



**FBS
Leasing**

3-207A022

18324

RECORDATION NO. FILED 1425

JUL 26 1995 10-30 AM

INTERSTATE COMMERCE COMMISSION

First Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4302
Fax: 612 973-0833

July 20, 1993

18323
RECORDATION NO. FILED 1425

JUL 26 1995 10-30 AM

INTERSTATE COMMERCE COMMISSION

18322
RECORDATION NO. FILED 1425
JUL 26 1995 10-30 AM
INTERSTATE COMMERCE COMMISSION

Mildred Lee
Interstate Commerce Commission
12th Street & Constitution Ave NW
Washington, D.C. 20423

Dear Ms. Lee:

I am enclosing three Loan and Security Agreement's with description of the railroad equipment for filing and recordation with the Interstate Commerce Commission. Also enclosed is a check for \$48.00 to cover recordation fee. The names of the parties to the enclosed documents are **Independent Locomotive Services, Inc.** as Borrower and **FBS Business Finance Corporation** as Secured Party. Please return the stamped original of the Loan and Security Agreement's to my attention.

Jody Robeck
FBS Leasing
PO Box 1540
Minneapolis, MN 55480

If you have any questions, please give me a call at (612) 973-0693.

Sincerely,

Jody Robeck
Commercial Assistant

Enclosures

JUL 26 10 25 AM '93
MOTOR OPERATING UNIT



FBS Leasing

First Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4302
Fax: 612 973-0833

July 27, 1993

Mildred Lee
Interstate Commerce Commission
12th Street & Constitution Ave NW
Washington, D.C. 20423

RE: Independent Locomotive Service, Inc.

Dear Ms. Lee:

I am enclosing three certified copies of the original Loan and Security Agreements which I sent to you previously. You left a message yesterday saying you needed another copy of the Loan and Security Agreements. I hope these will do for we only had one copy of original signature.

If you have any questions, please give me a call at 612-973-0693.

Sincerely,

Jody A Robeck
Commercial Assistant

Enclosure



FBS Leasing

First Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4302
Fax: 612 973-0833

July 20, 1993

Mildred Lee
Interstate Commerce Commission
12th Street & Constitution Ave NW
Washington, D.C. 20423

Dear Ms. Lee:

I am enclosing three Loan and Security Agreement's with description of the railroad equipment for filing and recordation with the Interstate Commerce Commission. Also enclosed is a check for \$48.00 to cover recordation fee. The names of the parties to the enclosed documents are **Independent Locomotive Services, Inc.** as Borrower and **FBS Business Finance Corporation** as Secured Party. Please return the stamped original of the Loan and Security Agreement's to my attention.

Jody Robeck
FBS Leasing
PO Box 1540
Minneapolis, MN 55480

If you have any questions, please give me a call at (612) 973-0693.

Sincerely,

Jody Robeck
Commercial Assistant

Enclosures

18324
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INTERSTATE COMMERCE COMMISSION

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18322
RECORDATION NO. FILED
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INTERSTATE COMMERCE COMMISSION

JUL 26 10 25 AM '93
MOTOR OPERATING UNIT



FBS Leasing

First Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4302
612 973-0939

September 29, 1993

Mildred Lee
Interstate Commerce Commission
12th Street & Constitution Ave NW
Washington, DC 20423

Dear Ms. Lee:

I am enclosing three certified copies of the original Loan and Security Agreements. Would you please exchange these for the original Loan and Security Agreements between Independent Locomotive Services, Inc. as Borrower and FBS Business Finance Corporation as Secured Party. Recordation numbers 18322, 18323 and 18324, dated July 27, 1993. Please return in the enclosed envelope.

Thank you for your help and sorry for the confusion. If you have any questions, please give me a call at 612-973-0693.

Sincerely,

Jody Robeck
Commercial Assistant

Enclosure

This is an exact and true copy of the original.



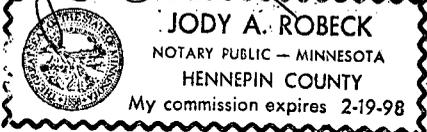
FBS BUSINESS FINANCE CORPORATION - Secured Party

LEASING DIVISION

120 South Sixth Street, MPFP 00389
Minneapolis, MN 55480
(612) 343-1400 FAX (612) 343-1807

First Bank Place
601 2nd Avenue S., MPFP0904
Minneapolis, MN 55402-4302
612-973-0939

Notary



LOAN AND SECURITY AGREEMENT 18334

BORROWER: Independent Locomotive Service, Inc.
ADDRESS: 21 Main Street, P.O. Box 79
Bethel, MN 55005

RECORDED IN 08

FILED IN 1225

5003058.006

JUL 26 1993 10:30 AM

THIS LOAN AND SECURITY AGREEMENT dated as of the date set forth below by and between the party referred to above as Borrower ("Borrower") and FBS Business Finance Corporation (the "Secured Party"):

1. LOAN (a) FOR VALUE RECEIVED, the Borrower hereby promises to pay to the order of the Secured Party, its main office in Minneapolis, Minnesota, the principal sum of One Hundred Two Thousand and 00/100

DOLLARS (\$ 102,000.00), together with interest on the unpaid principal balance from time to time outstanding (computed on the basis of a 30 day month and a year of 360 days), at the rate of 10 % per annum.

(b) The Loan is payable in Sixty (60) consecutive equal monthly installments of principal and interest, each in the amount of \$ 2,167.20, with the first such installment payable May 15, 19 93, and thereafter on the 15th day of each succeeding month until April 15, 19 98, when the entire balance hereof and all accrued and unpaid interest shall be paid in full. If any installment is more than ten (10) days late, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law. Each monthly installment shall be applied first to the accrued interest, then to principal and thereafter to any late charges or other costs then due.

(c) The Loan may not be prepaid without the prior written consent of the Secured Party. The Secured Party may condition its consent upon the Borrower's payment of a prepayment premium to be set by the Secured Party, in its sole discretion. If the Loan is prepaid, unearned interest will be computed in accordance with the Rule of 78s.

2. SECURITY INTEREST

(a) As security for the payment of the Loan and also to secure any other indebtedness or liability of Borrower to Secured Party hereunder and under any other agreement, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, joint or several, howsoever created, arising or evidenced (all hereinafter called "Secured Obligations"), Borrower hereby grants and conveys to Secured Party a security interest in the equipment, motor vehicles, fixtures, inventory and other goods, general intangibles, documents, instruments and chattel paper, accounts and securities and all attachments, accessories, additions, replacements and substitutions, whether now owned or hereafter acquired and all proceeds thereof (all of the foregoing, in the aggregate, called the "Collateral" and individually an "Item"):

(3) DM&IR Diesel Locomotives EMD SD-9 1750 HP, Unit#138 w/sn#23918
Unit#155 w/SN#23935, Unit#156 w/SN#23936

(b) All items of Collateral shall remain personal property and shall not in any way be allowed to become part of or to be affixed to any real property without first assuring to Secured Party's reasonable satisfaction that Secured Party's security interest in the Collateral is prior and senior to any interest or lien then held or thereafter acquired by any mortgage of such real property or the owner or purchaser of any interest therein. With the exception any of the motor vehicles included in the Collateral, the Collateral shall be kept at the Borrower's place of business set forth above and will not be removed from such location or locations unless, prior to any such removal, Borrower has given written notice to Secured Party of the location or locations to which Borrower desired to remove the same, and Secured Party has given its written consent to such removal. Any motor vehicles included in the Collateral will not be used outside the United States and Canada. Borrower shall use any motor vehicles included in the Collateral only in the course of Borrower's own business, and shall permit any such vehicles to be operated only by Borrower's agents or employees or members of Borrower's immediate family who, in each case, are legally licensed to operate such vehicles.

(c) Borrower represents and warrants that Borrower has or will acquire title to the Collateral, free and clear of all liens, security interests and encumbrances, except for the security interest granted herein. Such security interest will at all times constitute a valid, perfected and enforceable first priority security interest in favor of Secured Party, subject to no other security interest, mortgage, lien or encumbrance.

THIS AGREEMENT IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth below.

Date: 4-15-93, 19 93.

BORROWER:

Independent Locomotive Service, Inc.

By Frank W Nesbit
Its pres.

And
Its

SECURED PARTY:

FBS BUSINESS FINANCE CORPORATION

By Deborah J. Eckert
Its

And DEBORAH ECKERT
Its Asst. Vice President

GUARANTY

The undersigned (the "Guarantor"), in consideration of Secured Party entering into the foregoing Agreement, which the Guarantor has read and understands, hereby irrevocably and unconditionally, jointly and severally, guarantees the due and punctual payment when due of all amounts owed under the Agreement (whether by maturity or upon the occurrence of an event of default or otherwise) and the performance by Borrower of all promises, terms and conditions of the Agreement (collectively the "Liabilities"). If Borrower shall fail to pay or perform all or any part of the Liabilities when due, the Guarantor agrees, upon the demand of Secured Party, to pay immediately any amounts which may be due from Borrower and to take any action required of Borrower under the Agreement. The Guarantor agrees that this is an absolute and continuing guaranty and that its liability under this Guaranty is primary and will not be affected by any settlement, extension, renewal or modification of the Agreement or by the discharge or release of Borrower's obligations, whether or not by operation of law. The Guarantor waives all damages, demands, presentment and notices of every kind and nature, and any defenses available to a guarantor (other than the defense of payment in full) under applicable law. This Guaranty may be terminated only with the prior written consent of Secured Party.

The Guarantor expressly waives notice of the incurring of indebtedness by Borrower; the acceptance of this Guaranty by Secured Party; any right to require suit against Borrower or any other party before enforcing this Guaranty; any right to have the Equipment or any security applied before enforcing this Guaranty and any right of subrogation to Secured Party's rights against the Borrower until Borrower's indebtedness is paid in full. The Guarantor hereby consents and agrees that renewals and extensions of time of payment, surrender, release, exchange, substitution, failure to repossess the Equipment or exercise any other right under the Agreement, dealing with or taking of collateral security, taking or release of other guaranties, abstaining from taking advantage of or realizing upon the Equipment or any collateral security or other guaranties, and any and all other forbearances or indulgences granted by Secured Party to Borrower or any party may be made, granted and effect by Secured Party without notice to the Guarantor and without in any manner affecting its liability hereunder.

The Guarantor agrees to pay all expenses (including attorneys' fees and legal expenses) paid or incurred by Secured Party in endeavoring to collect the Liabilities, or any part thereof, and in enforcing this Guaranty. THIS GUARANTY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA. THE GUARANTOR AGREES THAT ANY ACTION CONCERNING THE GUARANTY SHALL BE VENUED IN THE COURTS OF THE STATE OF MINNESOTA AND HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF MINNESOTA, BOTH FEDERAL AND STATE, IN ANY ACTION WITH RESPECT TO THIS GUARANTY AND AGREES THAT ANY STATE COURT ACTION SHALL BE VENUED IN THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA.

Each signatory on behalf of any corporate or partnership guarantor warrants that he had authority to sign on behalf of such corporation or partnership and, by so signing, to bind said corporate or partnership guarantor hereunder.

Dated: 4-15-93

Frank Nesbit
Frank W Nesbit

3 AGREEMENT OF BORROWER Borrower hereby agrees that, so long as any Secured Obligations remain outstanding and unpaid, Borrower shall

(a) Pay and perform all of the Secured Obligations according to their terms... (b) Upon request by Secured Party, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this Agreement...

(c) Retain possession of the Collateral and not sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of the Collateral

(d) Keep each item in Borrower's possession at the location of Collateral or at such other location to which an item may have been moved with the prior written consent of Secured Party

(e) Keep the Collateral free and clear of all liens, charges and encumbrances

(f) Make all filings as to and pay when due all property taxes on the Collateral. Borrower shall pay as directed fees, fines, penalties and other governmental assessments (exclusive of Federal and State taxes based upon Secured Party's net income) imposed upon or arising out of the operation of the Collateral...

(g) For any Collateral other than motor vehicles maintain (1) actual cash value all risk insurance on the Equipment naming Secured Party as Loss Payee and (2) single limit public liability and property damage insurance of not less than \$1,000,000 per occurrence... (h) Maintain the Collateral in good repair, condition and working order, furnish all parts mechanisms, devices and labor required to keep the Collateral in such condition and pay all costs incident to the Collateral's operation.

(i) Immediately notify Secured Party in writing of any change in or discontinuance of Borrower's place or places of business or of any change in Borrower's name

4 DEFAULT AND REMEDIES

(a) The occurrence of any one or more of the following events shall constitute a default under this Agreement: (i) Borrower's failure to pay when due any of the Secured Obligations, (ii) Borrower's failure to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Agreement and such failure shall continue for a period of ten (10) days after written notice thereof is delivered to Borrower by Secured Party...

(b) Whenever an event of default shall exist, Secured Party may, at its option, without demand or notice (i) declare all Secured Obligations immediately due and payable in full, without presentment or other notice or demand, (ii) secure peaceable repossession of the Collateral without judicial process or the removal of the same by Secured Party or its representative(s)...

(c) Borrower shall pay Secured Party all costs and expenses including attorneys' fees incurred by Secured Party in exercising any of its rights or remedies under this Agreement or in enforcing any of the terms or conditions of this Agreement

(d) All rights and remedies of Secured Party pursuant to the provisions of this Agreement are cumulative, and may be exercised concurrently or separately without waiver of any other rights or remedies

5 MISCELLANEOUS

(a) This Agreement and all of the provisions hereof shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns, provided, however, that Borrower may not assign this Agreement or any provision thereof without the prior written consent of Secured Party

(b) Notices, requests or other communications required under this Agreement to be sent to either party shall be in writing and shall be by personal delivery, courier or mail postage prepaid, and addressed to the other party at the address set forth on the first side of this Agreement

(c) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA

Handwritten signature and date at the bottom left of the page.

Handwritten signature and date at the bottom right of the page.