

APR 21 1994 11:51 AM

**BINGHAM, DANA & GOULD**

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0100195033

April 21, 1994

BY MESSENGER

Interstate Commerce Commission  
Room 2303  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

RECEIVED  
APR 21 1994  
11:51 AM

Attention: Ms. Mildred Lee

Ladies and Gentlemen:

Enclosed for recording with the Commission pursuant to Section 11303 of Title 49 of the U.S. Code are two original fully executed, notarized documents described below.

This document is a Security Agreement, a primary document dated as of April 21, 1994, between Northbrook Rail Corporation, as the debtor (the "Debtor"), and The First National Bank of Boston, as the secured party (the "Secured Party"), covering certain of the Debtor's rolling stock now owned or hereafter acquired. A description of the rolling stock is attached to the Security Agreement as Schedule 4(b), as the same may be revised from time to time.

The names and addresses of the parties to the Security Agreement are as follows: the Debtor is Northbrook Rail Corporation, whose chief executive office is located at Suite 119, 2025 South Arlington Heights Road, Arlington Heights, Illinois 60005; the Secured Party is The First National Bank of Boston whose head office is located at 100 Federal Street, Boston, Massachusetts 02110.

Included in the property covered by the aforesaid Security Agreement are railroad cars, locomotives and other rolling stock intended for use related to

*Edward Winslow*  
*Counterparts*

BINGHAM, DANA & GOULD

Interstate Commerce Commission  
April 21, 1994  
Page 2

interstate commerce, or interests therein, owned by the Debtor at the date of said Security Agreement or thereafter acquired by it.

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

"A Security Agreement, dated as of April 21, 1994, between Northbrook Rail Corporation, as the debtor, and The First National Bank of Boston, as the secured party, covering certain of the debtor's rolling stock. A description of the rolling stock is attached to the Security Agreement as Schedule 4(b)."

Also enclosed is a check in the amount of \$18.00, payable to the Interstate Commerce Commission, to cover the recording fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt of the enclosed documents by stamping and returning to our messenger the enclosed copy of this letter together with the Security Agreement as filed.

If you have any questions with respect to the enclosed documents, please call me collect.

Sincerely,

  
Toby R. Serkin

Enclosures

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

April 22, 1994

OFFICE OF THE SECRETARY

Toby R. Serkin  
Bingham, Dana & Gould  
150 Federal Street  
Boston Massachusetts 02110-1726

Dear Mr. Serkin:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on April 22, 1994 at 11:30AM, and assigned  
recordation number(s). 18780

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

APR 22 1994 - 11:00 AM

## SECURITY AGREEMENT

This **SECURITY AGREEMENT**, dated as of April 21, 1994 is between **NORTHBROOK RAIL CORPORATION** (the "Borrower"), an Illinois corporation having its principal place of business at Suite 119, 2025 South Arlington Heights Road, Arlington Heights, Illinois 60005, and **THE FIRST NATIONAL BANK OF BOSTON** (the "Bank").

**WHEREAS**, the Borrower and the Bank are parties to that certain Revolving Credit and Term Loan Agreement, dated as of April 21, 1994, as the same may be amended, restated, modified or supplemented from time to time (such agreement, as in effect from time to time, the "Credit Agreement"); and

**WHEREAS**, it is a condition precedent to the Bank's making any loans or otherwise extending credit to the Borrower that the Borrower execute and deliver to the Bank a security agreement substantially in the form hereof; and

**WHEREAS**, the Borrower wishes to grant security interests in favor of the Bank as herein provided;

**NOW THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**§1. DEFINITIONS.** Capitalized terms which are used herein without definition and which are defined in the Credit Agreement shall have the same meanings herein as in the Credit Agreement.

**§2. GRANT OF SECURITY INTEREST.**

**§2.1. Collateral Granted.** To secure the due and prompt payment and performance by the Borrower of the Obligations, the Borrower hereby pledges, assigns and grants to the Bank, a continuing security interest in and lien on all properties, assets and rights of the Borrower of every kind and nature, wherever located, now owned or hereafter acquired or arising, and all proceeds and products thereof, whether derived from voluntary or involuntary disposition or otherwise, and all accessions thereto, including, without limiting the generality of the foregoing, all goods, accounts, including all accounts receivable, contract rights, all rights of the Borrower under leases of equipment and other personal property, all rights to the payment of money including tax refund claims, insurance proceeds,

insurance refund claims, tort claims, chattel paper, documents, instruments (including certificated securities), deposit accounts, general intangibles, securities, together with all income therefrom, increases thereunder and proceeds thereof, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, books and records, furniture, fixtures, rolling stock of every kind and description, locomotives, equipment, inventory and all other capital assets, raw materials, and work in progress, (all such properties, assets and rights hereinafter sometimes called, collectively, the "Collateral").

**§2.2. Excluded Collateral.** Notwithstanding the foregoing provisions of this §2, such grant of security interest shall not extend to, and the term "Collateral" shall not include (a) any asset which is now or hereafter owned by the Borrower which secures purchase money Indebtedness of the Borrower to the extent that the terms of such purchase money Indebtedness prohibits any other lien or security interest in such asset, and (b) any chattel paper and general intangibles which are now or hereafter held by the Borrower as licensee or lessee or otherwise, to the extent that (i) such chattel paper and general intangibles are not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law), without the consent of the licensor or lessor thereof or other applicable party thereto and (ii) such consent has not been obtained; provided, however, that the foregoing grant of security interest shall extend to, and the term "Collateral" shall include, (A) any and all proceeds of such chattel paper and general intangibles (except to the extent that the assignment or encumbering of such proceeds is restricted and such restriction is enforceable under applicable law) and (B) upon any such licensor, lessor or other applicable party consent with respect to any such otherwise excluded chattel paper or general intangibles being obtained, thereafter such chattel paper or general intangibles.

**§3. PRO RATA SECURITY; APPLICATION OF PROCEEDS OF COLLATERAL.** All amounts owing with respect to the Obligations shall be secured pro rata by the Collateral without distinction as to whether some Obligations are then due and payable and other Obligations are not then due and payable. Upon any realization upon the Collateral by the Bank, whether by receipt of insurance proceeds pursuant to §4(g) hereof or upon foreclosure and sale of all or part of the Collateral pursuant to §8 hereof or otherwise, the Borrower agrees that the proceeds thereof shall be applied as set forth in §13.4 of the Credit Agreement. The Borrower shall remain liable for any deficiency remaining unpaid after the application of proceeds in accordance with the foregoing provisions. The Borrower agrees that all amounts received with respect to any of the Obligations, whether by

realization on the Collateral or otherwise, shall be applied to the payment of the Obligations in accordance with the provisions of this §3.

**§4. REPRESENTATIONS AND COVENANTS OF THE BORROWER.**

(a) Real Property. The Borrower represents and warrants to the Bank that the real property listed in Schedule 4(a) attached hereto constitutes all of the real property which the Borrower owns or leases. The Borrower agrees to notify the Bank of any other real property which the Borrower may hereafter acquire or lease. The Borrower agrees that it shall execute and deliver to the Bank, at the Bank's request, mortgages and other instruments, and file the same in the appropriate recording offices with respect to the real property listed on Schedule 4(a) hereto and at such times as any mortgagable right, title or interest is acquired in the future by the Borrower in any other real property. All such mortgages and other instruments shall secure all of the Obligations pro rata and shall be on terms and conditions reasonably satisfactory to the Bank as evidenced by its written consent thereto.

(b) Rolling Stock. The Borrower represents and warrants to the Bank, that the Rolling Stock (as defined in this §4(b)) listed on Schedule 4(b) attached hereto constitutes all of the Rolling Stock, including markings thereon and serial numbers thereof, which the Borrower owns or leases. The Borrower agrees not to change any markings or serial numbers on any of the Rolling Stock listed on Schedule 4(b) hereto until after the Borrower has given notice in writing to the Bank of its intention to make such change. The Borrower agrees to notify the Bank of any other Rolling Stock which the Borrower may hereafter acquire or lease. The Borrower agrees that it shall execute and deliver to the Bank supplemental security agreements and other instruments, as referred to in paragraph (i) below of this §4, and file the same in the appropriate recording offices (i) with respect to the Rolling Stock listed on Schedule 4(b) hereto, (ii) at such times as any assignable right, title or interest is acquired in the future by the Borrower in any other Rolling Stock, and (iii) at such times as any change is made in one or more of the markings or serial numbers on any of the Rolling Stock listed on Schedule 4(b) attached hereto or on any other Rolling Stock owned or leased by the Borrower. All such supplemental security agreements and other instruments shall secure all of the Obligations pro rata and shall be on terms and conditions reasonably satisfactory to the Bank as evidenced by its written consent thereto. The term "Rolling Stock" as used herein means all rolling stock of every kind and description, locomotives and all other rail cars which constitute Collateral hereunder.

(c) Patents, Trademarks, Copyrights. The Borrower represents and warrants to the Bank, that as of the date hereof, except as listed and described on Schedule 4(c) attached hereto, it has no right, title or interest in any patent, trademark registrations, copyright registrations or service mark registrations, or in any pending applications for the same and agrees promptly to furnish to the Bank written notice of each such patent, trademark, copyright or service mark

registrations, or any applications for same, in which it may hereafter acquire any right, title or interest. The Borrower shall, on request by the Bank, execute, acknowledge and deliver all such documents and instruments as the Bank may reasonably require to confirm the Bank's security interest in and to any such patent, trademark or service mark registrations, or application for the same, as part of the Collateral hereunder and appoints the Bank as the Borrower's attorney-in-fact to execute and file the same.

(d). Delivery of Instruments, Etc. Pursuant to the terms hereof, the Borrower has endorsed, assigned and delivered to the Bank all negotiable or non-negotiable instruments (including certificated securities) and chattel paper pledged by it hereunder, together with instruments of transfer or assignment duly executed in blank as the Bank may have specified. In the event that the Borrower shall, after the date of this Agreement, acquire any other negotiable or non-negotiable instruments (including certificated securities) or chattel paper to be pledged by it hereunder, the Borrower shall forthwith endorse, assign and deliver the same to the Bank, accompanied by such instruments of transfer or assignment duly executed in blank as the Bank may from time to time specify. To the extent that any securities are uncertificated, appropriate book-entry transfers reflecting the pledge of such securities created hereby have been or, in the case of uncertificated securities hereafter acquired by the Borrower, will at the time of such acquisition be, duly made for the account of the Bank or one or more nominees of the Bank with the issuer of such securities or other appropriate book-entry facility or financial intermediary, with the Bank having at all times the right to obtain definitive certificates (in the Bank's name or in the name of one or more nominees of the Bank) where the issuer customarily or otherwise issues certificates, all to be held as Collateral hereunder. The Borrower hereby acknowledges that the Bank may, in its discretion, appoint one or more financial institutions to act as the Bank's agent in holding custodial account instruments or other financial assets in which the Bank is granted a security interest hereunder, including, without limitation, certificates of deposit and other instruments evidencing short term obligations.

(e) Location of Chief Executive Office and Principal Place of Business. The Borrower represents and warrants to the Bank that the location of its chief executive office (as such term is used in Paragraph 5(c) of the Official Comment to Section 9-103 of the UCC, as hereinafter defined) and the location where its books and records are kept is Suite 119, 2025 South Arlington Heights Road, Arlington Heights, Illinois 60005. The Borrower further represents that attached hereto as Schedule 4(d) is a true and correct list of all localities where property comprising a part of the Collateral (other than interests in rolling stock and real property set forth in Schedule 4(a) hereto) is located. The Borrower agrees that it shall not change the location of its chief executive office or location where books and records are kept or the location of any property comprising a part of the Collateral other than changes in the location of Rolling Stock unless it shall have (i) given the Bank

at least thirty (30) days' advance written notice of such change, and (ii) filed in all necessary jurisdictions such UCC-3 financing statements or other documents as may be necessary to continue without impairment or interruption the perfection and priority of the liens on the Collateral in favor of the Bank pursuant to the Security Documents.

(f) Ownership of Collateral.

(i) The Borrower represents and warrants to the Bank that it is the owner of the Collateral free from any adverse lien, security interest or encumbrance, except for the security interest created by this Agreement and Permitted Liens.

(ii) Except for the security interest herein granted and except for Permitted Liens, the Borrower shall be the owner of the Collateral free of any lien, security interest or encumbrance. The Borrower shall defend the same against all claims and demands of all persons at any time claiming the same or any interest therein adverse to the Bank. The Borrower shall not pledge, mortgage or create or suffer to exist a security interest in the Collateral in favor of any person other than the Bank.

(g) Sale or Disposition of Collateral. Except as permitted by the Credit Agreement, the Borrower shall not sell or offer to sell or otherwise transfer the Collateral or any interest therein.

(h) Insurance. The Borrower shall have and maintain at all times with respect to the Collateral such insurance as is required by the Credit Agreement, such insurance to be payable to the Bank and to the Borrower as their interests may appear, and all such insurance to name the Bank as loss payee and additional insured. All policies of insurance shall provide for thirty (30) days' written minimum cancellation notice to the Bank. In the event of the Borrower's failure to provide and maintain insurance as herein provided, the Bank may, at its option, provide such insurance, and the Borrower hereby promises to pay to the Bank on demand the amount of any disbursements made by the Bank for such purpose. The Borrower shall furnish to the Bank certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions. Upon the occurrence and during the continuance of an Event of Default, the Bank may act as attorney for the Borrower in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts; and any amounts collected or received under any such policies shall be applied by the Bank to the Obligations in accordance with the provisions of §3 hereof or, at the option of the Bank, the same may be released to the Borrower, but such application or release shall not cure or waive any default hereunder and no amount so released shall be deemed a payment on any Obligation secured hereby.

(i) Maintenance of Collateral. The Borrower shall keep the Collateral in good order and repair as provided in the Credit Agreement and shall not use the Collateral in violation of law or any policy of insurance thereon. The Bank may inspect the Collateral at any reasonable time, wherever located, as provided in the Credit Agreement. The Borrower shall pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement; provided that any such tax, assessment, charge or levy need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books adequate reserves with respect thereto; and provided further that the Borrower will pay all such taxes, assessments, charges and levies forthwith upon the commencement of proceedings to foreclose any lien that may have attached as security therefor. In its discretion and upon two (2) days prior written notice to the Borrower, the Bank may make repairs of the Collateral (to the extent that the Borrower is not making such repairs), discharge taxes and other encumbrances at any time levied or placed on the Collateral which remain unpaid in violation of §8.8 of the Credit Agreement and pay any necessary filing fees. The Borrower agrees to reimburse the Bank on demand for any and all expenditures so made and, until paid, the amount thereof shall be an Obligation secured by the Collateral. The Bank shall have no obligation to the Borrower to make any such expenditures, nor shall the making thereof relieve the Borrowers of any default. The Borrower has at all times operated, and the Borrower will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended.

(j) Creation of Lien. The Borrower represents and warrants to the Bank and covenants with the Bank that this Agreement creates a valid security interest in the Collateral as security for the payment and performance of the Obligations. The Collateral and the Bank's rights with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses.

(k) No Further Actions. No authorization, approval or other action by, and no notice of filing with, any governmental authority or regulatory body or other Person that has not been received, taken or made is required for the grant by the Borrower of the security interest granted hereby or for the execution, delivery or performance of this Agreement by the Borrower.

(l) Accounts Receivable. The Borrower shall keep or cause to be kept separate records of accounts receivable, which such records shall be complete and accurate in all material respects and, from time to time upon the request of the Bank, shall deliver to the Bank lists setting forth the name, address, face value, and date of invoice of each debtor obligated on all accounts receivable.

(m) Government Contracts. The Borrower agrees that from time to time at the Bank's request, it shall execute all such documents, and take all such actions, as the Bank may reasonably deem necessary or proper to perfect the Bank's security interest in any Collateral consisting of the Borrower's rights to monies due or to become due under any contracts or agreements with or orders from the United States government or any agency or department thereof.

(n) Further Assurances By the Borrower. The Borrower agrees to execute and deliver to the Bank from time to time at its reasonable request all documents and instruments, including financing statements, supplemental security agreements, notices of assignments under the United States Assignment of Claims Act and under similar or local statutes and regulations, and to take all action as the Bank may reasonably deem necessary or proper to perfect or otherwise protect the security interest and lien created hereby.

**§5. POWER OF ATTORNEY**. The Borrower hereby irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact, with full irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or otherwise, to (a) upon the occurrence and during the continuance of an Event of Default, take any and all appropriate action and to execute any and all documents and instruments which the Bank may deem necessary or advisable to accomplish the purpose of this Agreement, including, without limitation, the power and right generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral in such manner as is consistent with the UCC and as fully and completely as though the Bank were the absolute owner thereof for all purposes, and to do at the Borrower's expense, at any time, or from time to time, all acts and things which the Bank deems necessary to protect, preserve or realize upon the Collateral and the Bank's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Borrower might do, including, without limitation, the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and (b) file such financing statements with respect hereto, with or without the Borrower's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Bank may deem appropriate, and to execute in the Borrower's name such financing statements and amendments thereto and continuation statements which may require the Borrower's signature, provided that such actions are taken solely to the extent necessary to perfect the Bank's security interest in the Collateral and the Bank provides the Borrower with copies of all such documents. The Borrower ratifies and approves all acts of such attorneys-in-fact. This power of attorney is a power coupled with an interest and shall be irrevocable. The power conferred on the Bank hereunder is solely to protect the Bank's interests in the Collateral and shall not impose any duty upon the Bank to exercise such power. The Bank shall be accountable only for the amounts that it

actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Borrower for any act or failure to act, except for the Bank's own gross negligence or willful misconduct. The Bank shall use reasonable care with respect to the custody, safekeeping and physical preservation of the Collateral in its possession.

**§6. SECURITIES AS COLLATERAL.** (a) Upon the occurrence and during the continuance of an Event of Default, the Bank may, at any time, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. If the Bank so elects to exercise its right herein and gives notice of such election to the Borrower, upon the occurrence and during the continuance of an Event of Default, the Bank may vote any or all of the securities constituting Collateral possessing voting rights (whether or not the same shall have been transferred into its name or the name of its nominee or nominees) and give all consents, waivers and ratifications in respect of the securities constituting Collateral and otherwise act with respect thereto as though it were the outright owner thereof, the Borrower hereby irrevocably constituting and appointing the Bank the proxy and attorney-in-fact of the Borrower, with full power of substitution, to do so. So long as no Event of Default is continuing, the Borrower shall be entitled to receive all cash dividends paid in respect of the securities, to vote the securities and to give consents, waivers and ratifications in respect of the securities, provided that no vote shall be cast, or consent, waiver or ratification given or action taken which would be inconsistent with or violate any provisions of the Credit Agreement, any other Security Document or this Agreement.

(b) Any sums paid upon or in respect of any of the securities, upon the liquidation or dissolution of the issuer thereof, shall be paid over to the Bank to be held by it as security for the Obligations; and in case any distribution of capital or property shall be made on or in respect of any of the securities pursuant to the recapitalization or reclassification of the capital of the issuer thereof or pursuant to the reorganization of such issuer, the property so distributed shall be delivered to the Bank to be held by it as security for the Obligations. All sums of money paid and property distributed in respect of the securities upon such a liquidation, dissolution, recapitalization or reclassification which are received by the Borrower shall, until paid or delivered to the Bank, be held in trust for the Bank as security for the Obligations.

**§7. ACCOUNTS RECEIVABLE.** So long as no Event of Default has occurred or is continuing, the Borrower shall continue to collect payment from debtors on accounts receivable of the Borrower, obligors on accounts, chattel paper and general intangibles of the Borrower, obligors on instruments for which the Borrower is an obligee and lessees and conditional vendees under agreements governing the leasing or selling by conditional sale of Collateral by Borrower. After the occurrence and during the continuance of an Event of Default, the Bank may

require the Borrower to notify such debtors, obligors, lessees or conditional vendees of the Bank's security interest. Upon the making of such a request by the Bank, the Borrower shall hold, as trustee for the Bank, the proceeds received from such collection and shall turn the same over to the Bank, or to such other bank as may be approved by the Bank, immediately upon receipt of such proceeds and in the identical form received. After the occurrence and during the continuance of an Event of Default, the Bank may require the Borrower to notify such account debtors and obligors that payment thereof is to be made directly to the Bank, and, if the Borrower does not promptly so notify such account debtors and obligors, the Bank may itself without further notice to or demand upon the Borrower, so notify such account debtors and obligors. The making of such a request or the giving of any such notification shall not affect the duties of the Borrower described above with respect to proceeds received by the Borrower. The Bank shall apply the proceeds of such collection received by the Bank to the Obligations in accordance with §3 of this Agreement. The application of the proceeds of such collection shall be conditional upon final payment in cash or solvent credits of the items giving rise to them. If any item is not so paid, the Bank in its discretion, whether or not such item is returned, may either reverse any credit given for the item or charge it to any deposit account maintained by the Borrower with the Bank.

**§8. REMEDIES.** If an Event of Default shall have occurred and be continuing, the Bank may, without notice to or demand upon the Borrower, declare this Agreement to be in default, and the Bank shall thereafter have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to take possession of the Collateral, and for that purpose the Bank may, so far as the Borrower can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Bank may in its discretion require the Borrower to assemble all or any part of the Collateral at such location or locations within the state(s) of the Borrower's principal office(s) or at such other locations as the Bank may designate. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Bank shall give to the Borrower at least ten Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Borrower hereby acknowledges that ten Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Borrower waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Bank's rights hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto. The Borrower recognizes that the Bank may be unable to effect a public sale of the securities by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers consistent with all

applicable laws. The Borrower agrees that any such private sales may be at prices and other terms less favorable to the Borrower than if sold at public sales and that such private sales shall not by reason thereof be deemed not to have been made in a commercially reasonable manner. The Bank shall be under no obligation to delay a sale of any of the securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act of 1933, as amended, even if the issuer would agree to do so.

**§9. MARSHALLING.** The Bank shall not be required to marshal any present or future security for (including but not limited to this Agreement and the Collateral subject to the security interest created hereby), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any particular order; and all of its rights hereunder and in respect of such securities and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Borrower hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Bank's rights under this Agreement or under any other instrument evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or guaranteed and, to the extent that it lawfully may, the Borrower hereby irrevocably waives the benefits of all such laws. Except as otherwise provided by applicable law, the Bank shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof.

**§10. BORROWER'S OBLIGATIONS NOT AFFECTED.** To the extent permitted by law, the obligations of the Borrower under this Agreement shall remain in full force and effect without regard to, and shall not be impaired by (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Borrower, to the extent permitted by law; (b) any exercise or nonexercise, or any waiver, by the Bank of any right, remedy, power or privilege under or in respect of any of the Obligations or any security therefor (including this Agreement); (c) any amendment to or modification of this Agreement or any instrument evidencing any of the Obligations or pursuant to which any of them were issued, other than in the specific instance and for the specific purpose for which such amendment or modification was given; (d) any amendment to or modification of any instrument or agreement (other than this Agreement) securing any of the Obligations; or (e) the taking of additional security for or any guaranty of any of the Obligations or the release or discharge or termination of any security or guaranty for any of the Obligations; and whether or not the Borrower shall have notice or knowledge of any of the foregoing.

**§11. NO WAIVER.** No failure on the part of the Bank to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Bank of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy and power hereby granted to the Bank or the future holders of any of the Obligations or allowed to any of them by law or other agreement, including, without limitation, the Credit Agreement, the Note or any other Security Document, shall be cumulative and not exclusive of any other, and, subject to the provisions of this Agreement, may be exercised by the Bank or the future holders of any of the Obligations from time to time.

**§12. PROCEEDS OF DISPOSITIONS; EXPENSES; OVERDUE AMOUNTS.** (a) The Borrower agrees to pay, within five (5) days after demand by the Bank, any and all costs and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Bank in protecting, preserving or enforcing any of the Bank's rights under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as is provided in the Credit Agreement, proper allowance being made for Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations, any excess shall be returned to the Borrower and the Borrower shall remain liable for any deficiency in the payment of the Obligations.

(b) Until paid, all amounts due and payable by the Borrower hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Credit Agreement.

**§13. CONSENTS, AMENDMENTS, WAIVERS.** Any term of this Agreement may be amended, and the performance or observance by the Borrower of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the prior written consent of the Bank.

**§14. GOVERNING LAW; CONSENT TO JURISDICTION.** Except as otherwise required by the laws of any jurisdiction in which any Collateral is located, this Agreement shall be deemed to be a contract under seal and shall for all purposes be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Borrower agrees that any suit for the enforcement of this Agreement may be brought in the courts of the Commonwealth of Massachusetts or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Borrower by mail at the address specified in §19 of the Credit Agreement. The Borrower hereby waives any objection that it may now or hereafter

have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

**§15. WAIVER OF JURY TRIAL.** THE BORROWER WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Borrower waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages other than, or in addition to, actual damages. The Borrower (a) certifies that neither the Bank nor any representative, agent or attorney of the Bank has represented, expressly or otherwise, that the Bank would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that, in entering into the Credit Agreement and the other Loan Documents to which the Bank is a party, the Bank is relying upon, among other things, the waivers and certifications contained in this §15.

**§16. PARTIES IN INTEREST.** All terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, provided that the Borrower may not assign or transfer its rights hereunder. Any transfer or assignment by the Borrower of its rights hereunder shall be void.

**§17. COUNTERPARTS.** This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

**§18. TERMINATION.** Upon the indefeasible payment in full in cash of the Obligations and the termination of the Commitment to lend under the Credit Agreement, this Agreement shall terminate, the Borrower shall be entitled to the prompt return, at the Borrower's expense, of such Collateral in the possession or control of the Bank as has not theretofore been disposed of pursuant to the provisions hereof, and the Bank shall execute and file, at the Borrower's expense, all documents and instruments necessary to terminate of record the security interest granted herein.

**§19. NOTICES.** Except as otherwise expressly provided herein, all notices and other communications made or required to be given pursuant to this Agreement shall be given in accordance with §19 of the Credit Agreement.

**§20. MISCELLANEOUS.** The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Borrower acknowledges receipt of a copy of this Agreement.

**IN WITNESS WHEREOF,** the parties hereto have caused these presents to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

[Corporate Seal]

**NORTHBROOK RAIL CORPORATION**

By: *Sean P. Kilgore*  
Title: EXECUTIVE VICE PRESIDENT

**THE FIRST NATIONAL BANK  
OF BOSTON**

By: *Barbara W. Nelson*  
Title: Vice President

State/Commonwealth of MASSACHUSETTS )  
 ) ss.  
County of SUFFOLK )

On this 21 day of APRIL, 1994, before me personally appeared GERARD KILLOINE, to me personally known, who, being by me duly sworn, says that [s]he is EXEC. V.P. of Northbrook Rail Corporation, that the seal affixed to the foregoing instrument beside [his]/[her] signature is the corporate seal of said corporation and that the said instrument was signed on behalf of said corporation by authority of its Board of Directors, and [s]he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Pamela J. Hentley  
Notary Public

My commission expires: June 29, 1995

Commonwealth of Massachusetts )  
 ) ss.  
County of Suffolk )

On this 21 day of APRIL, 1994, before me personally appeared BARBARA WILSON, to me personally known, who, being by me duly sworn, says that [s]he is VICE PRESIDENT of The First National Bank of Boston, and that [s]he is duly authorized to sign the foregoing instrument on behalf of said banking association, and [s]he acknowledges that the execution of the foregoing instrument was the free act and deed of said banking association.

Pamela J. Hentley  
Notary Public

My commission expires: June 29, 1995

**Schedule 4(a)**  
**Real Property**

Lease dated June 21, 1991 between Brian Properties, Inc., as "Landlord" and Northbrook Rail Corporation, as "Tenant". Such lease covering approximately 5,736 square feet of office space located at 2025 South Arlington Heights Road, Suite 119, Arlington Heights, Illinois 60005.

Lease dated March 1, 1992 between thirty-five lexington properties, ("Lessor") and Northbrook Rail Corporation, ("Tenant"). Such lease covering approximately 210 square feet of office space located at 3550 Lexington Avenue N., Shoreview, Minnesota 55126.

Sublease dated June 1, 1993 between Suburban General Hospital, ("Sublessor") and Northbrook Rail Corporation, ("Sublessee"). Such sublease covering approximately 292.88 square feet located at 2593 Wexford-Bayne Road, Franklin Park Borough, Sewickley, Pennsylvania 15143.

**Schedule 4(b)**  
**Rolling Stock**

Ninety five (95) 3,433 cubic feet capacity, 100 ton, triple pocket, all steel open top hoppers equipped with gravity gates and initialed as follows:

WSOX 6600-6609, WSOX 6612-6621, WSOX 6623-6627, WSOX 6629-6632, WSOX 6634-6637, WSOX 6639-6641, WSOX 6643, WSOX 6648-6650, WSOX 6652-6657, WSOX 6659-6660, WSOX 6663-6665, WSOX 6667-6669, WSOX 6671-6672, WSOX 6674-6674, WSOX 6679-6680, WSOX 6682-6684, WSOX 6686-6709, WSOX 6711-6712, WSOX 6714-6719

Forty three (43) 4,750 cubic feet capacity, 100 ton capacity, triple pocket, covered hoppers equipped with gravity gates and trough hatches and initialed as follows:

TRGX 1051-1058, TRGX 1060-1061, TRGX 1063-1066, TRGX 1068-1069, TRGX 1071-1083, TRGX 1085-1087, TRGX 1089-1090, TRGX 1092-1100

Fifty (50) 52'6", 2,494 cubic feet capacity, 100 ton capacity, all steel mill gondolas and initialed as follows:

UMP 5264-5313

Ten (10) 3,900 cubic feet capacity, 100 ton capacity, 14 pocket, all steel pressure differential covered hoppers, equipped with nine 20" diameter circular hatch covers and a maximum operating pressure of 15 p.s.i. and initialed as follows:

UMP 99551-99552, UMP 99558, UMP 99565-99567, UMP 99569, UMP 99615-99616, UMP 99624

Twenty five (25) 21,000 litre (5,548g) Type 1 (IM 101) stainless steel tank containers with exterior steam heating channels, insulation, cladding, bottom outlets with top unloading capability and initialed as follows:

NCTU 021006-021030

Five (5) 15,140 litre (4,000g) DOT 51 stainless steel tank containers with 4" insulation, stainless steel jacketing, with top unloading capability only and no bottom outlets and initialed as follows:

NCTU 029001-029005

One (1) 810 cubic feet capacity pneumatic dry bulk container equipped with two 20" stainless steel manlids and two hoppers and initialed as follows:

NCBU 020001

BOB4b

**Schedule 4(c)**  
**Intellectual Property**

United States patent application numbers 08/048,518 and 08/155,721 for "Dry Bulk Pressure Differential Container", and related European Patent Convention number 93307321.5 and two related South African patent applications.

Reporting Mark and Operating Agreement dated December 1, 1989, as amended between Northbrook Rail Corporation, as assignee of the rights and interests of Northbrook Corporation, and Lukens Steel Company, as relates to the use of the railcar reporting mark "UMP".

Ownership of the railcar reporting marks "WSOX", "UMPX", and "TRGX" by Upper Merion and Plymouth Leasing Co., a wholly-owned subsidiary of Northbrook Rail Corporation.

Ownership of the reporting marks "NCBU" and "NCTU".

**Schedule 4(d)**  
**Location of Collateral**

2025 South Arlington Heights Road, Suite 119, Arlington Heights, Illinois 60005.

3550 Lexington Avenue N., Shoreview, Minnesota 55126.

2593 Wexford-Bayne Road, Franklin Park Borough, Sewickley, Pennsylvania 15143.

53 Judith Drive, Danbury, Connecticut 06811.