having at least equal value and utility as of the date of the Casualty Occurrence as the Item which has suffered the Casualty. The Debtor shall provide to the Lender an appraisal from Norman W. Seip & Associates, Erie, Pennsylvania, in form and substance acceptable to the Lender.

In the event such replacement is completed prior to the Casualty Occurrence Payment Date, the Debtor shall be released from its obligation to pay the Casualty Occurrence Payment. In the event, however, such replacement is not completed prior to

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the Casualty Occurrence Payment Date, the Debtor shall deposit with the Lender on or prior to the Casualty Occurrence Payment Date an amount equal to the Casualty Occurrence Payment. So long as no Event of Default shall have occurred and be continuing, the Lender shall invest such amount in any Permitted Investment, at the expense and risk of the Debtor. The Lender shall disburse such amount and any earnings derived from such investments to the Debtor upon receiving written notice from the Debtor that the replacement has been completed. If an Event of Default or Default shall occur, the Lender shall apply all such amounts in its possession in the manner set forth in Section 6.6 hereof.

In the event the Debtor elects to replace an Item of Equipment in accordance with Section 4.4 hereof, the Debtor covenants and agrees to enter into a lease of such Replacement Unit in form and substance similar to the Lease, and such lease and Replacement Unit shall become subject to the perfected lien of this Agreement and the interest of the Lender.

4.5 Obsolescence. In the event that an Item of Equipment shall, in the reasonable opinion of the Lessee become economically obsolete in the Lessee's business pursuant to Section 7 of the Lease, the Debtor shall promptly inform the Lender in respect thereto. In the event the Lessee elects to exercise its rights under Section 7 of the Lease with respect to such obsolescence of such Item of Equipment and if no Event of Default or Default shall have occurred and be continuing such Item of Equipment shall be released from the security interests created hereby or pursuant hereto as of the succeeding Installment Payment Date (the "Termination Date"), provided the Debtor shall pay to the Lender an amount equal to the sum of (x) 1/11th of the then unpaid principal amount of the Note plus (y) a Premium in an amount equal to 1/11th of the amount of the applicable Premium on such Installment Date, and upon full and final receipt by the Lender of all such amounts the amount of principal and interest due and payable under the Note on the remaining Installment Dates shall be reduced by 1/11th. Provided that Lender shall have received all amounts due and payable under this Section 4.5 and no Default or Event of Default has occurred and is continuing hereunder or under the Lease, all amounts of Casualty Value (as defined in the Lease) received by the Lender in excess of amounts due and payable under this Section 4.5 shall be released to the Debtor.

4.6 Release of Property. So long as no Event of Default, or event which with time or notice or both would constitute an Event of Default, has occurred and is continuing, the Lender shall execute a release in respect of any Item of Equipment withdrawn, lost or destroyed as referred to in Sections 4.2 and 4.5 hereof upon receipt from the Lessee of written notice



designating the Item of Equipment in respect of which the Lease will terminate, or upon receipt by the Lender of evidence that any withdrawn Item of Equipment has been substituted in accordance with the terms of Section 4.4 hereof. After payment in full of all the indebtedness hereby secured, including but not limited to all amounts due and payable under the Note, the Lender shall, upon the written request of the Debtor, execute and deliver to, or as directed in writing by, the Debtor, such instruments (in due form for filing and recording) as may be reasonably requested and furnished by the Debtor, releasing the Equipment from, and terminating and discharging, this Agreement and the security interests created hereby or pursuant hereto.

4.7 Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Lender to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

Section 5. APPLICATION OF ASSIGNED RENT AND CERTAIN OTHER MONEYS RECEIVED BY THE LENDER.

5.1 Application of Assigned Rent. So long as no Event of Default or event which, but for the lapse of time or the giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the amounts from time to time received by the Lender which constitute payment by the Lessee under the Lease of the installments of Basic Rent shall be applied: first, to the payment of the installment of the aggregate unpaid interest, or of principal and interest (in each case first to interest and then to principal), then due or which have become due on the Note (including, without limitation, the final payment of interest on the Note) ratably without priority of one over the other in the proportion that the sum of the aggregate unpaid principal amount of the Note held by each such holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the sum of the aggregate unpaid principal amount of all outstanding Note held by all such holders, plus the accrued but unpaid, interest thereon to the date of distribution; second, the balance, if any, of such amounts shall be paid to or upon the order of the Debtor.

5.2 Default. If an Event of Default, or event which, but for the lapse of time or the giving of notice or both, would constitute such an Event of Default, shall have occurred and be continuing, all amounts received by the Lender shall be held until (i) such event or condition has been cured or (ii) such

amounts are applied in the manner provided for in Section 6.6 hereof.

5.3 Excepted Payments. Notwithstanding any other provision of this Agreement, all payments constituting part of Excepted Rights in Collateral, if received by any holder of the Note, shall be paid to the Debtor.

Section 6. DEFAULTS AND OTHER PROVISIONS.

6.1 Events of Default. The term Event of Default shall mean one or more of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Default in payment of any installment of the principal of, Premium, if any, or interest on, the Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise; or

(b) A Lease Event of Default shall have occurred and be continuing; provided, however, that unless the Lender has declared an Event of Default under the Lease the Debtor shall be entitled to cure such Lease Event of Default and the corresponding Event of Default hereunder within the expiration of the applicable grace period; provided, however, that notwithstanding any provision to the contrary herein, the Lender shall have given a copy to the Debtor of any notice given by the Lender to the Lessee in connection with any Lease Event of Default concurrently with the giving of such notice to the Lessee; and provided further, that if more than twelve Lease Events of Default in total or if more than six consecutive Lease Events of Default shall have occurred resulting from failure to make any payment of Basic Rent, any such Lease Event of Default shall be an Event of Default hereunder whether or not the corresponding Event of Default hereunder is cured; or

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement to be observed or performed by the Debtor under this Agreement (other than the covenants referred to in Section 6.1(a), (e) and (f)), and such default shall continue unremedied for thirty (30) days after written notice from the Lender to the Debtor specifying the default and demanding the same to be remedied; or

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(d) Any representation or warranty on the part of the Debtor made herein or in the Lease or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease or the transactions contemplated herein or therein, shall prove to be false or misleading in any material respect when made; or

(e) Any claim, lien or charge arising by, through or under the Debtor shall be asserted against or levied or imposed upon the Equipment or any Item of Equipment or the security interest granted hereunder shall cease to be a perfected and enforceable first priority security interest in the Collateral other than as a result of acts by the Lender, and such claim, lien or charge shall not be discharged or removed or such security interest restored as a perfected and enforceable first priority security interest within thirty calendar days after written notice from the Lender or the holder of a Note to the Debtor demanding the discharge or removal or restoration thereof; or

(f) Failure on the part of the Debtor to give notice to the Lender, within ten (10) days of the occurrence thereof, of any Event of Default or of the occurrence of any event known to the Debtor which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default; or

(g) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Debtor under any bankruptcy, insolvency or similar act, law or statute now or hereafter in effect, or adjudging the Lessee a bankrupt or insolvent, or approving a petition seeking reorganization, adjustment or composition of or in respect of the Lessee under Title XI of the United States Code, as now constituted or hereafter in effect or under any other applicable Federal or State bankruptcy law or other similar law, or the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Debtor or of any substantial part of its property, or the entry of an order for the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) The filing by the Debtor of any petition, application, answer or consent to or for liquidation, reorganization, arrangement or any other relief under any Chapter of Title XI of the United States Code or any similar state or federal law or statute, as now or hereafter in effect or the consent by it to the filing of any such petition or application for the relief requested therein, or the consent by it to the appointment or taking possession by a receiver, liquidator,

assignee, trustee, custodian, sequestrator (or other similar official) of the Debtor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the failure of the Debtor generally to pay its debts as such debts become due, or the taking of lawful action by the Debtor in furtherance of any such action.

6.2 Lender's Rights. If any Event of Default shall have occurred and be continuing, the Lender shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code in effect in the State of New York (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), and:

(a) The entire unpaid principal balance of the Note and accrued interest thereon shall be immediately due and payable without notice, presentment or demand of any kind in the case of an Event of Default under Section 6.1(g) and (h) above, and with notice to the Debtor of any acceleration hereunder following any other Event of Default;

(b) At the request of the Lender, the Debtor shall promptly execute and deliver to the Lender such instruments of title and other documents as the Lender may deem necessary or advisable to enable the Lender or an agent or representative designated by the Lender, at such time or times and place or places as the Lender reasonably may specify, to obtain possession of all or any part of the Collateral to which the Lender shall at the time be entitled hereunder; if the Debtor shall for any reason fail to execute and deliver such instruments and documents after such request by the Lender, (i) the Lender may obtain a judgment conferring on the Lender the right to immediate possession and requiring the Debtor to execute and deliver such instruments and documents to the Lender, to the entry of which judgment the Debtor hereby specifically consents, and/or (ii) the Lender personally or by agents or attorneys, shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any premises, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the Collateral, or, to the extent permitted by law, use and operate or lease the Collateral until sold;

(c) Upon every such taking of possession, the Lender may, from time to time, at the expense of the Collateral, make

all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Collateral, as it may deem proper, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control, management or disposition of the Collateral or any part thereof as the Lender may determine; and the Lender shall be entitled to collect and receive directly all tolls, rents (including rental under the Lease), revenues, issues, income, products and profits of the Collateral and every part thereof, except Excepted Rights in Collateral, without prejudice, however, to the right of the Lender under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with the Lender hereunder;

(d) The Lender may, if at the time such action may be lawful (subject to compliance with any mandatory legal requirements), either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Debtor once at least ten days prior to the date of such sale, sell and dispose of said Collateral, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Lender may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to; provided, however, that any such sale should be held in a commercially reasonable manner provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Debtor should tender full payment of the total unpaid balance of the Note, together with interest thereon accrued and unpaid and all other payments due under the Note and this Agreement as well as expenses of the Lender in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Lender's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Lender, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Debtor. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Lender or any holder of the Note, or of any interest therein, or the Debtor may bid and become the purchaser at any such sale;

(e) The Lender may proceed to protect and enforce this Agreement and the Note by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or

aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; provided, however, that except with respect to Sections 6.2(h) and Sections 9.9 hereof, the Lender may take no action for money damages against Debtor, individually or personally, its officers, agents or assigns, it being agreed that the Lender shall look solely to the proceeds of the Lease, the Equipment and other Collateral for payment to it of any principal, interest, fees, cost, or other sums which may be due to the Lender from time to time hereunder;

(f) The Lender may proceed to exercise all rights, privileges and remedies available to the Debtor under the terms of the Lease including, without limitation, the right to terminate the Lease and may exercise all such rights and remedies either in the name of the Lender or in the name of the Debtor for the use and benefit of the Lender. In the event the Lender shall at any time declare that a Lease Event of Default shall have occurred, subject to the terms of Section 6.1(b) hereof, the unpaid balance of the Note then outstanding, together with all accrued interest thereon, shall immediately be and become immediately due and payable without presentment, demand, protest or notice, all of which are hereby waived; and

(g) In the event a Lease Event of Default shall have occurred and be continuing and the Debtor elects to terminate the Lease and enter into a new lease in respect to the Equipment, the Debtor (i) shall first obtain the written consent of the Lender, such consent not be unreasonably withheld, approving the new lessee and (ii) shall enter into a lease with such new lessee in form and substance similar to the Lease and such lease shall become subject to the perfected lien of this Agreement and the first priority interest of the Lender.

(h) The Debtor will pay all reasonable actual fees, costs and expenses, including attorneys' fees incurred by the Lender or any holder of the Note in enforcing its rights and remedies under the terms of this Agreement.

6.3 Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Agreement, the aggregate principal amount of the Note, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser, for the purpose of making settlement for or payment of

the purchase price, shall be entitled to turn in and use the Note and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

6.4 Waiver by Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Lender, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted; provided, however, that any such sale or sales shall be made in a commercially reasonable manner.

6.5 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns.

6.6 Application of Sale Proceeds. The proceeds of any sale of the Collateral, or any part thereof, and the proceeds of any remedy hereunder and any other amounts received by the Lender pursuant to this Agreement after an Event of Default shall have occurred and be continuing shall be paid to and applied as follows:

First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including reasonable actual legal expenses and attorneys' fees, incurred or made hereunder by

the Lender, or the holders of the Note, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

Second, to the payment to the Lender of the amount then due, owing or unpaid on the Note for principal and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Note, then first to unpaid interest thereon, second, to unpaid principal thereof ratably to the Lender, without priority of one over the other in the proportion that the amount of such proceeds to which each such holder is entitled bears to the aggregate amount of all such proceeds; and

Third, to the payment of any other indebtedness hereby secured to the Lender; and

Fourth, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

6.7 Discontinuance of Remedies. In case the Lender shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor, the Lender and the holders of the Note shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

6.8 Cumulative Remedies. No delay or omission of the Lender or of any holder of the Note to exercise any right or power arising from any default on the part of the Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Lender, or any holder of the Note, of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Lender may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Agreement operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor

shall the Lender or the holders of the Note be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

6.9 Indemnity. The Debtor agrees to indemnify, protect and hold harmless the Lender and its assigns, directors, officers, employees, agents and representatives (each an "Indemnified Party") from and against all losses, damages, injuries, liabilities, claims and demands (all the foregoing losses, damages, etc. are the "indemnified liabilities"), and expenses in connection therewith (including, but not limited to, reasonable counsel fees and expenses) arising out of or as the result of entering into or the performance of this Agreement and the Note, the enforcement of any rights thereunder, the retention by any Lender of a security interest in the Collateral, or arising during the period of any delivery, rejection, storage or repossession of any of the Equipment while a security interest therein remains in the Lender or during the period of the transfer of such security interest in the Collateral by the Lender pursuant to any of the provisions hereof; provided, however, that the Debtor shall have no obligation to so indemnify any Indemnified Party for any indemnified liabilities arising from its willful misconduct or gross negligence. The foregoing indemnity shall survive the termination of this Agreement.

Section 7. TRANSFER OF DEBTOR'S INTEREST.

The Debtor agrees that it will not sell or otherwise transfer its interest in the Equipment or the Lease, or any part thereof, without the prior written consent of the Lender.

Section 8. THE NOTE.

8.1 Execution of the Note. The Note shall be signed on behalf of the Debtor by an authorized signatory who, at the date of the actual execution thereof, shall be duly authorized to execute the same.

8.2 Payment of the Note.

(a) The principal of and interest on the Note shall be payable on each payment date under the Note by wire transfer of immediately available funds, at Chase Manhattan Bank, N.A., New York, New York, Account No. 910-2-585198, for the account of U.S. Concord, Inc. or to such other account as the holder of each Note shall designate to the Debtor from time to time in writing, and if no such designation is in effect, by check, duly mailed, first class, certified, postage prepaid, or delivered to the Lender at the address last furnished to the Debtor. All payments so made shall be valid and effective to satisfy and discharge the

liability upon such Note to the extent of the sums so paid. All such payments shall be free and clear of and without deduction for or an account of wire or other charges. Each holder (or the person for whom such holder is a nominee) by its acceptance of a Note agrees that, before selling, transferring or otherwise disposing of such Note, it will advise the Debtor upon such transfer and notation of payment as provided in Sections 8.3 and 8.4.

(b) There shall be a mandatory prepayment of principal on the Note, plus interest accrued thereon, in the amounts and to the extent required under Sections 4.3 and 4.5 hereof.

(c) At any time, upon not less than fifteen (15) Business Days' prior written notice to the Lender, the Debtor may prepay all but not less than all of the Loan or the Note. All voluntary prepayments of principal under the Note shall be accompanied by accrued interest on the amount prepaid, together with a Premium on the amount prepaid. Amounts paid or prepaid hereunder may not be reborrowed.

(d) If any payment hereunder or under the Notes is due on a day other than a Business Day, payments required to be made on such day shall be made on the next succeeding Business Day.

(e) The Debtor shall pay to the Lender or any holder of a Note interest on overdue principal and overdue interest and any other amounts payable hereunder or under any Note which are overdue at the rate of 13.18% per annum (calculated on the basis of twelve (12) months of thirty (30) days each) whether as scheduled or upon acceleration or otherwise.

(f) In no event shall the interest rate for the Note or any other amount payable under the Financing Agreements exceed the maximum permitted by law and, in the event the Lender ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of such other amounts due hereunder or under the Note or hereunder then outstanding, and, if such other amounts then outstanding are paid in full, any remaining excess shall forthwith be paid to the Debtor. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the highest lawful rate, the Debtor and the Lender shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (b) exclude any voluntary prepayments and the effect thereof, and (c) spread the total amount of interest throughout the period during which any principal of the Loan remains outstanding so that the interest rate is uniform throughout the period during which any principal

of the Loan remains outstanding. In no event shall any interest rate provided for in this Agreement or the Note exceed the maximum rate permitted by the then applicable law, provided, further that the interest rate payable pursuant to this Agreement and the Note shall be at all times the lower of (A) the relevant interest rate stated in this Agreement, or (B) the maximum interest rate permitted under applicable law.

8.3 Transfers and Exchanges of the Note; Lost or Mutilated Notes.

(a) The holder of the Note may transfer such Note upon the surrender thereof at the principal office of the Debtor and the Debtor shall execute in the name of the transferee a new Note or Notes, in such denominations as may be requested by the holder, in aggregate principal amount equal to the unpaid principal amount of the Note so surrendered, and deliver such new Note or Notes to said holder for delivery to such transferee.

(b) The holder of the Note or reissued Notes may surrender such Note or Notes at the principal office of the Debtor, accompanied by a written request for a new Note or Notes in the same aggregate principal amount as the then unpaid principal amount of the Note or Notes so surrendered. Thereupon, the Debtor shall execute in the name of such holder a new Note or Notes in the denomination or denominations so requested and in aggregate principal amount equal to the aggregate unpaid principal amount of the Note or Notes so surrendered and deliver such new Note or Notes to such holder.

(c) All Notes presented or surrendered for exchange or transfer shall be accompanied (if so required by the Debtor) by a written instrument or instruments of assignment or transfer, duly executed by the registered holder or by its attorney duly authorized in writing. The Debtor shall not be required to make a transfer or an exchange of any Note for a period of ten days preceding any installment payment date with respect thereto.

(d) No notarial act shall be necessary for the transfer or exchange of any Note pursuant to this Section 8.3, and the holder of any Note issued as provided in this Section 8.3 shall be entitled to any and all rights and privileges granted under this Agreement to the holder of such Note.

(e) In case the Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the holder thereof, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The applicant for a substituted Note shall furnish to the Debtor

such security or indemnity as may be required by the Debtor to save it harmless from all risks in connection therewith, and the applicant shall also furnish to the Debtor evidence to its satisfaction of the mutilation, destruction, loss or theft of the applicant's Note and of the ownership thereof. In case the Note which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Debtor may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note), if the applicant for such payment shall furnish to the Debtor such security or indemnity as the Debtor may require to save it harmless, and shall furnish evidence to the satisfaction of the Debtor of the mutilation, destruction, loss or theft of such Note and the ownership thereof. If the Lender, or its nominee, is the owner of any such lost, stolen or destroyed Note, then the affidavit of the president, vice president, treasurer or assistant treasurer of such Lender setting forth the fact of loss, theft or destruction and of its ownership of the Note at the time of such loss, theft or destruction shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of the Lender to indemnify the Debtor for any claims or action against it (and for its attorneys' fees) resulting from the issuance of such new Note or the reappearance of the old Note.

8.4 New Notes.

(a) Each new Note issued pursuant to Section 8.3(a), (b) or (e) in exchange for or in substitution or in lieu of an outstanding Note shall be dated the date of such outstanding Note. The Debtor shall mark on each new Note (i) the dates to which principal and interest have been paid on such outstanding Note, (ii) all payments and prepayments of principal previously made on such outstanding Note which are allocable to such new Note, and (iii) the amount of each installment payment payable on such new Note. Each installment of principal payable on such new Note on any date shall bear the same proportion to the installment of principal payable on such outstanding Note on such date as the original principal amount of such new Note bears to the aggregate unpaid principal amount of such outstanding Note on the date of the issuance of such new Note. Interest shall be deemed to have been paid on such new Note to the date on which interest shall have been paid on such outstanding Note, and all payments and prepayments of principal marked on such new Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) All new Notes issued pursuant to Section 8.3(a), (b) or (e) in exchange for or in substitution or in lieu of

outstanding Notes shall be valid obligations of the Debtor evidencing the same debt as outstanding Notes and shall be entitled to the benefits and security of this Agreement to the same extent as the outstanding Note.

(c) Upon the issuance of any Note pursuant to this Agreement, the Debtor shall prepare and deliver to the Lender a copy of an amortization schedule with respect to such Note setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment. The Lender shall deliver, or send by first class mail, postage prepaid, one copy of the applicable schedule to the holder of such Note at its address furnished to the Debtor for such purpose.

8.5 Cancellation of Notes. If any Note is surrendered for the purpose of payment, redemption, transfer or exchange, such Note shall be delivered to the Debtor for cancellation or, if surrendered to the Debtor, shall be cancelled by it, and no Note or Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Agreement.

Section 9. MISCELLANEOUS.

9.1 Business Days. As used herein, the term "Business Day" means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the States of New York or Illinois are authorized or obligated to remain closed.

9.2 Successors and Assigns. Whenever any of the parties hereto is referred to such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Agreement contained by or on behalf of the Debtor or by or on behalf of the Lender shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9.3 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

9.4 Communications. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mails, certified first class, postage prepaid, addressed as follows:

If to the Debtor:

National Railway Equipment Company
14400 South Robey Street
Dixmoor, Illinois 60426
Attn: Mr. Lawrence Beal, President
Telecopier No.: (708) 388-2487

with a copy to:

Richard F. Loritz, Esq.
Orland State Bank Building
9533 West 143rd Street
Orland Park, Illinois 60462
Telecopier No.: (708) 349-6628

If to the Lender:

c/o Concord Merchant Funding
70 Valley Stream Parkway
Malvern, Pennsylvania 19355
Attention: Robert M. Bauersmith, Vice President
Telecopier No.: (215) 644-4480

with a copy to:

Concord Leasing, Inc.
40 Richards Avenue
Norwalk, Connecticut 06856
Attention: William T. Whelan, Vice President
Telecopier No.: (203) 866-5409

or to the Debtor or the Lender at such other address as the Debtor or the Lender may designate by notice duly given in accordance with this Section to the other party.

9.5 Governing Law. This Agreement and the Note shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

9.6 Submission to Jurisdiction. The Debtor and the Lender hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New



York County, of the United States of America, and to the jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof brought by any party or its successors or assigns, and each of the undersigned hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by law, in such Federal court, and each of the undersigned hereby agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts. The Debtor hereby generally appoints as its attorney-in-fact, to receive service of process in such action, suit or proceeding Richard F. Loritz, Esq., Orland State Bank Building, 9533 West 143rd Street, Orland Park, Illinois 60462 (the "Agent for Service of Process"). The Debtor agrees that (without prejudice to any other lawful method of service) service of process upon such attorney-in-fact shall constitute valid service upon the Debtor or its successors or assigns. The Debtor also agrees to give each Lender thirty (30) days advance written notice regarding any change related to the Agent for Service of Process, and so long as any amount remains outstanding and unpaid hereunder or under the Note to maintain an agent for the receipt of process as aforesaid.

9.7 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

9.8 Table of Contents and Headings. The Table of Contents hereto and any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

9.9 Limitation of Liability. It is understood and agreed by the Lender that, except for the obligations of the Debtor in Sections 2.5(a)(xvii), 2.5(a)(xxi) and 7 hereof, the liability of the Debtor or any assignee of the Debtor for all payments to be made by it under and pursuant to this Agreement and the Note, including without limitation the indemnity contained in Section 6.9 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds

from the Equipment". As used herein and in the Note the term "income and proceeds from the Equipment" shall mean: (i) if one of the Events of Default specified in Section 6.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are received by the Debtor or any assignee of the Debtor at any time after any such event and during the continuance thereof (a) all amounts of operating revenues and amounts in respect of any Casualty Occurrence paid for or with respect to the Equipment or pursuant to the Lease and any and all other payments received under the provisions of the Lease or any other Collateral (except for Excepted Rights in Collateral) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Debtor or any assignee of the Debtor and as shall equal the portion of the principal of the Note (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable under the terms of the Note and this Agreement or as shall equal any other payments then due and payable under this Agreement. Nothing contained herein limiting the liability of the Debtor shall derogate from (i) the obligation of the Lender to pay over to the Debtor amounts received by the Lender under the Lease which exceed amounts owing and payable to the Lender under the Note and any other Financing Agreement; or (ii) the right of the Lender to proceed against the Collateral for the full unpaid principal amount of the Note and interest thereon and all other payments and obligations hereunder and thereunder. Notwithstanding any other provision of this Agreement, the Debtor shall be liable to the Lender in the event any representation or warranty made by the Debtor in Section 2.5(a)(i)-(viii), (x), (xvii), (xxii), and (xxiii) herein shall prove to have been incorrect in any material respect when the same was made. Except as expressly provided in this Section 9.9, the Lender shall have no recourse against the properties and assets of the Debtor.

9.10 Marking of Equipment. The Debtor will cause each Item of Equipment to be kept numbered and conspicuously marked indicating that ownership in the Item of Equipment is subject to a Loan and Security Agreement filed with the Interstate Commerce Commission. The Debtor will not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed by or on behalf of the Debtor in all public offices where this Agreement shall have been filed. Except as aforesaid, the Debtor will not allow the name of any person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as

claim of ownership or lien; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee.

9.11 Participation. Notwithstanding any other provision of this Agreement, the Lender may enter into participation agreements before, in conjunction with or after the closing hereof, with participating lenders whereby the Lender will allocate certain percentages of this Agreement and the Note to such participating lenders. The Debtor agrees that its obligations under this Agreement are undertaken for the benefit of, and as an inducement to, each of any such participants as well as the Lender.

9.12 Transaction Expenses. Whether or not the transactions contemplated by this Agreement and the Lease are consummated, the Debtor shall pay on demand all expenses in connection with such transactions, including without limitation the reasonable fees and expenses of Haight, Gardner, Poor & Havens, special New York counsel to the Lender and the reasonable fees and expenses of special I.C.C. counsel.

9.13 Release of Equipment and Termination of this Agreement. The parties hereto fully understand that after payment in full of all indebtedness hereby secured, including but not limited to all amounts due and payable under the Note, the Equipment shall be released from this Agreement and the security interests created hereby or pursuant hereto and this Agreement shall be terminated so long as no Default or Event of Default has occurred and is continuing.

9.14 WAIVER OF JURY TRIAL. BY ITS SIGNATURE BELOW WRITTEN EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER FINANCING AGREEMENTS HEREIN DESCRIBED OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the Debtor and the Lender have executed this Agreement as of the day and year first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

By: *Richard F. Loritz*
Name: Richard F. Loritz
Title: Asst. Secretary

By: *Lawrence J. Beal*
Name: Lawrence J. Beal
Title: President

ATTEST:

U.S. CONCORD, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

WASHINGTON, D.C.:

The undersigned states that she has read the attached document and that the attached document is identical to the complete and original Loan and Security Agreement.

My Commission Expires April 14, 1995

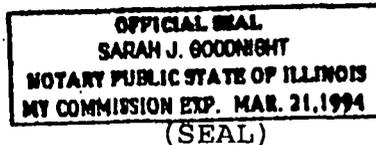
Diana K. Page
Notary Public
DATED: Feb. 5, 1992

STATE OF ILLINOIS)
 : ss.:
COUNTY OF COOK)

On this 30th day of January, 1992, before me personally appeared Lawrence J. Beal, to me personally known, who being by me duly sworn, says that he resides at 14400 So. Robey, Dixmoor, IL and he is the President of NATIONAL RAILWAY EQUIPMENT COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sarah J. Goodnight

Notary Public



My Commission expires:

SP

IN WITNESS WHEREOF, the Debtor and the Lender have executed this Agreement as of the day and year first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

U.S. CONCORD, INC.

By: John T. Costa
Name: John T. Costa
Title: Assistant Vice President

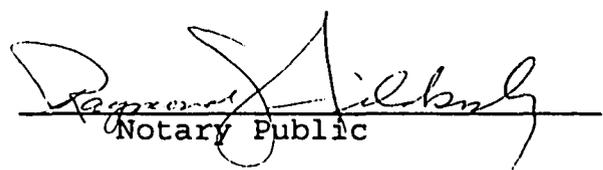
By: William T. Whelan
Name: WILLIAM T. WHELAN
Title: VICE PRESIDENT

SP

STATE OF CONNECTICUT)

: ss.: Norwalk
COUNTY OF FAIRFIELD)

On this 29TH day of JANUARY, 1992, before me personally appeared WILLIAM T. WHELAN, to me personally known, who being by me duly sworn, says that he resides at _____ and he is the _____ of U.S. CONCORD, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

(SEAL)

My Commission expires: 3-31-92

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EXHIBIT A
TO THE LOAN AND SECURITY AGREEMENT

DESCRIPTION OF EQUIPMENT

<u>UNIT NO.</u>	<u>TYPE</u>	<u>GENERAL DESCRIPTION</u>
CNW 4701	GP-38-2	General Purpose Locomotive
CNW 4702	GP-38-2	General Purpose Locomotive
CNW 4703	GP-38-2	General Purpose Locomotive
CNW 4704	GP-38-2	General Purpose Locomotive
CNW 4705	GP-38-2	General Purpose Locomotive
CNW 4706	GP-38-2	General Purpose Locomotive
CNW 4707	GP-38-2	General Purpose Locomotive
CNW 4708	GP-38-2	General Purpose Locomotive
CNW 4709	GP-38-2	General Purpose Locomotive
CNW 4710	GP-38-2	General Purpose Locomotive
CNW 4711	GP-38-2	General Purpose Locomotive

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EXHIBIT B
TO THE LOAN AND SECURITY AGREEMENT
FORM OF SECURED NOTE

NATIONAL RAILWAY EQUIPMENT COMPANY
SECURED PROMISSORY NOTE

THIS NOTE IS A REGISTERED INSTRUMENT. NO TRANSFER OF ANY INTEREST HEREIN SHALL BE EFFECTIVE OR PERMITTED UNLESS SUCH TRANSFER COMPLIES WITH THE REGISTRATION AND OTHER PROVISIONS OF THE LOAN AND SECURITY AGREEMENT REFEREED TO BELOW.

, 1992

\$5,389,344.58

New York, New York

FOR VALUE RECEIVED, the undersigned, National Railway Equipment Company, a corporation organized and existing under the laws of Illinois (the "Debtor") HEREBY PROMISES TO PAY to U.S. CONCORD, INC., a corporation organized and existing under the laws of New York, or its registered assign (the "Lender") the principal amount of Five Million Three Hundred Eighty-Nine Thousand Three Hundred Forty-Four Dollars and Fifty-Eight Cents (US \$5,389,344.58).

The principal hereof and interest thereon shall be payable in forty-eight (48) equal consecutive quarterly installments each in the amount of One Hundred Ninety-Five Thousand Seven Hundred Forty-Five Dollars (\$195,745.00) each on the first day of each January, April, June and October, commencing April 1, 1992 and ending January 1, 2004, provided, however, that the last such installment shall be in the amount necessary to repay in full the principal and interest outstanding under this Note.

The Debtor shall pay to the holder hereof interest on overdue principal and (to the extent permitted by applicable law) overdue interest and any other amounts payable hereunder which are overdue at the rate of 13.18% per annum (calculated on the basis of twelve (12) months of thirty (30) days each) whether as scheduled, or upon acceleration or otherwise, but not in excess of the highest rate permitted by law.

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If any payment hereunder is due on a day other than a Business Day (as defined in the Loan and Security Agreement), payments required to be made on such day shall be made on the next succeeding Business Day, together with interest thereon to the date of payment at a rate per annum of 10.18%.

All amounts payable hereunder are payable by wire transfer in lawful money of the United States of America to the Lender at Chase Manhattan Bank, N.A., New York, New York, (ABA No. 021000021), Account No. 910-2-585198, for the account of U.S. Concord, Inc., Re: National Railway Equipment Company or such other account as the Lender may from time to time designate in writing in same day funds. All payments shall be free and clear of, and without deduction for, an amount of wire or other charges.

This non-recourse Secured Promissory Note is the Note referred to in, and is entitled to the benefits, and subject to the terms and requirements, of the Loan and Security Agreement dated as of January 31, 1992 (as the same may be supplemented, amended or otherwise modified from time to time, the "Loan Agreement") between (1) the Debtor, and (2) the Lender, their respective successors and assigns (the "Lender"), which Loan Agreement, among other things, (i) provides for the making of the Loan evidenced hereby by the Lender to the Debtor, (ii) provides for the mandatory amortization of such Loan, (iii) provides for optional prepayment by the Debtor at any time with payment of Premium (as defined in the Loan Agreement), and (iv) contains provisions for acceleration of the maturity thereof and payment of Premium upon the happening of certain stated events.

The Debtor hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

This Note and the Loan Agreement are governed by and construed in accordance with the laws of the State of New York (other than the laws of the State of New York governing the choice of law).

The Lender acknowledges that it has received an assignment of the Lease Railroad Equipment Agreement dated as of November 1, 1991 (the "Lease") between the Debtor and Chicago and North Western Transportation Company (the "Lessee") and that it will look solely to the proceeds from the Lease, the Equipment and the other Collateral described in the Loan Agreement for any payment due to the Lender hereunder, the Note being presented and accepted by the parties without any recourse by the Lender against the Debtor, its officers, agents, successors, or assigns, except as otherwise expressly provided in Section 9.9 of the Loan Agreement.

BY ITS SIGNATURE BELOW WRITTEN THE DEBTOR HERETO HEREBY
IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION,
PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS
NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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IN WITNESS WHEREOF, the Debtor has caused this Note to be duly executed.

WITNESS:

NATIONAL RAILWAY EQUIPMENT
COMPANY

By _____
Name:
Title:

THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY NOT BE OFFERED, TRANSFERRED OR RESOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

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EXHIBIT C

TO THE LOAN AND SECURITY AGREEMENT

DESCRIPTION OF OPINION OF
COUNSEL FOR THE DEBTOR
TO BE DELIVERED ON THE CLOSING DATE

The opinions of counsel for the Debtor, which are called for by Section 2.4(g) of the Loan and Security Agreement, shall be dated the Closing Date, shall be addressed to the Lender, shall be satisfactory in form and substance to the Lender and shall cover the matters set forth below, subject to the assumptions, exceptions and qualifications as may be acceptable to the Lender or its Counsel.

Capitalized terms used herein but not otherwise defined herein are used with the respective meanings given to such terms in the Loan and Security Agreement.

1. The Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois has full power and authority to own its property and carry on its business as currently conducted and is duly qualified to do business in such other jurisdictions in which the failure to so qualify would have a material adverse effect upon the financial condition of the Debtor and its Subsidiaries taken as a whole.

2. To the best knowledge of such counsel, there are no actions, suits or proceedings, whether or not purportedly on behalf of the Debtor, pending or threatened against or affecting the Debtor or any of its Subsidiaries or any property rights of the Debtor or any of its Subsidiaries at law, in admiralty or in equity, or before any commission, board or other administrative agency, domestic or foreign, which could materially and adversely affect the business, present or prospective, or the operations, properties, assets or condition, financial or otherwise, of the Debtor and its Subsidiaries taken as a whole; and, to the best knowledge of such counsel, neither the Debtor nor any of its Subsidiaries is in default with respect to any order, writ, injunction, decree, rule or regulation of any court or governmental department, commission, or agency, domestic or foreign, which default would materially and adversely affect the business, present or prospective, or the operations, properties, assets or condition, financial or otherwise, of the Debtor and its Subsidiaries taken as a whole.

3. The execution, delivery and performance by the Debtor of the Financing Agreements are within the Debtor's corporate powers and have been duly authorized by all necessary

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corporate action. Neither the execution and delivery of the Financing Agreements, nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will (1) conflict with, or result in a breach of, any of the terms, conditions or provisions of (i) any law, or any regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or (ii) the corporate charter, as amended, or the by-laws, as amended, of the Debtor or (iii) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument of which such counsel has knowledge and to which the Debtor or any of its Subsidiaries is a party except for such conflict or breach which would not have a material adverse effect on the financial condition of the Debtor and its Subsidiaries taken as a whole (2) constitute, with the giving of notice or the passage of time or both, a default under any such agreement or instrument, except for such breach which would not have a material adverse effect on the financial condition of the Debtor and its Subsidiaries taken as a whole (3) result in the creation or imposition of, any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Debtor or any of its Subsidiaries (except for the lien contemplated by the Financing Agreements) pursuant to the terms of any such agreement or instrument except for such encumbrances which would not have a material adverse effect on the financial condition of the Debtor and its Subsidiaries taken as a whole.

4. The Financing Agreements have been duly executed and delivered by the Debtor and (assuming due authorization, execution and delivery by the Lender of the Loan Agreement and Security Agreement) each constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and to equitable principles of general application).

5. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Debtor of the Financing Agreements except for the filing of the Uniform Commercial Code financing statements, and the recording of the Loan, the Security Agreement and the Lease with the ICC pursuant to 49 U.S.C. 11303.

6. The Loan and Security Agreement, the Lease and the Notice and Acknowledgement of Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. 11303, and no other filing is necessary with any other commission, agency or instrumentality of the United States of

America or in any state of the United States of America or in the District of Columbia for the protection of the rights of the Lender in the Collateral covered by the Loan and Security Agreement.

7. Assuming the proceeds of the Loan are applied as per the Loan and Security Agreement, no part of the proceeds of the Loan will be used for any purpose that violates the provisions of any of Regulations G, T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors. To our knowledge, the Debtor is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock within the meaning of Regulations G, T, U and X issued by the Board of Governors of the Federal Reserve System.

8. The Debtor is not an "investment company" (as such term is defined or used in the Investment Company Act of 1940, as amended) and the rules and regulations promulgated thereunder, nor will the making of the Loan by the Lender, and the use of the proceeds therefrom, in each case on the terms and conditions of the Loan and Security Agreement, result in any violation by the Debtor and its affiliates of the Investment Company Act of 1940, as amended and the rules and regulations promulgated thereunder.

9. Under the circumstances contemplated by the Loan and Security Agreement it is not necessary to register the Note under the Securities Act of 1933, as amended.

10. The Lender has a valid and perfected first priority security interest in all of the Debtor's right, title and interest in the Collateral.

The foregoing opinions set forth in paragraphs (1), (2), (3), (4), (5), (7), (8) and (9) shall have been rendered by Richard F. Lortiz, Esq., counsel to the Debtor; the foregoing opinions set forth in paragraphs (6) and (10) shall have been rendered by Richard F. Lortiz, Esq., special ICC counsel, within fifteen (15) days after the Closing Date.

EXHIBIT D

TO THE LOAN AND SECURITY AGREEMENT

DESCRIPTION OF OPINION OF COUNSEL FOR THE
LESSEE TO BE DELIVERED ON THE CLOSING DATE

The opinion of counsel for the Lessee, which is called for by Section 2.4(g) of the Loan and Security Agreement, shall be dated the Closing Date, shall be addressed to the Debtor and the Lender, and shall be to the effect that:

1. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full right, power and authority to carry on its business and own its property, to enter into, execute and deliver the Lease, each Certificate of Inspection and Acceptance and the Notice and Acknowledgement of Assignment attached hereto and to perform each and all of the provisions to be performed by the Lessee thereunder.

2. The Lease, each Certificate of Inspection and Acceptance and the Notice and Acknowledgement of Assignment have been authorized by all necessary corporate action on the part of the Lessee and have been duly executed and delivered by the Lessee. Said agreements constitute the legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as enforcement is subject to general principles of equity (including but not limited to all matters of public policy), regardless of whether such enforceability is considered in a proceeding in equity or at law.

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EXHIBIT E

TO THE LOAN AND SECURITY AGREEMENT

FORM OF NOTICE AND ACKNOWLEDGEMENT
OF ASSIGNMENT

THIS NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT dated as of January 31, 1992 ("Notice and Acknowledgement") among NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation ("Lessor"), U.S. CONCORD, INC., a New York corporation (together with its successors and assigns, the "Lender"), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Lessee"),

W I T N E S S E T H:

A. Prior to the execution hereof, Lessor and Lessee have executed the Lease of Railroad Equipment Agreement dated as of November 1, 1991 (the "Lease"), pursuant to which Lessor will lease to Lessee the equipment described in Schedule A to the Lease (the "Equipment").

B. Concurrently with the execution hereof, Lessor and Lender are executing the Loan and Security Agreement dated as of January 31, 1992 (the "Security Agreement"), pursuant to which Lessor will borrow from Lender funds necessary to finance the remanufacturing of the Equipment, transfer to Lender a security interest in the Equipment, and assign to Lender Lessor's rights and interests in and under the Lease to secure Lessor's non-recourse obligation to repay the funds borrowed from Lender.

C. Lessee is willing to consent to such assignment of the Lease provided that so long as no Event of Default has occurred and is continuing under the Lease, the Lessee shall be suffered and permitted to retain full possession, enjoyment and control of the Equipment.

NOW, THEREFORE, in consideration of the mutual agreements contained in the Lease and the Security Agreement, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein are used with the respective defined meanings given to such terms in the Lease.

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2. Consent of Lessee to Assignment as Security to Lender. Lessee hereby acknowledges and consents to the assignment of the Lease by Lessor to Lender under and pursuant to the Security Agreement and subject to Lessee's rights and interests created by or under the Lease, including but not limited to, Lessee's right, so long as no Event of Default has occurred and is continuing under the Lease, to quiet use, enjoyment and possession of the Equipment under the Lease agrees for the benefit of Lender as follows:

(a) To make each payment of quarterly rental and all other sums due under the Lease, including interest thereon for late payment thereof ("Rent") assigned thereby directly to Lender by paying to Lender by wire transfer in immediately available funds on the day when due pursuant to written instructions of the Lender or by one or more checks drawn on any bank or trust company (selected by Lessee and reasonably acceptable to Lender) having a banking office in New York, New York, made payable to Lender and delivered to Lender at the address indicated in Section 2(h) hereof at least two Business Days before the date such payment is due, so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid;

(b) Each quarterly installment of rent provided for in Section 3 of the Lease ("Basic Rent") and each payment of Casualty Value payable under the Lease shall be, under any circumstances and in any event, payable in accordance with the terms of the Lease;

(c) Not to seek the recovery of any payment made to Lender pursuant to the Lease and this Notice and Acknowledgement once such payment has been made;

(d) That so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid, all rights of Lessor with respect to the Lease and the Equipment or any part thereof shall be exercisable by Lender, as assignee and secured party or lienholder, subject to the terms of the Lease and this Notice and Acknowledgement.

(e) At the request of the Lender, to execute any financing statements, continuation statements or other documents necessary to create, perfect, protect and preserve the priority security interest acquired, or intended to be acquired, by Lender under the Security Agreement, subject to Lessee's leasehold interest under the Lease, until all

obligations of Debtor in connection with the transactions contemplated hereby and thereby shall have been fulfilled;

(f) To execute and deliver such other documents as Lessor or Lender may reasonably request;

(g) That any amendment to, or any waiver, discharge or termination of, any term or provision of the Lease (or any consent of Lessor required thereunder) shall also require the written consent of Lender;

(h) That Lessee will deliver to Lender at c/o Concord Merchant Funding, 70 Valley Stream Parkway, Malvern, Pennsylvania 19355, Attention: Robert M. Bauersmith, Vice President, Telecopier No.: (215) 644-4480, with a copy to: Concord Leasing, Inc., 40 Richards Avenue, Norwalk, Connecticut 06856, Attention: William T. Whelan, Vice President, Telecopier No.: (203) 866-5409, a copy of all notices required to be delivered to Lessor under the Lease concurrently with the delivery of such notices to Lessor;

(i) That Lender shall be named as additional insured with respect to all insurance required to be maintained by Lessee pursuant to Section 7 of the Lease;

(j) That each of the representations, warranties and indemnities of Lessee set forth in the Lease, are hereby incorporated by reference herein and are deemed to apply to Lender as well as Lessor as fully and to the extent and with the force and effect as if set forth in full in this Section 2(j) and all such representations and warranties were true and correct when given and remain true and correct on the date hereof; and

(k) For the purpose of applying Section 6 of the Lease to Lender, Lender and its successors, assigns, agents, servants, employees and officers shall each be an Indemnified Person, provided, however, that Lender and its successors, assigns, agents, servants, employees and officers shall for the entirety of said Section 6 of the Lease be subject to all exclusions to indemnification therein contained and such indemnification shall be limited to rights arising under the Lease and this Notice and Acknowledgement and not under the Security Agreement.

3. Amendment to the Lease. The parties hereto agree that the Lease is hereby amended as follows:

The first sentence of the second paragraph of Section 12 of the Lease, entitled "Possession and Use", is hereby deleted in its entirety and the following phrase is hereby substituted therefor:

"The Equipment will be used by the Lessee only upon lines or railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over lines upon which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting with other carriers in the usual interchange of traffic in the continental United States. The Equipment will be located at all times only in the United States, notwithstanding any provision of the Lease or any other agreement; provided, however, with the prior express written consent of the Lender, and subject to such conditions as Lender may require, the Equipment may be used in Canada or Mexico for a period of time not exceeding a total of ninety (90) days in any calendar year."

4. No Further Amendments. Except as expressly modified or amended herein, all of the terms, covenants and conditions of the Lease shall remain unamended and in full force and effect.

5. Governing Law and Submission to Jurisdiction. This Notice and Acknowledgement shall be governed by and construed in accordance with the laws of the State of New York.

6. Counterparts. This Notice and Acknowledgement may be executed in two or more counterparts, which together shall constitute one and the same instrument.

7. WAIVER OF JURY TRIAL. BY ITS SIGNATURE BELOW WRITTEN EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Notice and Acknowledgement to be duly executed as of the date first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

U.S. CONCORD, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

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