

[Alabama]

1423

SECOND AMENDMENT TO  
FIRST TERM AND OPEN END MORTGAGE

This Amendment, dated this 1st day of August, 1989, is entered into by and between THE FIRST NATIONAL BANK OF CHICAGO, with an office located at Two First National Plaza, Suite 0087, Chicago, Illinois 60670-0087 (the "Lender") and ABC RAIL CORPORATION, a Delaware corporation with its principal place of business and chief executive office at 200 South Michigan Avenue, Chicago, Illinois 60604 (the "Borrower").

W I T N E S S E T H :

WHEREAS, Lender and Borrower executed a certain Loan and Security Agreement dated as of July 8, 1987 (the "First Loan Agreement"); and

WHEREAS, pursuant to the First Loan Agreement, Borrower executed and delivered to Lender (i) that certain Fixed Asset Note (the "Fixed Asset Note") dated as of July 8, 1987 in the original principal amount of Twelve And One-half Million Dollars (\$12,500,000), (ii) that certain Bridge Loan Note (the "Original Bridge Loan Note") dated as of July 8, 1987, in the original principal amount of Six Million Dollars (\$6,000,000), and (iii) that certain Revolving Loan Note ("Original Revolving Loan Note") dated as of July 8, 1987, in the original principal amount of up to Twenty-Nine and One-half Million Dollars (\$29,500,000); and

WHEREAS, as security for the "Liabilities" (as defined in the First Loan Agreement), including, without limitation, the Liabilities evidenced by the Fixed Asset Note, the Original Bridge Loan Note and the Original Revolving Loan Note, the Borrower executed a certain First Term and Open End Mortgage dated as of July 8, 1987, and recorded July 10, 1987 in the office of the Judge of Probate of Shelby County, Alabama in Book 140 Page 06 (as amended, the "Mortgage") encumbering the property described in Exhibit A hereto; and

WHEREAS, pursuant to that certain Purchase and Assignment Agreement (the "First Purchase Agreement") dated as of October 27, 1987 by and among Lender, Sanwa Business Credit Corporation, a Delaware corporation ("Sanwa"), Borrower and ABC Rail Limited, an Ontario corporation ("ABC Limited"), (i) Sanwa purchased from Lender, and Lender sold to Sanwa, all of its rights under the Fixed Asset Note, (ii) Lender assigned to Sanwa certain of its liens and security interests in Borrower's real and personal property and (iii) Lender assigned to Sanwa certain of Lender's rights under the First Loan Agreement; and

WHEREAS, pursuant to the First Purchase Agreement, Lender assigned the Mortgage to Sanwa by a certain Assignment of First Term and Open End Mortgage dated as of October 27, 1987,

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Arch A

and recorded October 29, 1987 in the office of the Judge of Probate of Shelby County, Alabama in Book 157 Page 455; and

WHEREAS, in connection with the transactions evidenced by the First Purchase Agreement, Borrower and Sanwa executed that certain First Amendment to First Term and Open End Mortgage dated as of October 27, 1987, and recorded October 29, 1987 in the office of the Judge of Probate of Shelby County, Alabama in Book 157 Page 462 (the "First Amendment"); and

WHEREAS, the Fixed Asset Note was amended by a Substitute Fixed Asset Note (the "Substitute Fixed Asset Note") dated as of October 27, 1987 executed by Borrower and delivered to Sanwa reevidencing the Fixed Asset Loan (as defined in the First Loan Agreement); and

WHEREAS, in connection with the transactions evidenced by the First Purchase Agreement, Borrower and Lender executed that certain Restated and Amended Loan and Security Agreement dated as of October 27, 1987; and

WHEREAS, pursuant to that certain Purchase and Assignment Agreement ("Second Purchase Agreement") of even date herewith among Lender, Sanwa, Borrower and ABC Limited, (i) Lender has purchased from Sanwa, and Sanwa has sold to Lender, the Substitute Fixed Asset Note and (ii) Sanwa has assigned to Lender its liens and security interests in Borrower's real and personal property; and

WHEREAS, pursuant to that certain Second Restated and Amended Loan and Security Agreement of even date herewith (the "Second Loan Agreement"), Borrower has agreed to execute and deliver to Lender (1) a Bridge Loan Note (the "Bridge Loan Note") of even date herewith in the principal amount of Twenty-One Million Dollars (\$21,000,000.00) which shall evidence certain new loans made by Lender to Borrower and shall reevidence the indebtedness of Borrower to Lender formerly evidenced by the Substitute Fixed Asset Loan Note the unpaid principal balance of which is \$10,416,668.00 (the "Unpaid Principal Balance") and (2) a Revolving Loan Note (the "Revolving Loan Note") of even date herewith in the original principal amount of up to Twenty-Eight Million Dollars (\$28,000,000); and

WHEREAS, the Borrower and Lender have agreed to further amend the Mortgage, as amended by the First Amendment, to reflect the fact that the Unpaid Principal Balance and Mortgagor's payment and performance obligations under the Mortgage are the obligations secured by the Mortgage,

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, Borrower and Lender agree as follows:

1. All references to the Loan Agreement contained in the Mortgage shall mean and refer to the Second Loan Agreement.

2. All references to the Mortgagee contained in the Mortgage shall mean and refer to the Lender.

3. All references to the Liabilities contained in the Mortgage shall mean and refer to the Unpaid Principal Balance and Mortgagor's payment and performance obligations under the Mortgage.

4. All references to the Loans contained in the Mortgage shall mean and refer to the Revolving Loan and Bridge Loan, each as defined in the Second Loan Agreement; provided, however, that notwithstanding anything herein or in the Mortgage to the contrary, the Mortgage shall secure only the Unpaid Principal Balance and Mortgagor's payment and performance obligations under the Mortgage.

5. Any reference to the maturity date of the Loans or any portion thereof shall be deemed to refer to January 31, 1990.

6. Except as amended hereby, the Mortgage is hereby ratified and confirmed and is and shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this  
Amendment as of the day and year first above written.

Lender:

THE FIRST NATIONAL BANK OF CHICAGO

By: *John H. [Signature]*  
Its: VICE PRESIDENT

Borrower:

ABC RAIL CORPORATION

By: *A. Stinson*  
Its: CHAIRMAN

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STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that John H. Neiting whose name as Vice President of THE FIRST NATIONAL BANK OF CHICAGO, a national banking association is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

GIVEN under my hand this 1st day of August, 1989.

  
Notary Public

[SEAL]

My Commission expires:

11/1/89

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STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that G.E. Stinson whose name as Chairman ~~President~~ of ABC RAIL CORPORATION, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand this 1st day of August, 1989.

  
Notary Public

[SEAL]

My Commission expires:

11/1/89

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EXHIBIT A

Beginning at the Southwest corner of Block "F" according to the survey and Map of Resurvey of Russel R. Hetz Property as recorded in Map Book 3, page 119, in the Probate Office of Shelby County, Alabama, and run Northerly along the East line of 18th Street and along the West line of Blocks "F", "T", "P" and "D" to the intersection with the South line of Rose Lake Drive on the Western boundary of Lot 1 in Block "D" of said subdivision; thence along the South line of Rose Lake Drive in a Northeast, East, Southeast and Southerly direction around Block "D" of said subdivision to a point 40 feet South of the Northeast corner of Lot 10 in said Block "D"; thence Southeasterly across Rose Lake Drive to the Northwest corner of Lot 13, Block "O" in said subdivision; thence East along the South line of 11th Avenue to the Northeast corner of Block 18 of said subdivision; thence South along the East line of said Block 18, extended, to the Northeast corner of Block 11 of said subdivision; thence Northeasterly along the South line of Woodbine Avenue to the Northeast corner of Lot 3 in Block 10 of said subdivision; thence Southeast along the Northeast line of said Lot 3 to the Southeast corner of said Lot and the North line of Southern Railway right of way, according to said map; thence Southwest along the North or Northwest line of said right of way to the point of beginning; including in the above description all of Blocks "D", "E", "F", "O", "P", "T", "U", 11, 18, and Lots 1, 2, & 3 in Block 10 according to the map of said Survey, together with certain streets and alleys included within the above metes and bounds description.

All of Blocks "R" and "S" and all that part of Patricia Place that lies West of 18th Avenue according to Resurvey of Russel R. Hetz Property as recorded in Map Book 3, page 119, in the Probate Office of Shelby County, Alabama.

Beginning at the Southeast corner of Fractional Section 20, Township 22 South, Range 2 West, Shelby County, Alabama and from said point run North along the Section line a distance of 985 feet to a point; thence run North 69 deg. 09 min. East 102.88 feet to a point; thence run North and parallel to the West right of way of 18th Street a distance of 429 feet to the point of beginning of the lot herein described; from said point continue North and parallel to said 18th Street a distance of 745 feet to a point; run thence West and at right angles to said 18th Street a distance of 448 feet to a point; thence run South and parallel to said 18th Street a distance of 745 feet to a point; thence run East and at right angles to 18th Street a distance of 448 feet to point of beginning; lying and being in the SE 1/4 of Section 20, Township 22 South, Range 2 West and in SW 1/4 of Section 21, Township 22 South, Range 2 West, Shelby County, Alabama.

Beginning at the Southeast corner of Section 20, Township 22 South, Range 2 West Fractional Section and run thence North on and along the Section line 985 feet to the point of beginning of the lot herein described; from said point North 69 deg. 09 min. East 102.88 feet to a point; thence run North and parallel to the West right of way of 18th Street a distance of 429 feet to a point; thence West and at right angles to said 18th Street for 448 feet to a point; thence run North and parallel to said 18th Street for 191 feet to a point; run thence West and at right angles to said 18th Street for 437 feet to a point; run thence South and parallel to said 18th Street for 304 feet to a point; run thence West and at right angles to said 18th Street for 350 feet, more or less, to a point on the East right of way of a public road; run thence South 9 deg. East on and along said East right of way of public road for 415 feet to a point; continue to run South 20 deg. 51 min. East for a distance of 300 feet; thence run North 69 deg. 09 min. East 958.02 feet back to the point of beginning; lying and being in the SE 1/4 of Section 20, Township 22 South, Range 2 West and in the SW 1/4 of Section 21, Township 22 South, Range 2 West.

A Part of the NE 1/4 of SE 1/4 of Section 20 and a part of the NW 1/4 of SW 1/4 of Section 21, Township 22 South, Range 2 West, described as follows: Commence at the Southeast corner of Section 20, Township 22 South, Range 2 West and run North along the East line of Section 20 a distance of 755.27 feet to the Northwest right of way line of the Southern Railway and the point of beginning; thence turn an angle of 110 deg. 51 min. to the left and run along said right of way line a distance of 503.68 feet; thence turn an angle of 90 deg. to the right and run a distance of 210.00 feet; thence turn an angle of 89 deg. 40 min. to the right and run Northeast and parallel with said Railroad right of way a distance of 711.90 feet to a point; thence turn an angle of 113 deg. 13 min. to the right and run a distance of 229.73 feet to the Northwest right of way line of the Southern Railway; thence turn an angle of 67 deg. 07 min. to the right and run along said right of way line a distance of 118.88 feet to the point of beginning, EXCEPTING any part of the above that may lie within Lots 15, 16 and 17, Block 8 according to the Resurvey of Russel R. Hetz Property as recorded in Map Book 3, page 119, in the Probate Office of Shelby County, Alabama.

**THERE IS EXCEPTED HEREFROM THE FOLLOWING DESCRIBED PARCEL:**

A parcel of land situated in Section 21, Township 22 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the SW corner of said Section 21; thence in a Northerly direction along the West line of said Section 21, a distance of 755.27 feet to the intersection with the Northwesternly right of way line of the Southern Railroad; thence 69 degrees 09 minutes right, in a Northeasterly direction along said right of way

line, a distance of 137.00 feet to the point of beginning, said point also being that certain point of beginning as described in Deed Book 343, Page 492, in the Office of the Judge of Probate in Shelby County, Alabama; thence continue along last described course, a distance of 155.32 feet; thence 0 degrees 01 minutes right, in a Northeasterly direction along said right of way line, a distance of 571.48 feet; thence 90 degrees left, in a Northwesternly direction, a distance of 255.00 feet; thence 90 degrees left, in a Southwesterly direction, a distance of 257.00 feet; thence 90 degrees right, in a Northwesternly direction, a distance of 65.97 feet; thence 89 degrees 56 minutes left, in a Southwesterly direction, a distance of 469.80 feet; thence 90 degrees 04 minutes left, in a Southeasterly direction, a distance of 321.57 feet to the point of beginning.

2. TAX COLLECTED 100  
3. Recording Fee 20.00  
4. Indexing Fee 5.00  
TOTAL 27.00

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JUDGE OF PROBATE