

RECORDATION NO. 27595 FEB

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SURFACE TRANSPORTATION BOARD

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OF COUNSEL
URBAN A. LESTER

August 8, 2008

Anne K. Quinlan, Esquire
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Chattel Mortgage and Security Agreement, dated as of August 1, 2008, a primary document as defined in the Board's Rules for the Recordation of Documents.

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

Bank: Manufacturers and Traders Trust Company
25 South Charles Street
Baltimore, MD 21201

Borrower: Canton Railroad Company
1841 South Newkirk Street
Baltimore, MD 21202

Anne K. Quinlan, Esquire
August 8, 2008
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A description of the railroad equipment covered by the enclosed document is:

2 locomotives: CTN 1307 and CTN 1364 (previously marked NREX 1307 and NREX 1364).

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

Chattel Mortgage and Security Agreement.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/sem
Enclosures

RECORDATION NO. 27595 FILED

AUG 08 '08 -11 30 AM

SURFACE TRANSPORTATION BOARD

CHattel MORTGAGE AND SECURITY AGREEMENT

BY AND BETWEEN

MANUFACTURERS AND TRADERS TRUST COMPANY

AND

CANTON RAILROAD COMPANY

Dated as of August 1, 2008

Covering two (2) Locomotives

CHATTEL MORTGAGE AND SECURITY AGREEMENT

THIS CHATTEL MORTGAGE AND SECURITY AGREEMENT (this "Agreement") dated as of August 1, 2008, is made by and between MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation (the "Bank") and CANTON RAILROAD COMPANY, a Maryland corporation (the "Borrower").

RECITALS

WHEREAS, Borrower has applied to the Bank for a loan in the maximum principal amount of \$350,000 (the "Loan") to be evidenced by a promissory note payable by the Borrower to the order of the Bank (the "Note");

WHEREAS, the proceeds of the Loan will be used for the acquisition by the Borrower of the two locomotives described on Schedule 1 attached hereto (collectively, the "Locomotives");

WHEREAS, in order to secure its obligations to the Bank, the Borrower has agreed to grant to the Bank a continuing, first priority security interest in, and chattel mortgage lien on, the Locomotives, all additions and modifications thereto, all replacements and substitutions therefor and all proceeds, including insurance proceeds and condemnation awards, thereof, to collaterally assign to the Bank all of its right, title and interest (but not its obligations) in and to any purchase agreement ("Purchase and Sale Agreement") or any bill of sale ("Bill of Sale") whereby Borrower acquired title to the Locomotives, and to assign to the Bank all of its right, title and interest (but not its obligations) in, to and under all leases and other agreements for the use or hire of the Locomotives, including, without limitation, the right to receive all payments due and to become due from time to time thereunder.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

INTERPRETATION

Section 1.1. Definitions. For the purposes of this Agreement:

"Agreement" means this Chattel Mortgage and Security Agreement, as it may be amended, modified, supplemented or extended from time to time.

"Applicable Law" means all material applicable provisions of all (a) constitutions, statutes, rules, regulations and orders of Governmental Authorities, (b) Governmental Approvals, and (c) orders, decisions, judgments and decrees of all courts and arbitrators.

"Bill of Sale" shall have the meaning set forth in the Recitals to this Agreement.

“Borrower” means Canton Railroad Company, a Maryland corporation.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks in the State of Maryland are authorized or obligated to remain closed.

“Casualty Occurrence” shall have the meaning set forth in Section 5.6 of this Agreement.

“Casualty Value” shall have the meaning set forth in Section 5.7 of this Agreement.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including without limitation, fees, costs and expenses of attorneys, consultants, contractors and experts.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” shall have the meaning set forth in Section 2.1 of this Agreement.

“Contamination” means the present, past and future uncontained presence, leak, discharge, emission, release, threatened release, suspected release or abandonment of Hazardous Substances that may require remediation, removal, abatement or cleanup under any of the Environmental Laws upon property (including, but not limited to, the improvements, facilities, soil, ground water, air or other elements on, or of, such property).

“Contract” means an indenture, agreement (other than this Agreement), other contractual restriction, lease, instrument, certificate of incorporation or charter, or bylaw.

“Default” means any condition or event which with the giving of notice or lapse of time, or both, would, unless cured or waived, become an Event of Default.

“Default Rate” shall have the rate of interest set forth in the Note during the continuance of an event of default thereunder.

“Environmental Laws” means any and all environmental laws and regulations promulgated thereunder, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., as amended; the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., as amended; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended; and any other law similar to those set forth in this definition.

“Event of Default” means any of the events specified in Article V of this Agreement.

“Expense Payments” shall have the meaning ascribed to it in Section 3.2 of this Agreement.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America.

“Governmental Approval” means an authorization, consent, approval, license or exemption from, registration or filing with, or report or notice to, any Governmental Authority.

“Governmental Authority” means any international, federal, state or local regulatory, governmental or quasi-governmental entity or political subdivision thereof, including, without limitation, any department, commission, board, bureau, intermediary, agency or other governmental instrumentality.

“Hazardous Substances” means any hazardous substance as defined in CERCLA or other Applicable Laws, oil of any kind, petroleum products and their by-products, including, but not limited to, sludge or residue, asbestos containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, any and all other hazardous or toxic substances, hazardous waste as defined in RCRA and the Applicable Laws, medical waste, infectious waste, used tires, and all other pollutants, contaminants and other substances regulated or controlled by the Environmental Laws and any other substance the presence of which is prohibited by any of the Environmental Laws or that requires special handling in its collection, storage, treatment or disposal under the Environmental Laws.

“Interchange Rules” means all codes, rules, interpretations, laws and orders governing the hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted with the rail industry as being applicable to the Locomotives, as adopted and in effect from time to time by the Association of American Railroads, or any successor.

“Lease” means any lease between the Borrower, on the one hand, and a third party, on the other, with respect to any or all of the Locomotives, in form and substance acceptable to the Bank.

“Lien”, as applied to the property or assets (or the income or profits therefrom) of any Person, means (in each case, whether the same is consensual or nonconsensual or arises by Contract, operation of law, legal process or otherwise) any mortgage, lien, pledge, attachment, levy, charge, or other security interest or encumbrance of any kind in respect of any property or assets of such Person, or upon the income or profits therefrom. For this purpose, the Borrower shall be deemed to own subject to a Lien any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capitalized lease or other title retention agreement relating to such asset.

“Liquidation Costs” shall have the meaning ascribed to it in Section 8.3 of this Agreement.

“Loan Documents” means the Note, this Agreement, the UCC-1 financing statements, and all other instruments, documents or agreements relating to the Obligations, both now or hereafter executed and/or delivered by the Borrower to the Bank.

“Materially Adverse Effect” means (a) with respect to any Person, a materially adverse effect upon such Person’s business, assets, liabilities, financial condition, results of operations or

business prospects, and (b) with respect to this Agreement, any Contract or any other obligation, a materially adverse effect, as to any party thereto, upon the binding nature, validity or enforceability thereof.

“Note” shall have the meaning set forth in the Recitals to this Agreement.

“Obligations” of the Borrower at any time to the Bank means all of the Borrower’s liabilities, obligations and indebtedness at such time to the Bank of any kind whatsoever, howsoever evidenced and whether contingent or otherwise, including, without limitation, all of the Borrower’s liabilities, obligations and indebtedness to the Bank under the Note, this Agreement and the other Loan Documents.

“Permitted Lien” means the Bank’s continuing, first priority security interest in, and chattel mortgage on, the Collateral pledged in Section 2.1 of this Agreement.

“Person” or “person” means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

“Purchase and Sale Agreement” shall have the meaning set forth in the Recitals to this Agreement.

“RGC” means the Registrar General of Canada or any successor agency thereof.

“STB” means the Surface Transportation Board or any successor agency thereof.

“Tax” or “Taxes” means any federal, state, local or foreign tax, assessment or other governmental charge or levy upon a Person or upon its assets, revenues, income or profits.

“UCC” means the Maryland Uniform Commercial Code.

Section 1.2. Other Definitional Provisions.

(a) Except as otherwise specified herein, all references herein (1) to any Person, other than the Borrower, shall be deemed to include such Person’s successors and assigns, (2) to the Borrower shall be deemed to include the Borrower’s successors and permitted assigns, and (3) to any Applicable Law shall be deemed references to such Applicable Law as the same may be amended or supplemented from time to time.

(b) The words “herein”, “hereof” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any provision of this Agreement, and “Section”, “subsection”, “Schedule” and respective references are to this Agreement unless otherwise specified.

(c) Whenever the context so requires, the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa.

(d) All terms defined in this Agreement shall have the defined meanings ascribed herein or, except as otherwise expressly stated therein, in any certificate, opinion or other document delivered pursuant hereto.

(e) A reference to any Contract shall include all permitted supplements and amendments thereto.

(f) When used herein, the word "or" is not exclusive and the words "include" and "including" are not limiting.

(g) All obligations set forth herein are continuing obligations.

(h) Any right provided herein may be exercised at any time and from time to time.

ARTICLE II

SECURITY

Section 2.1. Grant of Security. As security for prompt payment and performance of its Obligations to the Bank, the Borrower has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over to the Bank, and does hereby grant to the Bank, a continuing, first priority security interest in and to, and lien on, the following collateral, to have and to hold all and every part of such collateral unto the Bank, its successors and assigns, for its and their own use and benefit forever:

(a) the Locomotives and all replacements and substitutions thereof;

(b) all improvements, additions, modifications, accessions, attachments, appurtenances and parts appertaining or attached to the Locomotives, whether now owned or hereafter acquired;

(c) all logs, books and records pertaining to the use, operation and/or maintenance of the Locomotives or otherwise relating to any of the Collateral;

(d) all rights, claims and causes of action, if any, which the Borrower may have now or in the future against any manufacturer, rebuilder or seller of the Locomotives (or any component thereof) or any other Person, by contract or otherwise, in respect of any defect in the Locomotives or any part thereof;

(e) any agreement now or hereafter entered into for leasing the Locomotives to any third party and the right to receive all payments and other sums due and to become due from time to time thereunder, to receive all notices and give consents, to exercise any election or option, to declare defaults and to demand payment of any sum due in connection therewith;

(f) all rent, damages and other moneys from time to time payable to or receivable by the Borrower in respect of the Locomotives;

(g) all proceeds (cash and non-cash), including insurance proceeds, settlement proceeds and condemnation awards thereof.

All collateral and other security pledged by the Borrower to the Bank hereunder is hereinafter referred to as the "Collateral".

Section 2.2. Use And Maintenance.

(a) The Borrower shall use, and cause each lessee and permitted sublessee to use, the Locomotives only in the manner for which they were designed and intended and so as to subject them only to reasonable wear and tear from proper use alone excepted. The Locomotives shall not be used in any manner that is in violation of, or more hazardous than permitted by, the insurance maintained under Section 5.5 hereof. The Borrower agrees that it will not, and will cause each lessee and permitted sublessee not to, discriminate against any Railcar (as compared to other similar equipment owned or leased by them) with respect to its use, operation or maintenance in contemplation of the expiration or termination of any Lease or sublease.

(b) At its own expense, the Borrower shall maintain, service, repair, overhaul and keep the Locomotives and all component parts thereof in good operating condition and repair suitable for the commercial use as originally designed and intended (i) in accordance with prudent railroad industry maintenance practices, (ii) in a manner consistent with maintenance practices used by it in respect of equipment owned or leased by it similar in nature to the Locomotives, (iii) in compliance with all Applicable Laws, and (iv) eligible for railroad interchange in accordance with all applicable Interchange Rules. The Borrower shall perform, and cause each lessee and permitted sublessee to perform, all inspections of the Locomotives and maintain all records, logs and other materials required to be maintained in respect of the Locomotives by the United States Department of Transportation or any other Governmental Authority having jurisdiction over them, such lessee or permitted sublessee.

(c) The Borrower shall not make, nor permit any lessee or any permitted sublessee to make, any additions, improvements, modifications or alterations to the Locomotives unless consented to in writing by the Bank and then only to the extent that such additions, improvements, modifications and alterations (other than those mandated pursuant to Section 2.7 hereof) are readily removable without causing material damage to the Locomotives or otherwise adversely affecting their value and/or utility.

Section 2.3. Use and Possession in Railroad Operations. So long as no Default or Event of Default shall have occurred, the Borrower and each lessee and permitted sublessee shall be entitled to the possession of the Locomotives and to the use thereof upon the lines of railroad owned or operated by them, or upon lines of railroad over which they or any of their affiliates have trackage or other operating rights pursuant to any Contract, or upon connecting and other carriers' trackage in the usual interchange of traffic or pursuant to run-through or pooling arrangements, but only upon and subject to all the terms and conditions of this Agreement. Notwithstanding the foregoing, in all

events, the Locomotives shall be used predominantly within the continental United States of America.

Section 2.4. Marking of Locomotives. At the request of the Bank, the Borrower shall, at its sole cost and expense, cause the Locomotives to be kept numbered with the identifying reporting marks set forth in Schedule 1 attached hereto, or in the case of any item of equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such equipment, and to keep and maintain marked, plainly, distinctly, permanently and conspicuously by a plate or stencil printed in contrasting colors upon each side of each Railcar in letters not less than one inch in height the words "Ownership Subject to a Security Agreement Filed with the Surface Transportation Board," or other appropriate markings approved in writing by the Bank, with appropriate changes thereof and additions thereto as from time to time may be required by Applicable Law in order to protect the Bank's security interest in, and lien on, the Locomotives. At the request of the Bank, the Borrower shall cause, and cause each lessee and permitted sublessee, at its sole cost and expense, to cause any such markings that may be removed, defaced, obliterated or destroyed to be promptly replaced and shall not change, or permit any lessee or permitted sublessee to change the reporting marks of the Locomotives unless and until (i) a statement of the new marks to be substituted therefor shall have been filed with the Bank and filed, recorded and deposited by the Borrower in all public offices where this Agreement shall have been filed recorded and deposited and (ii) the Borrower shall have furnished the Bank an opinion of counsel to the effect that nothing further needs to be done to maintain the perfection and priority of the Bank's security interest in, and lien on, the Locomotives and other Collateral pledged to secure the Borrower's Obligations to the Bank.

Section 2.5. Prohibition Against Certain Designations. The Borrower will not allow the name of any Person other than the Borrower to be placed on any of the Locomotives as a designation that might be interpreted as a claim of ownership; provided, however, that the Borrower may permit any lessee or permitted sublessee to cause the Locomotives to be lettered with the names or initials or other insignia customarily used by such lessee or permitted sublessee on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Locomotives as permitted by any Lease or permitted sublease.

Section 2.6. Registration of Locomotives. The Borrower shall, at its sole cost and expense, register or cause to be registered the Locomotives and any substitute or replacement equipment in accordance with any and all applicable registration requirements of the Association of American Railroads, the United States Department of Transportation, the STB, the RGC, or other agency having jurisdiction over the Locomotives.

Section 2.7. Rules, Laws and Regulations. The Borrower shall comply, and shall cause each lessee and permitted sublessee to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Locomotives), with all Applicable Laws, including all Interchange Rules and all rules and regulations of the United States Department of Transportation, the Federal Railroad Administration, and the STB, the RGC or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives. In case any equipment or appliance is required to be altered, added, replaced or modified on any Railcar in order to comply with such Applicable Laws, the Borrower, at its sole

cost and expense, shall make, or shall cause the lessee or permitted sublessee (as the case may be) to make such alterations, additions, replacements and/or modifications and title thereto shall be immediately vested in the Borrower, free and clear of any liens, claims, interests or encumbrances whatsoever other than the interests of the Bank.

Section 2.8. The Bank as Agent. The Borrower hereby appoints the Bank, its successors and assigns, the true and lawful attorney of the Borrower, irrevocably and with full power of substitution, in the name of the Borrower or otherwise, (a) to demand, receive, compromise, sue for, and give acquittance for, any and all rents, profits, moneys and claims for money due and to become due with respect to the Collateral or otherwise arising out of this Article II; (b) to endorse any checks or other instruments or orders in connection therewith; and (c) following an Event of Default, to make all waivers and agreements and to file any claims or take any actions or institute any proceedings with respect thereto which the Bank may deem reasonably necessary or advisable.

Anything herein contained to the contrary notwithstanding, neither the Bank nor its nominee or assignee shall have any obligation or liability by reason of or arising out of this Article II 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 amount to which it may be entitled at any time or times by virtue of this Article II; provided, however, that the Bank shall notify the Borrower if any payment due by a lessee under the a Lease is not received by the Bank on the scheduled due date for payment thereof or if received, is less than the amount then due and payable by the lessee thereunder.

Section 2.9. Perfecting Interest in Collateral. The Borrower shall, from time to time and at its sole cost and expense, promptly execute, acknowledge, witness, deliver and file and/or record, or procure the execution, acknowledgment; witnessing, delivery and filing and/or recordation of, such documents or instruments, and shall take or cause to be taken such other actions, as the Bank may reasonably request for the perfection against the Borrower and all third parties whomsoever of the security interests created by this Article II, of the rights and powers herein granted to the Bank and for the continuation and protection thereof and promptly give to the Bank evidence satisfactory to the Bank of such delivery and filing and/or recording. Without limiting the generality of the foregoing, the Borrower shall from time to time and at any time execute, acknowledge, witness and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as the Bank may reasonably request for the purpose of so perfecting, maintaining and protecting such security interests of the Bank, and shall cause this Agreement and each such financing and continuation statement, notice and additional security agreement to be filed or recorded in such manner and in such places as may be required by Applicable Law and as the Bank may reasonably request for such purpose. Without limiting the generality of the foregoing, the Borrower hereby authorizes the Bank to file at Borrower's cost and expense any Uniform Commercial Code financing statement perfecting, maintaining and protecting security interests of the Bank granted by the Borrower hereby. The Borrower further authorizes the Bank to effect any filing or recording which the Bank has requested pursuant to this Section 2.9 without the signature of the Borrower to the extent permitted by Applicable Law. All costs and expenses incurred by the Bank in respect of such actions shall be payable by the Borrower on demand.

Section 2.10. Disclaimer by the Bank. The Bank makes no representations or warranties with respect to the Collateral or any part thereof. The Bank shall not be chargeable with any obligations or liabilities of the Borrower with respect to the Collateral. The Bank shall have no liability or obligation arising out of any claims, known or unknown, with respect to the Collateral.

ARTICLE III

RIGHTS OF BANK

Section 3.1. Rights of Bank and Duties of Borrower. The Bank may at any time and from time to time both prior to and after the occurrence of an Event of Default hereunder, and the Borrower hereby irrevocably appoints the Bank as its attorney-in-fact (which appointment is irrevocable and coupled with an interest), with power of substitution, in the name of the Bank or in the name of the Borrower or otherwise, for the use and benefit of the Bank, but at the sole cost and expense of the Borrower and without notice to the Borrower: (a) compromise, extend, or renew any of the Collateral or deal with the same as it may deem advisable; (b) release, make exchanges or substitutions for, or surrender all or any part of the Collateral; (c) demand, collect, receipt for, and give renewals, extensions, discharges, and releases of any of the Collateral; (d) institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon, any of the Collateral; (e) settle, renew, extend, compromise, compound, exchange, or adjust claims with respect to any of the Collateral or any legal proceedings brought with respect thereto; and (f) endorse the name of the Borrower upon any items of payment relating to the Collateral or upon any proof of claim in bankruptcy against an account debtor.

Section 3.2. Performance by Bank. If the Borrower fails to perform, observe, or comply with any of the conditions, terms, or covenants contained in this Agreement, the Bank, without notice to or demand upon the Borrower and without waiving or releasing any of the Obligations or any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms, or covenants for the account and at the expense of the Borrower, and may enter upon any place of business or other premises of the Borrower for that purpose and take all such action thereon as the Bank may consider necessary or appropriate for such purpose. All sums paid or advanced by the Bank in connection with the foregoing and all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection therewith (collectively, the "Expense Payments") together with interest thereon at a per annum rate of interest which is equal to the Default Rate, from the date of payment until repaid in full, shall be paid by the Borrower to the Bank on demand and shall constitute and become a part of the Obligations secured hereby.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to establish the Loan to the Borrower, the Borrower hereby represents and warrants that:

Section 4.1. Organization; Power; Qualification. It is a corporation duly organized, validly existing and in good standing under the laws of the state listed in the Preamble to this Agreement; has the full power and authority to own its properties and to carry on its business as now being and hereafter proposed to be conducted; and is duly qualified and is in good standing as a foreign corporation, and authorized to do business, in all jurisdictions in which the character of its properties or the nature of its business requires such qualification or authorization.

Section 4.2. Authorization of and Compliance with this Agreement. It has the full power, and has taken all necessary corporate (including stockholder, if necessary) action to authorize it to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms. The execution and delivery of, and the performance by it of its obligations under, this Agreement do not and will not (a) require (i) any consent or approval of its stockholders or of the holders of any indebtedness owed by it, or (ii) any Governmental Approval that has not already been obtained; (b) violate or conflict with, result in a breach of, or constitute a default under, (i) any Contract to which it is a party or by which it or its property may be bound or affected, or (ii) any Applicable Law, the failure to comply with which would have a Materially Adverse Effect upon its ability to perform its obligations hereunder or upon any of its assets; or (c) result in or require the creation of any Lien other than Permitted Liens upon any of its assets.

Section 4.3. Litigation. Except as otherwise previously disclosed to the Bank in writing, there are not, in any court or before any arbitrator of any kind or before or by any Governmental Authority or non-Governmental Authority, any actions, suits or proceedings pending, or, to its knowledge, threatened (nor, to its knowledge, is there any basis therefor probable of assertion) against or in any other way relating to or affecting (a) the Collateral or (b) this Agreement.

Section 4.4. No Conflicting Agreements. The execution, delivery or performance of the terms of this Agreement will not violate, conflict with, be prevented by, result in a breach of or constitute a default under any (a) agreement of any kind among its stockholders, (b) provision of its articles of incorporation or bylaws, (c) provision of any existing mortgage, deed of trust, Contract, Lease, security agreement, indenture or other agreement binding on it or affecting any of its property, or (d) Applicable Law, order of court or directive of any other Governmental Authority binding upon it.

Section 4.5. Taxes. It has filed all required federal, state and local tax returns and has paid all Taxes as such Taxes have become due, prior to the date on which penalties attach thereto unless and to the extent only that (a) the Taxes are currently being contested in good faith, by appropriate and diligent legal proceedings, and (b) adequate reserves therefor have been established by it for the payment thereof as required under GAAP.

Section 4.6. No Adverse Fact. No fact or circumstance is known to it, which, either alone or in conjunction with all other such facts and circumstances known to it, has had or might in the future have (so far as it can foresee) a Materially Adverse Effect upon its performance of its obligations under this Agreement or upon the Collateral.

Section 4.7. No Default, etc. No Default or Event of Default has occurred and is continuing. It is not in default of the terms of any agreement or instrument, or any order, injunction or decree of any court or Governmental Authority, binding upon it or to which it is a party which would either directly or indirectly impair or otherwise affect the Bank's security interest in, and rights with respect to, the Collateral.

Section 4.8. Regulatory Approvals. All Governmental Approvals necessary for the execution, delivery and performance of this Agreement have been obtained and remain in full force and effect.

Section 4.9. Collateral. Except for the liens in favor of the Bank, the Borrower has good and marketable title to the Collateral, free and clear of any and all Liens.

Section 4.10. Location of Books and Records. The books and records of the Borrower are located at the address specified in Section 10.3 of this Agreement and are not subject to the control of any Person other than the Borrower and its employees for the purposes of administration, servicing, collection or otherwise, nor does any other Person have any interest therein.

Section 4.11. Recitals. The Recitals to this Agreement are true and accurate in each and every respect and are all incorporated by reference herein.

Section 4.12. [reserved]

Section 4.13. Prepayment of Rent; Rentals Owed. No lessee, if any, has prepaid any part of the rent or any other sums due and payable under its Lease.

Section 4.14. No Other Agreements. There is no other agreement, oral or written, between the Borrower or any other Person with respect to the use of the Locomotives.

ARTICLE V

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that so long as any Obligations remain outstanding, it shall:

Section 5.1. Visits and Inspections. Permit representatives (whether or not officers or employees) of the Bank, from time to time, as often as may be reasonably requested to (a) visit and inspect the Collateral wherever the same may be located and all books, logs and records related thereto; (b) make extracts from such books, logs and records; and (c) discuss with its principal officers and independent agents any questions which the Bank may have with respect to the same.

Section 5.2. Encumbrances. Keep, and cause each lessee and permitted sublessee to keep, the Collateral free and clear from all Liens except Permitted Liens and shall notify, and use their

best efforts to cause each lessee and permitted sublessee to notify, the Bank in writing immediately upon learning of any Lien.

Section 5.3. Repossession of Locomotives. Immediately upon the request of the Bank and to the extent permitted by Applicable Law, exercise any rights they may have to repossess the Locomotives covered by any Lease.

Section 5.4. Compliance with AAR Regulations, etc. Comply, and use its best efforts to cause the lessee and permitted sublessee to comply, with the rules and regulations of the Association of American Railroads and any successor organization thereof, the Federal Railroad Administration, the United States Department of Transportation, the STB and the RGC.

Section 5.5. Insurance. The Borrower, at its sole cost and expense, shall carry and maintain, or shall cause each lessee and permitted sublessee of the Locomotives, at their own cost and expense, to carry and maintain:

- (i) all risks property insurance with respect to each Railcar in an amount equal to its Casualty Value, with a deductible not in excess of \$2,500 per occurrence; and
- (ii) public liability insurance (including, without limitation, to the extent required by Applicable Law, insurance required under the Federal Employers Liability Act for employee injury or death or occupational disease, and Employers Liability Insurance) in an amount satisfactory to the Bank in its sole discretion.

Each policy of insurance shall:

- (i) be issued by one or more recognized, financially sound and responsible insurance companies approved by the Bank, which are qualified or authorized by the Applicable Laws of the states in which the Borrower does business to assume the risks covered by such policy, and rated "B+" or higher by A.M. Best Company in Best's Insurance Guide and Key Ratings;
- (ii) with respect to the property insurance, have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling the Bank without contribution to collect any and all proceeds payable under such insurance and, with respect to liability insurance, name the Bank as additional insured;
- (iii) provide that the Bank shall be given at least thirty (30) days' prior written notice of the effective date of cancellation or material change in coverage;
- (iv) provide that insurance as to the interest of the Bank shall not be invalidated by any actions, inactions, breaches of warranty or conditions, or negligence of the Borrower, any lessee or permitted sublessee of any of the Locomotives or any other Person with respect to each such policy and that any loss otherwise payable thereunder shall be payable notwithstanding any such actions, inactions, breaches or negligence of the Borrower, any lessee or

permitted sublessee of any of the Locomotives or any other Person that might, absent such provision, result in a forfeiture of all or a part of such insurance payment; which insurance shall provide the insurer's waiver of its right of subrogation, set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability against the Borrower and provide that there is no recourse against the Bank or any assignee for payment of premium, commissions, direct calls, assessments or advances;

(v) be in amounts not less than and insure against such risks so as to be no less protective than the insurance, if any, maintained by the Borrower, any lessee or permitted sublessee of any of the Locomotives with respect to similar equipment which they own or lease;

(vi) be consistent with prudent railroad industry practice and otherwise be in form and content satisfactory to the Bank; and

(vii) insure against such further risks as the Bank may reasonably specify from time to time.

The Borrower shall furnish the Bank with certificates or other evidence satisfactory to it of the maintenance of the insurances so required.

The Borrower shall immediately notify the Bank of any cancellation, alteration or non-renewal of any of such insurance policies. The Borrower shall promptly pay, or cause to be paid, all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration date of each such policy or policies, the Borrower shall deliver, or cause to be delivered, to the Bank a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Bank. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The Bank shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (1) the existence, non-existence, form or legal sufficiency thereof, (2) the solvency of any insurer, or (3) the payment of losses.

If the Borrower fails to maintain the insurance required by this Section 5.5, the Bank may procure such insurance (but is not obligated to do so) and the cost of such insurance shall be secured hereby and will be payable to the Bank on demand with interest at the Default Rate from the date incurred until paid in full. The Borrower agrees that the proceeds of all such insurance, if any loss should occur, shall be applied in accordance with Section 5.7 hereof to the extent applicable and otherwise to the payment of any or all of the Obligations hereby secured or to the cost, in whole or in part, of the repair, restoration and replacement of the property damaged or destroyed (without obligation to see that the funds are so applied), as the Bank may elect or direct in its sole discretion. The Bank shall have the right, in the Borrower's name, the lessee's or permitted sublessee's name or in its own name, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be made thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents as may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

Section 5.6. Duty of Borrower to Notify Bank of a Casualty Occurrence. In the event (i) of the loss or theft of any Railcar, (ii) of the actual or constructive total loss of any Railcar, (iii) of the destruction of any Railcar or damage thereto to such extent as shall make repair thereof uneconomical or shall render the Railcar permanently unfit for normal use for whatever reason, (iv) any Railcar shall be worn out, (v) title to or use of any Railcar shall be requisitioned or taken by any Governmental Authority under the power of eminent domain or otherwise, (vi) any Railcar shall have been returned permanently to the Borrower pursuant to a material breach of a warranty of the Borrower, or (vii) the use of any Railcar in the normal course of interstate rail transportation shall have been prohibited as a result of any rule, regulation, order or other action by a United States Governmental Authority for a continuous period (any such occurrence being hereinafter called a "Casualty Occurrence"), the Borrower shall promptly, and in any event within thirty (30) days after the occurrence thereof, notify the Bank of such Casualty Occurrence and the Borrower shall pay to the Bank, in accordance with the terms of Section 5.7 hereof, the Casualty Value thereof.

Section 5.7. Sum Payable as a Result of a Casualty Occurrence. In the event that one or more of the Locomotives sustains a Casualty Occurrence, the Borrower, after payment of all costs, unpaid late charges, if any, and all accrued but unpaid interest then due, shall pay to the Bank, on the next scheduled principal payment date following the occurrence of a Casualty Occurrence, the Casualty Value of each Railcar sustaining a Casualty Occurrence. Concurrently with payment of such amount, the Borrower shall deliver to the Bank a certificate setting forth the reporting mark(s) of the Locomotives sustaining a Casualty Occurrence. All monies received by the Bank pursuant to the provisions of this Section 5.7 shall, after payment of all outstanding late charges, if any, and accrued but unpaid interest, be applied to prepay principal amount due under the Note (provided that, if the Bank so permits, the Borrower may use its operating funds rather than the insurance proceeds it received for such casualty to prepay the Note in such amount). For purposes hereof, the "Casualty Value" of each Railcar shall be equal to the product obtained by multiplying the then unpaid principal balance of the Note by the fraction, the numerator of which is one (1) and the denominator of which is the total number of Locomotives securing the Borrower's Obligations immediately prior to the Casualty Occurrence.

Section 5.8. Environmental Covenants.

(a) **Notice.** Immediately notify the Bank if the Borrower, or to its knowledge any lessee or any permitted sublessee (as the case may be) of the Locomotives, (1) generates, produces, manufactures, processes, refines, handles, transfers, transports, treats, stores, recycles or disposes of Hazardous Substances; (2) receives notice from any Person that it is a potentially responsible party under CERCLA or is potentially liable under any of the other Environmental Laws; (3) receives notice from any Person of any claim, proceeding, litigation, order, directive, or request for information regarding environmental matters; (4) receives notice from any Person of any alleged violation of any of the Environmental Laws; or (5) receives any information concerning any potentially adverse environmental condition, including, but not limited to, any Contamination, for which the Borrower, any lessee or any permitted sublessee of the Locomotives may be liable in whole or in part.

(b) **Hazardous Substances.** Conduct its business, and cause each lessee and permitted sublessee of the Locomotives to conduct its business, in compliance with the

Environmental Laws and shall use its best efforts to not, and shall cause each lessee and permitted sublessee of the Locomotives not to, generate, treat, produce, store, handle, transfer, process, transport, dispose, recycle or otherwise release Hazardous Substances if by doing so the Borrower, such lessee or permitted sublessee (1) creates or causes a Contamination, (2) incurs any form of liability, direct or indirect, or (3) contravenes or violates any of the Environmental Laws.

Section 5.9. Notices. Promptly deliver to the Bank all reports, notices, documents and other information provided to it by any lessee or any permitted sublessee (as the case may be) under a Lease.

ARTICLE VI

NEGATIVE COVENANTS

The Borrower shall not, without the prior written consent of the Bank, directly or indirectly:

Section 6.1. Sale of Collateral. Sell, lease, sublease, or otherwise transfer or dispose of any of the Collateral. Any consent of the Bank to the disposition of the Collateral may be conditioned on a specified use of the proceeds of disposition.

Section 6.2. Lease Assignment. Assign any of its rights under any Lease (as applicable) to any Person other than the Bank or permit any lessee (as applicable) to assign its obligations to any other Person.

Section 6.3. Lease. Agree to amend, supplement or modify any provision of a Lease, once such Lease is approved by the Bank.

ARTICLE VII

DEFAULT

Each of the following shall constitute an event of default (the "Event of Default") hereunder, whatever the reason for such event and whether it shall be voluntary or involuntary, or within or without the control of the Borrower or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or non-Governmental Authority:

Section 7.1. Breach of Representations and Warranties. Any representation or warranty made herein shall prove to have been false or misleading in any material respect when made or shall omit any fact necessary not to make any such report, certificate, opinion, financial statement or other instrument not misleading.

Section 7.2. Failure to Comply with Covenants. The Borrower shall fail to duly observe and perform any term, covenant, condition or agreement contained in this Agreement.

Section 7.3. Default Under Other Loan Documents. A Default or an Event of Default (as defined therein) shall occur under any of the other Loan Documents.

Section 7.4. Bankruptcy of the Borrower.

(a) The Borrower shall (1) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (2) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (3) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws, (4) apply for, or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its assets, domestic or foreign, (5) admit in writing its inability to pay, or not be paying, its debts (other than those that are the subject of a bona fide dispute) as they become due, (6) make a general assignment for the benefit of creditors, or (7) take any corporate action for the purpose of effecting any of the foregoing; or

(b) A case or other proceeding shall be commenced against the Borrower in any court of competent jurisdiction seeking (1) relief under the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or (2) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower or of all or any substantial part of the assets, domestic or foreign, of the Borrower, or (3) an order granting the relief requested in such case or proceeding against the Borrower (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

ARTICLE VIII

REMEDIES

Section 8.1. Rights and Remedies. Upon the occurrence of an Event of Default (whether or not declared to be such by the Bank), and in every such event and at any time thereafter, the Bank shall have all of the rights and remedies of a secured party under 49 U.S.C. § 11303 and, to the extent applicable, the UCC as in effect from time to time and may at the Borrower's, sole cost and expense, in addition to all other rights and remedies provided hereunder or under the other Loan Documents or as shall exist at law or in equity from time to time, without notice to the Borrower:

(a) institute legal proceedings to recover judgment against the Borrower for the unpaid balance of the Obligations, and to collect the same;

(b) institute legal proceedings for the foreclosure and sale, under the judgment or decree of any court of competent jurisdiction, of the Collateral;

(c) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure and sale of the Collateral under the order of a court of competent jurisdiction or under other legal process;

(d) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof or render it unusable, and, without being responsible for loss or damage, hold, store and keep idle, or operate, lease or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as the Bank may determine, in a commercially reasonable manner;

(e) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof with or without process of law and without being responsible for loss or damage and sell or dispose of all or any part of the same, free from any and all claims of the Borrower or of any other Person claiming by, through or under the Borrower at law, in equity or otherwise, at one or more public or private sales, in such place or places, at such time or times and upon such terms as the Bank may determine, in a commercially reasonable manner with or without any previous demand on or notice to the Borrower or advertisement of any such sale or other disposal, except that the Bank shall provide the Borrower with at least five (5) days' prior notice of such sale by certified mail, return-receipt requested; and for the aforesaid purposes, all other notices of sale, advertisement and demand and any right or equity of redemption otherwise required by, or available to the Borrower under, Applicable Law are hereby waived by the Borrower to the fullest extent permitted by Applicable Law; the power of sale hereunder shall not be exhausted by one or more sales, and the Bank may from time to time adjourn any sale to be made hereunder;

(f) demand, collect, and retain all rents, earnings and all other sums due and to become due from any Person whomsoever, accounting only for net earnings arising after charging against all receipts from the use of or sale of the Collateral, all costs and expenses of, and damages or losses by reason of, such use or sale;

(g) if and to the extent the Event of Default results from a breach by the Borrower of any representation, warranty or covenant of the Borrower contained herein or in any of the other Loan Documents, institute legal proceedings against the Borrower to enforce performance of the applicable covenant of the Borrower or to recover damages for the breach of any such representation, warranty or covenant;

(h) by notice in writing to the Borrower and any lessee, terminate the Lease, whereupon all right of the lessee and the Borrower to the use of the Locomotives shall absolutely cease and terminate as though the Lease had never been made;

(i) remove from the Borrower's place of business all books, records, ledger sheets, correspondence, invoices and documents, relating to or evidencing any of the Collateral;

(j) make such use of the Borrower's place of business as may be reasonably necessary to administer, control and collect the Collateral;

(k) require the Borrower to assemble the Collateral and make it available to the Bank, at a place designated by the Bank; and/or

(1) offset and apply to all or any part of the Obligations all moneys, credits and other property of any nature whatsoever of the Borrower now or at any time hereafter in the possession of, in transit to or from, under the control or custody of, or on deposit with, the Bank.

Section 8.2. Power of Attorney. The Borrower hereby appoints the Bank as its attorney-in-fact to accomplish any of the rights and remedies set forth in Section 8.1, in the name of the Borrower, the Bank, or the Bank's designees as the Bank may from time to time elect, said appointment being irrevocable and coupled with an interest. The Borrower hereby ratifies and approves all acts of the Bank as its attorney-in-fact and will not hold the Bank liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law.

Section 8.3. Expenses and Proceeds. The Borrower shall pay on demand all costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by or on behalf of the Bank in preparing for sale or other disposition, selling, managing, collecting or otherwise disposing of, the Collateral. All of such costs and expenses (the "Liquidation Costs") together with interest thereon from the date incurred until paid in full at the Default Rate, shall be paid by the Borrower to the Bank on demand and shall constitute and become a part of the Obligations. Any proceeds of sale or other disposition of the Collateral will be applied by the Bank to the payment of the Liquidation Costs, and any balance of such proceeds will be applied by the Bank to the payment of the balance of the Obligations in such order and manner of application as the Bank may from time to time in its sole discretion determine. After such application of the proceeds, any balance shall be paid to the Borrower or to any other Person entitled thereto.

Section 8.4. Right to Purchase Collateral. At any sale pursuant to this Article, the Bank or its agent may, to the extent permitted by Applicable Law, bid for and, if the Bank is the highest bidder, purchase the Collateral offered for sale, may use any claim for the Obligations payable to it as a credit against the purchase price thereof and, upon compliance in full with the terms of such sale, may hold, retain and dispose of such property without further accountability therefor to the Borrower or any other Person.

Section 8.5. Waiver by Borrower. To the fullest extent that it may lawfully so agree, the Borrower shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, redemption or any similar law now or hereafter in force in order to prevent, delay or hinder the enforcement of this Agreement or any of the other Loan Documents or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to this Article. The Borrower, for itself and all who may claim by, through or under it, as far as it now or hereafter lawfully may so do, hereby waives the benefit of all such laws and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Agreement may order the sale of the Collateral as an entirety or in lots.

Section 8.6. Disclosures. The Bank may disclose to, and exchange and discuss with, any other Person (the Bank and each such other Person being hereby irrevocably authorized to do so) any information concerning the Borrower (whether received by the Bank or such Person in connection with or pursuant to this Agreement or otherwise) for the purpose of protecting, preserving, exercising or enforcing any rights hereunder or under any of the other Loan Documents, or consulting with respect to any such rights or any rights of the Borrower, and the Bank may disclose to any Person any such information as may be required by Applicable Law or in accordance with the Bank's normal procedures.

Section 8.7. Cumulative Rights. Each right, power and remedy herein specifically granted to the Bank or otherwise available to it shall be cumulative, and shall be in addition to every other right, power and remedy specifically given herein or in any of the other Loan Documents or now or hereafter existing at law, in equity or otherwise. Each right, power and remedy, whether specifically granted herein or in any of the other Loan Documents or otherwise existing, may be exercised, at any time and from time to time, as often and in such order as may be deemed expedient by the Bank in its sole and complete discretion. The exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by the Bank in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Borrower or an acquiescence therein. No waiver by the Bank of any breach or default of or by the Borrower under this Agreement shall be deemed to be a waiver of any other or similar, previous or subsequent breach or default.

ARTICLE IX

RETURN OF EQUIPMENT UPON DEFAULT

Section 9.1. Borrower's Duty to Return. If, following the occurrence of an Event of Default, the Bank requests the Borrower to assemble and return all Locomotives to it, the Borrower shall forthwith deliver, or cause to be delivered, possession of the Locomotives to the Bank. For the purpose of delivering possession of the Locomotives to the Bank as above required, the Borrower shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Railcar or Locomotives have been interchanged to return the Railcar or Locomotives so interchanged) place such Locomotives upon such storage tracks in the continental United States of America as the Bank reasonably may designate, or, in the absence of such designation, as the Borrower may select;

(b) permit the Bank to store such Locomotives on such tracks at the risk of the Borrower until such Locomotives have been sold, leased or otherwise disposed of by the Bank and during such period of storage, the Borrower shall continue to maintain all insurance required by Section 5.5 and shall otherwise satisfy all of their other obligations hereunder; and

(c) cause any or all of the Locomotives to be moved to such interchange point or points in the continental United States of America as shall be designated by the Bank upon any sale, lease or other disposal of such Locomotives.

Section 9.2. Specific Performance. The assembling, delivery, storage and transporting of the Locomotives as hereinbefore provided shall be at the sole expense and risk of the Borrower and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises the Bank shall be entitled to a decree against the Borrower requiring specific performance of the covenants of the Borrower so to assemble, deliver, store and transport the Locomotives. During any storage period, the Borrower will permit the Bank or any Person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Railcar, to inspect the same; provided, however, that the Borrower shall not be liable, except in the case of negligence of the Borrower or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Bank or any prospective purchaser, the rights of inspection granted under this sentence.

Section 9.3. Bank Appointed Borrower's Agent. Without in any way limiting the obligation of the Borrower under the foregoing provisions of this Article VIII, the Borrower hereby irrevocably appoint the Bank as the agent and attorney of the Borrower, with full power and authority (which power is irrevocable and coupled with an interest), at any time while the Borrower is obligated to deliver possession of any Railcar to the Bank, to demand and take possession of such Railcar in the name and on behalf of the Borrower from whosoever shall be at the time in possession of such Railcar.

ARTICLE X

MISCELLANEOUS

Section 10.1. Indemnity for Misrepresentations or Breaches of Covenants; Indemnity in General. (a) The Borrower covenants and agrees with the Bank that in any suit, proceeding or action brought or taken by the Bank under this Agreement or any bill of sale relating to the Locomotives or other Collateral, the Borrower will save, indemnify and keep the Bank harmless from and against all expenses (including legal fees), losses or damages suffered by the Bank as a result of any misrepresentation or any breach by the Borrower of any of its obligations hereunder.

(b) The Borrower will, on demand, pay and indemnify and hold the Bank harmless from and against (i) any losses in connection with any claim in any way arising out of, related to or connected with, this Agreement, the Note, the other Loan Documents including, without limitation, any losses suffered by reason of any defense, setoff, counterclaim or recoupment by a lessee or its successors under a Lease (except, in the case of any claim brought by the Borrower or the lessee, to the extent such claim results in a final judgment in favor of the Borrower or the lessee that the Bank had acted in bad faith) and (ii) all transfer, documentary stamp and similar taxes, and recording and filing fees, payable in respect of this Agreement and the other Loan Documents. The Borrower's obligations under this Section 10.1 shall survive the repayment in full of the Obligations. The Borrower agrees to indemnify Bank for, and forever hold them harmless from, any and all Claims arising out of, or in connection with, any collateral including, without limitation, any Leases or any assignment thereof.

Section 10.2. Liability of the Bank. The Borrower hereby agrees that the Bank shall not be chargeable for any negligence, mistake, act or omission of any accountant, examiner, agency or attorney contracted for by the Bank in making examinations or investigations, or otherwise in perfecting, maintaining, protecting or realizing upon any security for the Borrower's Obligations.

Section 10.3. Notices. All notices and other communications under this Agreement and the other Loan Documents, shall (a) be in writing (which shall include communications by telecopy), (b) be (i) sent by certified mail, postage prepaid, return-receipt requested, (ii) by prepaid telecopier, or (iii) delivered by hand, and (c) be given at the following respective addresses and/or telecopier numbers:

(i) if to the Borrower, at:

Canton Railroad Company
1841 South Newkirk Street
Baltimore, MD 21224

(ii) if to the Bank, at:

Manufacturers and Traders Trust Company
25 South Charles Street
Baltimore, MD 21201
Attention: Sonja Wells

or at such other address, or telecopier number as the Bank or the Borrower may hereafter specify for the purpose in a notice to the other specifically captioned "Notice of Change of Address". Such notices and communications shall be effective or deemed delivered or furnished (i) if given by mail, on the third (3rd) Business Day after such communication is deposited in the U.S. mail, addressed as above provided, (ii) if given by telecopier, when such communication is transmitted to the appropriate number and the appropriate answer-back is received or receipt is otherwise acknowledged, and (iii) if given by hand delivery, when left at the address of the addressee addressed as above provided.

Section 10.4. Waivers; Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived, and any departure therefrom may be consented to, if, but only if, such amendment, waiver or consent is in writing and is signed by the Bank and, in the case of each amendment, is signed by the Borrower. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

Section 10.5. Binding Agreement; Assignment. All the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement, and no such assignment or transfer of any such obligation shall relieve the Borrower thereof unless the Bank shall have consented to such release in a writing specifically referring to the obligation from which the Borrower is to be released.

Section 10.6. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Borrower hereby waives any provision of Applicable Law which renders any provision hereof prohibited or unenforceable in any respect.

Section 10.7. Construction. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of the masculine, feminine or neuter gender shall include all genders. The headings in this Agreement are for convenience only and shall not limit or otherwise affect any of the terms hereof.

Section 10.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

Section 10.9. Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement between the parties hereto and supersede all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

Section 10.10. Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws (as opposed to conflicts of law provisions) and decisions of the State of Maryland.

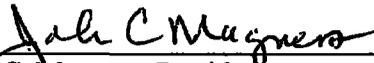
[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, under seal, as of the day and year first written above.

WITNESS:

CANTON RAILROAD COMPANY



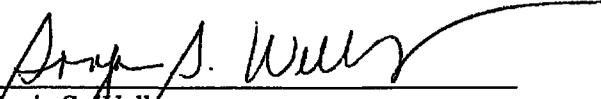
By: 

John C. Magness, President

WITNESS:

MANUFACTURERS AND TRADERS TRUST
COMPANY



By: 

Sonja S. Wells
Vice President

[Acknowledgements Appear on Following Page]

STATE OF Maryland)
CITY/COUNTY OF Baltimore) SS:

On this 1st day of August, 2008, before me, a Notary Public of the City/County and State aforesaid, personally appeared John C. Magness, to me personally known, who being by me duly sworn, says that he is the President of Canton Railroad Company, a Maryland corporation, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed 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.

AS WITNESS my hand and notarial seal

Alanie J. Abate

Notary Public

My commission expires:

STATE OF Maryland)
CITY/COUNTY OF Baltimore) SS:

On this 1st day of August, 2008, before me, a Notary Public of the City/County and State aforesaid, personally appeared Sonja S. Wells, to me personally known, who being by me duly sworn, says that she is a Vice President of Manufacturers and Traders Trust Company, that the seal affixed to the foregoing instrument is the seal of Manufacturers and Traders Trust Company, that said instrument was signed and sealed on behalf of Manufacturers and Traders Trust Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of Manufacturers and Traders Trust Company.

AS WITNESS my hand and notarial seal

Alanie J. Abate

Notary Public

My commission expires:

DIANE I. ABATE
Notary Public
Baltimore County, MD
My Commission Expires 7/1/2010

Schedule 1 to
Chattel Mortgage and Security Agreement

DESCRIPTION OF LOCOMOTIVES

Two (2) Locomotives bearing road marks and numbers as follows:

CTN 1307 (previously marked as NREX 1307)

CTN 1364 (previously marked as NREX1364)

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 8/8/08



Robert W. Alvord