w/ Old Republic National Title
400 2nd Ave S
Minneapolis MN
55401-2499

*Execution Copy*

Book 2011 Page 2109

Document 2011 2109 Type 04 008 Pages 15
Date 6/30/2011 Time 2:18:37PM
Rec Amt $79.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

**AMENDED AND RESTATED**
**REAL ESTATE MORTGAGE**
Recorder's Cover Sheet

| | |
|---|---|
| Taxpayer Address: | BIG RIVER UNITED ENERGY, LLC,<br>15210 103rd Street<br>West Burlington, Iowa 52655 |
| Prepared by & Return Document To: | Alexander P. Galyon, 321 E. Walnut Street, Suite 200, Des Moines, IA 50309, Phone: (515) 237-1181 |
| Grantor: | BIG RIVER UNITED ENERGY, LLC,<br>15210 103rd Street<br>West Burlington, Iowa 52655 |
| Grantee(s): | AgStar Financial Services. PCA (AgStar)<br>P.O. Box 4249<br>Mankato, MN 56002-4249 |
| Legal Description: | Parcel "R" in Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, comprised of the South 250' of SW 1/4 of SW 1/4; SE 1/4 of SW 1/4; NW 1/4 of SW 1/4; NE 1/4 of SW 1/4, So. of the former Railroad R.O.W.; SW 1/4 of NW 1/4, So. of the former Railroad R.O.W.; SE 1/4 of NW 1/4, So. of the former Railroad R.O.W.; NW 1/4 of SE 1/4, So. of the centerline of Vine Road; NE 1/4 of SE 1/4, So. of the centerline of Vine Road & S 1/2 of SE 1/4 of Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, according to the Plat of Survey recorded in Book 2006, Page 3366. |
| Prior Mortgage: | This Amended and Restated Mortgage amends, restates and replaces that certain Real Estate Mortgage between Mortgagor and Mortgagee dated September 16, 2009, and recorded in Book 2009, Page 3711, in the original amount of $108,000,000.00. |

*Execution Copy*

## MORTGAGE

**THIS AMENDED AND RESTATED MORTGAGE** (hereinafter referred to as this "**Mortgage**") made as of May 30, 2011, by and between **BIG RIVER UNITED ENERGY, LLC**, a Wisconsin limited liability company (the "**Mortgagor**"), whose mailing address is 15210 103rd Street, West Burlington, Iowa 52655, and **AGSTAR FINANCIAL SERVICES, PCA** (the "**Mortgagee**"), whose mailing address is 1921 Premier Drive, P.O. Box 4249, Mankato, Minnesota 56002-4249, pursuant to the Credit Agreement (as defined below).

## RECITALS

Mortgagor and Mortgagee have entered into a Credit Agreement dated September 16, 2009 (as the same has been amended, restated or otherwise modified from time to time, the "**Credit Agreement**"), under which the Mortgagor has agreed to borrow, and Mortgagee has agreed to lend, amounts which in the aggregate do not exceed the sum of One Hundred Thirteen Million and No/100 Dollars ($113,000,000.00) (the "**Loans**") for the purposes set forth in the Credit Agreement. To secure the payment of the Loans as well as all other Obligations due or to become due to Mortgagee from Mortgagor, Mortgagor has agreed under the Credit Agreement to grant a mortgage in the real property described in this Mortgage. Accordingly, this Mortgage is granted in partial fulfillment of Mortgagor's Obligations under the Credit Agreement. Capitalized terms used herein but otherwise not defined herein shall have the meanings ascribed thereto in the Credit Agreement. This Mortgage amends, restates and replaces that certain Real Estate Mortgage between Mortgagor and Mortgagee dated September 16, 2009, and recorded in Book 2009, Page 3711, in the original amount of $108,000,000.00.

## Granting Clause

To secure the performance of the covenants and commitments of the Mortgagor to the Mortgagee, its successors and assigns, and the payment to the Mortgagee, its successors and assigns, of: (i) the Loans, as evidenced by the Term Notes dated September 16, 2009, the Term Revolving Notes dated September 16, 2009, and the Amened and Restated Revolving Line of Credit Notes of even date herewith (together all such promissory notes, the "**Notes**"), the balance of the Notes being due and payable on or before the maturity dates set forth therein, unless sooner called by Mortgagee as provided in the Notes, and (ii) any other obligations and liabilities of Mortgagor to Mortgagee pursuant to terms of this Mortgage, the Credit Agreement, the Notes, or any other Loan Documents; and for and to secure the payment to the Mortgagee, its successors and assigns, at the times demanded and with interest thereon at the Default Rate of all sums advanced in protecting the lien of this Mortgage (all sums referred to in (i) and (ii) being collectively referred to herein as the "**Secured Indebtedness**"), and in consideration of the sum of $1.00 paid by the Mortgagee to the Mortgagor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL AND CONVEY unto the Mortgagee, its successors and assigns, forever, and GRANTS A SECURITY INTEREST to the Mortgagee, its successors and assigns in, the following properties (all of the following being hereafter collectively referred to as the "**Mortgaged Property**"):

**A. Real Property**

Those certain tracts or parcels of real property lying and being in the County of Delaware, State of Iowa, all as more fully described in Exhibit A attached hereto and made a part hereof (the "**Land**"), together with all improvements, buildings or structures owned by Mortgagor, situated, now or hereafter placed or constructed upon the Land ("**Improvements**"), all right, title, and interest of the Mortgagor in and to the Land and in and to lands lying in any and all streets, lanes, alleys, passages and roads adjoining the Land, and together with all right, title, and interest of the Mortgagor in and to all annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments, appurtenances, minerals, mineral rights, water and water rights, now or hereafter belonging or pertaining to the Land ("**Real Property**"); and

**B. Personal Property**

All right, title, and interest of the Mortgagor in and to all equipment, fixtures, improvements, building supplies and materials and other personal property now or hereafter attached to, located in, placed in or necessary to the use of the improvements on the Land or Improvements (the "**Personal Property**"); and

**C. Leases, Rents, Issues and Profits**

All right, title, and interest of the Mortgagor in and to all leases, accounts, rents, issues and profits now or which may hereafter become due with respect to the Mortgaged Property or any part thereof; and

**D. Judgments and Awards**

All right, title, and interest of the Mortgagor in and to any and all awards or compensation made by any governmental or other lawful authorities for the taking or damaging by eminent domain of the whole or any part of the Mortgaged Property or any rights appurtenant thereto, including any awards for a temporary taking, change of grade of streets or taking of access; and

**E. After-Acquired Property**

All right, title, and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, and replacements of, and all additions and appurtenants to the items or types of property described in Sections A through D above, which are hereafter acquired by or released to the Mortgagor, or are hereafter constructed, assembled or placed by the Mortgagor on the Mortgaged Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement, or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances, or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns.

NOTHING IN THIS AGREEMENT SHALL CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT EXCEPT AS OTHERWISE PROVIDED IN THE CREDIT AGREEMENT.

## ARTICLE I
## Mortgagor's Representations, Warranties Covenants and Agreements

The Mortgagor makes the following additional representations, warranties, covenants and agreements with the Mortgagee:

**1.1. First Lien Status.** The Mortgagor owns the Mortgaged Property free and clear of any and all Liens except the Liens described on Exhibit B attached hereto ("**Permitted Encumbrances**") and any other Permitted Liens from time to time affecting the Mortgaged Property. Except for the Permitted Encumbrances, this Mortgage creates a valid first priority lien and security interest against the Mortgaged Property. The Mortgagor shall preserve and protect the first priority lien and security interest status of this Mortgage subject only to the Permitted Encumbrances.

**1.2. Payment and Performance**. The Mortgagor shall pay the Secured Indebtedness when due under the terms of the Credit Agreement and the other Loan Documents and shall duly perform and observe all of the covenants, agreements and provisions contained in this Mortgage, the Credit Agreement and the other Loan Documents. Until such time as the Secured Indebtedness bas been paid in full and the Commitments and the Credit Agreement have been terminated, no payment or collection of any of the Secured Indebtedness shall reduce the amount secured by this Mortgage.

**1.3. Care of Mortgaged Property; No Waste**. Subject to the terms of the Credit Agreement, the Mortgagor shall, at all times, keep and maintain the Mortgaged Property in good repair and operating condition, subject to ordinary wear and tear, and shall not commit, or suffer to be committed, any material waste or misuse of the Mortgaged Property, and shall repair, restore or replace, any buildings, improvements or structures now or hereafter placed or located on the Mortgaged Property which may become damaged or destroyed in accordance with the terms of this Mortgage and the Credit Agreement. The Mortgagor shall not, without the prior written consent of the Mortgagee, or except as permitted under the Credit Agreement: (i) remove or permit the removal of any material buildings, structures or other material improvements or material fixtures, (ii) otherwise make any material alterations in any improvements which will materially and adversely alter the basic structure, materially and adversely affect the market value, or materially and adversely change the existing architectural character of the Mortgaged Property, and the Mortgagor will complete within a reasonable time any structures which are now or at any time in the process of erection in accordance with the terms of the Credit Agreement, (iii) acquiesce in any rezoning classification, modification or public or private restriction which in any way limits or otherwise materially and adversely affects the Mortgaged Property, or any part thereof, or (iv) vacate or abandon the Mortgaged Property.

**1.4. Payment of Utilities and Operating Costs**. To the extent required under the Credit Agreement, the Mortgagor shall pay, or cause to be paid, when due, all charges made for electricity, gas, heat, water, sewer, and all other utilities and operating costs and expenses incurred in connection with the Mortgaged Property.

**1.5. Liens**. To the extent required under the Credit Agreement, the Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of a lien on the Mortgaged Property, or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and in general will do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee. The Mortgagor shall not do, or permit to be done, anything that may in anyway weaken, diminish, or impair the security of this Mortgage. Should any fixture be installed to the Mortgaged Property from or after the date hereof, the lien of this Mortgage shall immediately attach to said fixture and shall be prior and superior to all other liens or claims, other than the Permitted Encumbrances. The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants, and conditions of all Permitted Encumbrances, the noncompliance with which may affect the security of this Mortgage, or may impose duty or obligation upon the Mortgagor or any sublessee or occupant of the Mortgaged Property or any part thereof, and the Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired all easements, appurtenances, and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

**1.6. Real Property Taxes and Assessments**. The Mortgagor agrees to pay all real property taxes, assessments, and other similar charges made against the Mortgaged Property in accordance with the terms and conditions of the Credit Agreement.

**1.7. Mortgage Taxation**. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the amounts herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in the Mortgaged Property, so as to impose such imposition on the Mortgagee or on the interest of the Mortgagee in the Mortgaged Property, then, in any such event, the Mortgagor shall bear and pay the full amount of such imposition, provided that if for any reason payment by the Mortgagor of any such imposition would be unlawful, or if the payment thereof would constitute usury or render the Secured Indebtedness wholly or partially usurious, the Mortgagee shall pay that amount or portion of such impositions as renders the Secured Indebtedness unlawful or usurious, in which event the Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said imposition.

**1.8. Compliance with Laws**. The Mortgagor shall materially comply with all present and future laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Property or the operation thereof, and shall pay all fees or charges of any kind in connection therewith, in each case, to the extent required under the Credit Agreement.

**1.9. Permitted Contests. INTENTIONALLY DELETED.**

**1.10. Duty to Defend**. The Mortgagor shall promptly notify the Mortgagee of and appear in and defend any suit, action or proceeding that affects the Secured Indebtedness, or any right or interest of the Mortgagee under this Mortgage. If an Event of Default has occurred and is continuing, the Mortgagee may, at its option, elect to appear in or defend any such action or proceeding, and the Mortgagor agrees to indemnify and reimburse the Mortgagee from any and all loss, damage, reasonable and documented expense or cost arising out of, or incurred in connection with any such suit, action or proceeding, including, but not limited to, costs of evidence of title and reasonable attorneys' fees if allowed by law except for losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of Mortgagee.

**1.11. Insurance Coverage**. The Mortgagor shall obtain and keep in force and effect during the term of this Mortgage at its sole cost and expense such insurance as required in accordance with the terms and conditions of the Credit Agreement.

**1.12. Notice of Damage**. The Mortgagor shall give the Mortgagee prompt notice of any material damage to or destruction of the Mortgaged Property and authorize the Mortgagee to make proof of loss if not made promptly by the Mortgagor. In case of loss covered by policies of insurance held as Collateral, the Mortgagor shall not without the express written consent of the Mortgagee settle, adjust or compromise any claim arising out of such policies, or collect and receive the proceeds payable therefrom. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of the Mortgagor) shall be reimbursed to the Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied, at the Mortgagee's option to the repair or replacement of the assets subject to such casualty or, upon or in reduction of the Secured Indebtedness or to the restoration or repair of the Mortgaged Property.

**1.13. Condemnation**. The Mortgagor shall give the Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain. The Mortgagor may in good faith contest any condemnation or eminent domain action by appropriate legal action or proceedings. Any such contest shall be prosecuted with due diligence. The Mortgagor hereby irrevocably assigns, transfers, and sets over to the Mortgagee, to the extent of the remaining unpaid Secured Indebtedness, the entire proceeds of any award, payment or claim for damages for all or any part of the Mortgaged Property taken or damaged, whether temporary or permanent, under the power of eminent domain or condemnation, and authorizes the Mortgagee to intervene in any such action in the name of the Mortgagor and to collect and receive from the condemning authorities and give proper receipts and acquaintances for such proceeds. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds shall be reimbursed to the Mortgagee first out of the proceeds. So long as no Event of Default exists, the proceeds or any part thereof shall be applied upon or in reduction of the Secured Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of the Mortgagee.

**1.14. Restoration of Mortgaged Property After Loss**. Should any insurance or condemnation proceeds be applied to the restoration or repair of the Mortgaged Property, the restoration or repair shall be done under the supervision of an architect reasonably acceptable to the Mortgagee, pursuant to plans and specifications reasonably approved by the Mortgagee, and in accordance in all material respects with all applicable building laws, regulations and ordinances, including, but not limited to, the Accessibility Guidelines set forth in the Americans with Disabilities Act. In such case, the proceeds shall be held by the Mortgagee for such purposes and will from time to time be disbursed by the Mortgagee to defray the costs of such restoration or repair under such safeguards and controls as the Mortgagee may reasonably require to assure completion in accordance with the approved plans and specifications and free of Liens, other than Permitted Encumbrances. Any surplus which may remain after payment of all costs of restoration or repair may, at the option of the Mortgagee, be applied on account of the Secured Indebtedness then most remotely to be paid, whether due or not, without application of any prepayment premium, or shall be returned to the Mortgagor as its interest may appear, the choice of application to be solely at the discretion of the Mortgagee.

**1.15. Environmental Compliance.** Mortgagor shall comply with all applicable Environmental Laws as required in the Credit Agreement.

**1.16. Financial and Operating Statements.** Mortgagor shall provide all Financial Statements and operating statements as required in the Credit Agreement.

**1.17. Mortgagee's Right of Entry**. The Mortgagor shall permit the Mortgagee or its authorized representatives to enter the Mortgaged Property on the terms and conditions set forth in the Credit Agreement.

**1.18. Due on Sale**. Except as otherwise permitted pursuant to the terms of the Credit Agreement, the Mortgagor shall not voluntarily or involuntarily sell, convey, transfer, further mortgage, encumber, or dispose of the Mortgaged Property, or any part thereof, or any interest therein, legal or equitable, without first obtaining the written consent of the Mortgagee. The Mortgagee's consent to any one transaction shall not be deemed to be a waiver of the requirement to receive the Mortgagee's consent to future or successive transactions.

**1.19. Mortgagee's Right to Cure**. If the Mortgagor shall fail to materially comply with any of the covenants or obligations of this Mortgage such that an Event of Default has occurred hereunder, to the extent permitted under the terms of the Credit Agreement the Mortgagee may, but shall not be obligated to, without further demand upon or notice to the Mortgagor, and without waiving or releasing the Mortgagor from any obligation contained in this Mortgage, perform such covenants and agreements, investigate and defend against such action or proceeding, and take such other action as the Mortgagee deems reasonably necessary to protect its interest in the Mortgaged Property or this Mortgage. Subject to the terms of the Credit Agreement, the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure, together with interest at the Default Rate. All such sums, together with interest as aforesaid, shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve the Mortgagor from any failure hereunder.

**1.20. Uniform Commercial Code Security Interest**. This Mortgage shall constitute a security agreement as defined in Article 9 of the Iowa Uniform Commercial Code and SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING which is to be filed in the real estate records of the County where the Mortgaged Property is situated. The name of the record owner of said real estate is the Mortgagor set forth on page one of this Mortgage. Information concerning the security interest created by this Mortgage may be obtained from the Mortgagee, as secured party, at its address as set forth on page one of this Mortgage. The name and address of the Mortgagor, as debtor, and the name and address of the Mortgagee, as secured party, are as set forth on page one of this Mortgage. This Mortgage covers goods which are, or are to become, "fixtures" as defined in the Uniform Commercial Code. This Mortgage is sufficient as a financing statement, and as a financing statement it covers goods which are, or are to become, fixtures on the Land. In addition, the Mortgagor hereby authorizes Mortgagee to file any financing statements or amendments thereto or continuation statements thereto that the Mortgagee may require to perfect a security interest in said items or types of property. If for any reason the Mortgagee requires execution and delivery by Mortgagor of any security interest or lien perfection instruments, the Mortgagor shall execute and deliver to the Mortgagee, upon the Mortgagee's request, any such perfection instruments. The Mortgagor shall pay all costs of filing such instruments. All references to the Uniform Commercial Code in this Mortgage shall mean the Uniform Commercial Code as in effect in the State of Iowa.

**1.21. Leases**. The Mortgagor shall, at its own cost and expense, perform, comply with and discharge all of the obligations of the Mortgagor under all leases and agreements for the use of the Mortgaged Property and use reasonable efforts to enforce or secure the performance of each obligation

and undertaking of the respective tenants under such leases and shall appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with the Mortgagor's interest in any leases of the Mortgaged Property. Without the Mortgagee's prior consent, which consent shall not be unreasonably withheld, the Mortgagor shall permit no surrender nor assignment of any tenant's interest under said leases unless the right to assign or surrender is expressly reserved under the lease, nor receive any installment of rent for more than one (1) month in advance of its due date unless otherwise required pursuant to the terms of the applicable lease, nor execute any mortgage or create or permit a lien which may be or become superior to any such leases, nor permit a subordination of any lease to such mortgage or lien. The Mortgagor shall not materially modify or amend the material terms of any such leases, nor borrow against or pledge the rentals from such leases, nor exercise or waive any material default of the tenant thereunder without the prior consent of the Mortgagee, which consent shall not be unreasonably withheld. The Mortgagor agrees to obtain the Mortgagee's prior written approval before entering into any lease with a term of five (5) years or more. Should the Mortgagor fail to perform, comply with or discharge any material obligations of the Mortgagor under any lease or should the Mortgagee become aware of or be notified by any tenant under any lease of a material failure on the part of the Mortgagor to so perform, comply with or discharge its obligations under said lease, the Mortgagee may, but shall not be obligated to, and without further demand upon or notice to the Mortgagor, and without waiving or releasing the Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all reasonable sums incurred by the Mortgagee in remedying any such failure together with interest at the Default Rate. All such sums, together with interest as aforesaid, shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve the Mortgagor from any Event of Default hereunder.

**1.22. No Consent**. Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving the Mortgagor or any party in interest with the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Mortgagee in respect thereof, or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

**1.23. Further Assurances**. The Mortgagor shall execute and deliver to the Mortgagee from time to time, on demand, such further instruments, security agreements, financing statements under the Uniform Commercial Code and assurances and do such further acts as Mortgagee may reasonably require to carry out more effectively the purposes of this Mortgage and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or so intended to be. The Mortgagor shall pay any recording fees, filing fees, mortgage registry taxes, stamp taxes and other charges arising out of such further assurances and instruments in accordance with the terms of the Credit Agreement.

**1.24. Miscellaneous Rights of Mortgagee**. Without affecting the liability of any party liable for payment of the Secured Indebtedness or the performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may, at any time, and without notice to or the consent of the Mortgagor or any party with an interest in the Mortgaged Property or the Notes (a) release any person or entity liable for payment of all or any part of the Secured Indebtedness or for the performance of any obligation herein, (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Secured Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing

with the lien or charge hereof, (c) accept any additional security, (d) release or otherwise deal with any property, real or personal, including any or all of the Mortgaged Property, including making partial releases of the Mortgaged Property, or (e) resort to any security agreements, pledges, contracts of guaranty, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine. No act or thing, except full payment of the Secured Indebtedness, which but for this provision could act as a release, termination, satisfaction or impairment of this Mortgage shall in any way release, terminate, satisfy or impair this Mortgage.

**1.25. Other Covenants**. Until this Mortgage is released (or required to be released pursuant to the terms of the Credit Agreement) and to the extent permitted by law, all of the representations, warranties and covenants of Mortgagor in the Credit Agreement, including all applicable cure and grace periods with respect to any failure to comply with the same, are incorporated herein by reference.

## ARTICLE II
## Defaults and Remedies

**2.1. Events of Default**. The occurrence of an Event of Default (as defined in the Credit Agreement) shall constitute an "Event of Default" hereunder.

**2.2. Remedies**. Upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Credit Agreement, the Mortgagee may, at its option, and without notice to the Mortgagor, unless otherwise provided herein, exercise any or all of the following rights and remedies, and any other rights and remedies now or then available to it, either hereunder or at law or in equity, including, without limitation, the rights and remedies provided in the assignment of rents contained herein:

a. The Mortgagee may immediately, and without notice to the Mortgagor, except as required by applicable statutes governing foreclosure or debt secured by real estate, declare the entire unpaid principal balance of the Notes together with all accrued interest thereon to be immediately due and payable and thereupon all such principal and accrued interest and all other Secured Indebtedness shall be and become immediately due and payable.

b. The Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and a court having jurisdiction over the Mortgaged Property shall at the request of the Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the revenues and income accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to the Mortgagor only for the net profits, after application of rents, issues and profits as provided below.

c. The Mortgagee may collect, receive, and retain all rents, income, and profits (the "Rents") from the Mortgaged Property.

The Rents collected in accordance with this Mortgage, shall be applied in the following order, unless otherwise provided in the Credit Agreement, or as otherwise mandated by Iowa Statute Section 654.14, and applicable successor

statutes: (1) in payment of all reasonable costs in the disposition of the Mortgaged Property, including the cost of receivership; (2) in payment of all taxes required by law in connection with the Mortgaged Property; (3) in payment of all necessary costs to maintain the Mortgaged Property, including the cost of insurance and any other benefit to the Mortgaged Property; (4) in payment of the balance of the Secured Indebtedness; and (5) in satisfaction of the junior secured indebtedness; and the remaining balance, after the above deductions, shall be paid to the Mortgagor and other persons entitled to the above sum in full by the Mortgagee.

Nothing contained in this Mortgage and no actions taken pursuant to this Mortgage shall be construed as constituting the Mortgagee a mortgagee in possession.

d. In addition to the rights available to a mortgagee of real property, the Mortgagee shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code, including without limitation the right to proceed under the provisions of the Uniform Commercial Code governing default as to any personal property which may be included in the Mortgaged Property or which may be deemed nonrealty in a foreclosure of this Mortgage or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

**2.3 Redemption.** It is agreed that if this Mortgage covers less than ten (10) acres of Land, and in the event of the foreclosure of this Mortgage and sale of the Mortgaged Property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the Statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings; consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after any sale of the Mortgaged Property such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The Land is less than ten (10) acres in size; (2) the Court finds affirmatively that the Mortgaged Property have been abandoned by the Mortgagor at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagor or its successors in interest in such action. If the redemption period is so reduced, the Mortgagor or its successors in interest shall have the exclusive right of redemption for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of the Mortgagor shall be a presumption that the Mortgaged Property are not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

## ARTICLE III
## Miscellaneous

**3.1. Mortgagor's Acknowledgment of Remedies**. SUBJECT TO THE TERMS OF THE CREDIT AGREEMENT AND APPLICABLE IOWA LAW, UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, THE MORTGAGOR HEREBY CONSENTS AND AGREES TO THE FORECLOSURE AND SALE OF THE MORTGAGED PREMISES BY ACTION PURSUANT TO IOWA STATUTES CHAPTER 654 (OR PURSUANT TO ANY SIMILAR OR REPLACEMENT STATUTES HEREAFTER ENACTED). The Mortgagor understands that upon the occurrence and during the continuance of an Event of Default, the Mortgagee may also elect its rights under the Uniform Commercial Code and take possession of the Personal Property and dispose of the same by sale or otherwise in one or more parcels provided that at least ten (10) days' prior notice of such disposition must be given, all as provided for by the Uniform Commercial Code, as hereafter amended or by any similar or replacement statute hereafter enacted. THE MORTGAGOR ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL; THAT BEFORE SIGNING THIS DOCUMENT THIS PARAGRAPH AND THE MORTGAGOR'S RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL AND THAT THE MORTGAGOR UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

**3.2. Continued Priority**. Any agreement hereafter made by the Mortgagor and the Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

**3.3. Cumulative Rights**. Each right, power or remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the Mortgagee, at law or in equity, or under the Uniform Commercial Code or other law, or under any other Loan Document, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Mortgagee to resort thereto at a later date or be construed to be a waiver of any Event of Default under this Mortgage.

**3.4. Waiver**. The Mortgagor hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property. The Mortgagor hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Mortgaged Property, or as to require the Mortgagee or any other person to exhaust its remedies against a specific portion of the Mortgaged Property before proceeding against the other and does hereby expressly consent to and authorize the sale of the Mortgaged Property or any part thereof as a single unit or parcel.

**3.5. Satisfaction of Mortgage**. When all Secured Indebtedness has been paid or if otherwise required to be released pursuant to the terms of the Credit Agreement, this Mortgage and all assignments herein contained shall be void and this Mortgage shall be satisfied and released by the Mortgagee at the cost and expense of the Mortgagor.

**3.6. Governing Law**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF IOWA (WITHOUT REFERENCE TO THE CHOICE OF LAW PRINCIPLES THEREOF).

**3.7. Binding Effect**. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor, the Mortgagee and their respective successors and assigns including without limitation each and every record owner of the Mortgaged Property and any other person having an interest therein. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Mortgage.

**3.8. Severability and Survival**. The unenforceability or invalidity of any provisions hereof shall not render any other provision, or provisions herein contained unenforceable or invalid. The foreclosure of this Mortgage will not affect or limit any remedy of the Mortgagee on account of any breach by the Mortgagor of the terms of this Mortgage occurring prior to such foreclosure, except to the extent of the amount bid at foreclosure.

**3.9. Captions**. The captions and headings of the various sections of this Mortgage are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**3.10. Notices**. Any notice which any party hereto may desire or may be required to give to any other party shall be in accordance with the notice provisions set forth in the Credit Agreement.

**3.11. Conflicts**. Notwithstanding anything in this Mortgage to the contrary, if any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern and control, to the extent the inconsistent term in the Credit Agreement is not inconsistent with Iowa law that governs Mortgagee's rights to secure the Mortgaged Property and to enforce Mortgagee's rights to the remedies established by this Mortgage and by Iowa Law.

THE MORTGAGOR REPRESENTS, CERTIFIES, WARRANTS AND AGREES THAT THE MORTGAGOR HAS READ ALL OF THIS MORTGAGE AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS MORTGAGE. THE MORTGAGOR ALSO AGREES THAT THE MORTGAGEE'S COMPLIANCE WITH THE EXPRESS PROVISIONS OF THIS MORTGAGE SHALL CONSTITUTE GOOD FAITH AND SHALL BE CONSIDERED REASONABLE FOR ALL PURPOSES.

**SIGNATURE PAGE TO**
**REAL ESTATE MORTGAGE**
**OF**
**BIG RIVER UNITED ENERGY, LLC**

**IN WITNESS WHEREOF**, the undersigned has executed this Amended and Restated Real Estate Mortgage as of the day and year first above written.

**MORTGAGOR:**

BIG RIVER UNITED ENERGY, LLC, a Wisconsin limited liability company

By: _____
Andy Brader, Chairman of the Board

STATE OF ILLINOIS )
) ss.
COUNTY OF Henderson )

This instrument was acknowledged before me on this 24 day of May, 2011 by Andy Brader, being the Chairman of the Board of BIG RIVER UNITED ENERGY, LLC, a Wisconsin limited liability company.

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
DEBORAH J GREEN
MY COMMISSION EXPIRES
JANUARY 6, 2015

Deborah J. Green
Notary Public

**EXHIBIT A**
**LEGAL DESCRIPTION**

Parcel "R" in Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, comprised of the South 250' of SW 1/4 of SW 1/4; SE 1/4 of SW 1/4; NW 1/4 of SW 1/4; NE 1/4 of SW 1/4, So. of the former Railroad R.O.W.; SW 1/4 of NW 1/4, So. of the former Railroad R.O.W.; SE 1/4 of NW 1/4, So. of the former Railroad R.O.W.; NW 1/4 of SE 1/4, So. of the centerline of Vine Road; NE 1/4 of SE 1/4, So. of the centerline of Vine Road & S 1/2 of SE 1/4 of Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, according to the Plat of Survey recorded in Book 2006, Page 3366.

**EXHIBIT B**
**PERMITTED ENCUMBRANCES**

1. Taxes not yet due and payable and special assessments, if any.
2. Taxes payable in 2011/2012 and thereafter, not yet due and payable.
3. Easement for highway purposes over part of the premises together with incidental rights granted to Delaware County, as evidenced by instrument dated May 20, 1987, filed June 11, 1987, in Book "Y", Page 192.
4. Easement for electric transmission line purposes over part of the premises together with incidental rights granted to Interstate Power Company, as evidenced by instrument dated May 19, 1944, filed August 14, 1944, in Book "F" of Miscellaneous, Page 534.
5. Easement for electric transmission line purposes over part of the premises together with incidental rights granted to Interstate Power Company, as evidenced by instrument dated July 23, 1987, filed August 31, 1987, in Book "Z", Page 49.
6. Easement for electric and telecommunication line purposes over part of the premises together with incidental rights granted to Interstate Power and Light Company, as evidenced by instrument dated November 12, 2007, filed December 31, 2007, in Book 2007, Page 4146.
7. Easement for electric substation purposes over part of the premises together with incidental rights granted to Interstate Power and Light Company, as evidenced by instrument dated November 12, 2007, filed December 31, 2007, in Book 2007, Page 4147.
8. Terms, conditions, provisions and easements as contained in that certain Drain Tile Agreement dated October 25, 1972, filed October 26, 1972, in Book "O", Page 68.
9. Rights of the public and the City of Dyersville in and to that part of the premises that lies within Vine Road as evidenced by Plat of Survey filed September 12, 2006, in Book 2006, Page 3366.
10. Ordinance No. 423 of the City of Dyersville regarding zoning filed November 23, 1977, in Book "R", Page 157.
11. Survey dated February 11, 2009 and signed April 8, 2009, by Yaggy Colby Associates indicates spur tracks onto the premises from the property to the South.
12. Terms, conditions and provisions contained in that certain Easement Agreement dated May 3, 2010, filed May 6, 2010, in Book 2010, Page 1348.
13. Terms, conditions and provisions contained in that certain Easement Agreement dated May 3, 2010, filed May 6, 2010, in Book 2010, Page 1349.
14. Terms, conditions and provisions contained in that certain Easement Agreement dated May 3, 2010, filed May 6, 2010, in Book 2010, Page 1350.

NOTE: The premises has been annexed into the City of Dyersville by Resolution No. 28-06 of the City of Dyersville filed November 6, 2006, in Book 2006, page 3947.

GP:2982260 v1