

BK: 2016 PG: 281
Recorded: 2/3/2016 at 1:09:50.0 PM
Fee Amount: \$132.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

Prepared by, and after recording, return to:
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603-4080
Attention: James R. Nelson
Telephone: (312) 845-3498

For Legal description, see page 25

THIS MORTGAGE SECURES FUTURE ADVANCES AND VARIABLE RATES OF INTEREST
OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

Dated as of February 2, 2016,

FROM

IOWA INTERSTATE RAILROAD, LTD.

TO

U.S. BANK NATIONAL ASSOCIATION, in its capacity as collateral trustee

Debtor: Iowa Interstate Railroad, Ltd.
5900 6th Street, S.W.
Cedar Rapids, Iowa 52401

Secured Party: U.S. Bank National Association, as Trustee
60 Livingston Avenue
St. Paul, Minnesota 55107
Attn: Iowa Interstate Railroad Administrator

OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

This OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (the “**Mortgage**”) is dated as of February 2, 2016, from IOWA INTERSTATE RAILROAD, LTD., a Delaware corporation with a mailing address at 5900 6th Street, S.W., Cedar Rapids, Iowa 52401 (“**Mortgagor**”), to U.S. BANK NATIONAL ASSOCIATION, a national banking association with a mailing address at West End Flats, 60 Livingston Avenue, St. Paul, MN 55107, Attention: Iowa Interstate Railroad Administrator, in its capacity as collateral trustee for the Secured Parties from time to time (together with its successors and assigns and any co-trustees in such capacity, the “**Trustee**” or “**Mortgagee**”). Capitalized terms used herein have the meanings specified in the Trust Indenture (as such is hereinafter defined) unless otherwise defined herein.

WITNESSETH THAT:

WHEREAS, pursuant to the terms of that certain Note Purchase Agreement dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “**Note Purchase Agreement**”), among the Mortgagor and the Purchasers named in Schedule A thereto, the Mortgagor is, among other things, selling to the Purchasers and the Purchasers are purchasing from the Mortgagor, the Mortgagor’s 4.53% Senior Secured Notes due January 28, 2028 in the aggregate principal amount of \$150,000,000 (the “**Notes**”);

WHEREAS, subject to the terms and limitations of the Note Purchase Agreement, the Mortgagor may incur certain Indebtedness in addition to the Notes, which Indebtedness may be in the form of (i) loans and other extensions of credit made by, or notes or other indebtedness issued to, one or more lenders or other Persons (each such lender or other Person which executes a Joinder to the Trust Indenture is referred to herein as an “**Other Secured Party**”, and collectively, all such Persons are referred to as the “**Other Secured Parties**”, and, together with the holders of the Notes are referred to as the “**Secured Parties**”) on a secured basis (“**Other Secured Loans**”), or (ii) other loans and other extensions of credit made by, or notes or other indebtedness issued to, one or more lenders or other Persons on an unsecured basis;

WHEREAS, the Mortgagor, the Trustee and the Secured Parties have entered into that certain Collateral Trust Indenture and Security Agreement dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “**Trust Indenture**”) whereby the Mortgagor granted to Trustee certain collateral for the benefit of the Secured Parties;

WHEREAS, the Mortgagor desires to secure the payment of the outstanding principal amount of the Notes and the Other Secured Loans together with all interest accrued and unpaid thereon and all other sums due to the Trustee and the Secured Parties under the Notes, the Note Purchase Agreement, each Other Secured Loan Agreement (as defined below), this Mortgage and any other Operative Agreement (collectively, the “**Debt**”), and the performance of all of its obligations thereunder;

WHEREAS, it is a condition to the agreement of the Purchasers to purchase the Notes that this Mortgage shall have been executed and delivered by the Mortgagor and shall be in full force and effect;

NOW, THEREFORE, to secure the full and punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of (i) any and all principal, interest (including any default interest and whether arising before or after the filing of a petition in bankruptcy and whether or not allowed), Make-Whole Amount, premium, breakage costs, indemnity obligations, fees and other indebtedness, obligations and liabilities of the Mortgagor to the Holders of the Notes issued from time to time under the terms of the Note Purchase Agreement, in each case arising in connection with the Note Purchase Agreement, the Notes and the other Operative Agreements to which the Mortgagor is a party and whether now existing or hereafter arising (and whether arising before or after the filing of a petition in bankruptcy), due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, (ii) any and all principal, interest (including any default interest and whether arising before or after the filing of a petition in bankruptcy whether or not allowed), premium, breakage costs, reimbursement obligations, indemnity obligations, fees and other indebtedness, obligations and liabilities of the Mortgagor to any Other Secured Lender (or any agent, trustee or other representative appointed in connection therewith) under or in connection with or evidenced by any credit, loan, reimbursement or other agreement with any Other Secured Lender (or any agent, trustee or other representative appointed in connection therewith) identified on the applicable Joinder (an "**Other Secured Loan Agreement**"), in each case whether now existing or hereafter arising (and whether arising before or after the filing of a petition in bankruptcy), due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, (iii) payment and performance of all obligations of the Mortgagor under this Mortgage and the other Security Documents, together with all advances, payments or other expenditures made by any Secured Party or the Trustee as or for the payment or performance of any such obligations of the Mortgagor, and (iv) any and all expenses and charges, legal or otherwise, suffered or incurred by any Secured Party or the Trustee in collecting or enforcing any of such indebtedness, obligations and liabilities or in realizing on or protecting or preserving any security therefor, including, without limitation, the lien and security interests granted in accordance with the Security Documents (all such principal, interest (including default interest), indebtedness, obligations, liabilities, expenses and charges described in clauses (i) through (iv), inclusive, together with any modifications, extensions or renewals thereof is being referred to herein as the "**Secured Obligations**") all for the benefit of the Secured Parties, and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, the Mortgagor does hereby grant, bargain, sell, convey, mortgage, assign, and pledge unto the Mortgagee, its successors and assigns (for the benefit of itself and as representative for the benefit of the Secured Parties), and grant to the Mortgagee, its successors and assigns (for the benefit of itself and as representative for the benefit of its affiliates), a continuing security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII and IX below, all of the same being collectively referred to herein as the "**Subject Property**":

GRANTING CLAUSE I

All right, title and interest of the Mortgagor in and to the real property rights, interests or estates in and to the lands and premises more particularly described on Schedule I attached hereto and made a part hereof (the "Land") in the following county in Iowa: Madison County.

GRANTING CLAUSE II

All right, title and interest of the Mortgagor in and to any buildings and improvements of every kind and description heretofore or hereafter erected or placed on the Land, including track (rail, concrete ties, ballast, switches), structures, fixtures, fencing, signs, rail crossings and signals, conduits and lines, and all materials intended for construction, reconstruction, alteration and repairs thereof, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Mortgage, to be real estate and covered by this Mortgage.

GRANTING CLAUSE III

All right, title and interest of the Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, rights-of-way, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the Land and the buildings and improvements now or hereafter located thereon and the reversions, remainders, rents, issues, revenues and profits thereof, including all interest of the Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or

under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Secured Obligations and to demand, sue for and recover the same when due or payable; *provided* that the assignments made hereby shall not impair or diminish the obligations of the Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon the Mortgagee. By acceptance of this Mortgage, the Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to the Mortgagor that until a Mortgage Event of Default (as hereinafter defined) shall occur giving the Mortgagee the right to foreclose this Mortgage, the Mortgagor may collect, receive (but not more than 30 days in advance) and enjoy such rents.

GRANTING CLAUSE IV

All right, title and interest of the Mortgagor in and to all agreements, contracts, certificates, instruments, franchises, permits, licenses, applications, entitlements, plans, specifications, drawings, and other documents, now or hereafter entered into, and all rights therein and thereto, prepared in connection with improvements constituting part of the Subject Property, all rights of the Mortgagor against vendors or manufacturers in connection with equipment located upon the Subject Property, whether arising by virtue of warranty or otherwise, all rights against contractors, sub-contractors and materialmen arising in connection with work performed at or on the Subject Property or with materials furnished for the construction of improvements at or on the Subject Property, and all rights of the Mortgagor under contracts to provide any of the foregoing, in each case whether now owned or existing or hereafter arising or acquired.

GRANTING CLAUSE V

All right, title and interest of the Mortgagor in and to all judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the Land or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, "**Condemnation Awards**"); and all right, title, and interest in all insurance policies maintained in connection with the Land or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto or for any damage to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto.

GRANTING CLAUSE VI

All right, title and interest of the Mortgagor in and to all additional lands, estates and development rights hereafter acquired by the Mortgagor for use in connection with the Land and the development thereof and all other property and rights, if any, which are by the express provisions of this Mortgage required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter be subjected to the lien hereof by the Mortgagor or by anyone on the Mortgagor's behalf.

GRANTING CLAUSE VII

All right, title and interest of the Mortgagor in and to all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Land and any other Subject Property as a result of tax certiorari or any applications or proceedings for reduction.

GRANTING CLAUSE VIII

All right, title and interest of the Mortgagor in and to all rights in and to all common areas and access roads on adjacent properties heretofore or hereafter granted to the Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Land or any part thereof.

GRANTING CLAUSE IX

All right, title and interest of the Mortgagor in and to all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

TO HAVE AND TO HOLD the Subject Property and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, or intended so to be, unto the Mortgagee, its successors and assigns, forever; *provided, however*, that this Mortgage is upon the express condition that if the Secured Obligations shall be indefeasibly fully paid and performed and all commitments contained in the Operative Agreements to extend credit thereunder shall have terminated (the "**Termination Conditions**"), then this Mortgage and the estate and rights hereby granted shall cease and be of no further effect. This Mortgage shall be released of record by the Mortgagee, upon the written request and at the expense of the Mortgagor, following the Mortgagee's receipt of an Officer's Certificate from a Responsible Officer of the Mortgagor certifying that the Termination Conditions have occurred and confirmation from the Secured Parties as to the same.

It is expressly understood and agreed that the Secured Obligations will in no event exceed two hundred percent (200%) of (i) \$150,000,000.00 plus (ii) the total interest which may hereafter accrue under the Operative Agreements on such amount plus (iii) any fees, costs, expenses or other amounts which may be payable hereunder.

The Mortgagor hereby covenants and agrees with the Mortgagee as follows:

1. *Payment and Performance of the Secured Obligations.* (a) The Secured Obligations will be promptly paid as and when the same becomes due.

(b) The Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by the Mortgagor pursuant to the Operative Agreements and any other agreement or recorded instrument affecting or pertaining to the Subject Property and any amendments, modifications or changes thereto.

2. *Ownership of Subject Property.* The Mortgagor represents and covenants that, except for Permitted Liens, the Mortgagor lawfully possesses and holds Good Title to the Subject Property without limitation on the right to encumber, as herein provided, and that this Mortgage is a valid lien on the Subject Property and all of the Mortgagor's interest therein.

3. *Further Assurances.* The Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose 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 Clauses hereof or intended so to be.

4. *Possession.* Provided no Mortgage Event of Default has occurred and is continuing hereunder, the Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Subject Property, subject always to the observance and performance of the terms of this Mortgage.

5. *Payment of Taxes.* The Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Subject Property or any part thereof and which, if unpaid, might by law become a lien or charge upon the Subject Property or any part thereof, and shall, upon written request, exhibit to the Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if (i) being contested (except to the extent any full or partial payment shall be required by law), after notice to the Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Subject Property or any part thereof to satisfy the same, (ii) such proceedings are conducted in good faith and with due diligence, (iii) the amount or validity of such lien or charge (individually or in the aggregate) is not Material and (iv) the Mortgagor shall have furnished such security, if any, as may be required in the proceedings or requested by the Mortgagee.

6. *Payment of Taxes on Security Documents, Mortgage or Interest of the Mortgagee.* The Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the Secured Obligations or any of the Security Document or the interest of the Mortgagee in the Subject Property or upon the Mortgagee or any of the Secured Parties by reason of or as a

holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the Secured Obligations imposed by the United States or any state) is levied, assessed or charged, then, unless all such taxes are paid by the Mortgagor to, for or on behalf of the Mortgagee or any Secured Party as they become due and payable (which the Mortgagor agrees to do upon demand of the Mortgagee, to the extent permitted by law), or the Mortgagee is reimbursed for any such sum advanced by the Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of the Mortgagee upon thirty (30) days' notice to the Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding the Mortgagor from making any such payment. The Mortgagor agrees to exhibit to the Mortgagee, upon request, official receipts showing payment of all taxes and charges which the Mortgagor is required to pay hereunder.

7. *Recordation and Payment of Taxes and Expenses Incident Thereto.* The Mortgagor will cause this Mortgage, all amendments hereto, all mortgages supplemental hereto, and any financing statement or other notice of a security interest that is required by law or by the Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Subject Property, or any part thereof, in order fully to preserve and protect the rights of the Mortgagee hereunder and, without limiting the foregoing, the Mortgagor will pay or reimburse the Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or rerecording, including any documentary stamp tax or tax imposed upon the privilege of having this Mortgage or any instrument issued pursuant hereto recorded.

8. *Insurance.* The Mortgagor shall insure, or cause to be insured, the Subject Property with policies of insurance in accordance with the requirements of Section 9.2 and Schedule 9.2 of the Note Purchase Agreement. The Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance, shall not incur any liability for: (a) the existence, nonexistence, form or legal sufficiency thereof; (b) the solvency of any insurer; or (c) the payment of losses. All casualty insurance policies and certificates of insurance thereof shall name the Mortgagee as loss payee, all liability insurance policies and certificates thereof shall name the Mortgagee as an additional insured, and all insurance policies and certificates, whether casualty or liability, shall provide that the insurance cannot be terminated as to the Mortgagee except upon a minimum of ten (10) days' prior written notice to the Mortgagee. Immediately upon any request by the Mortgagee, the Mortgagor shall deliver to the Mortgagee the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

UNLESS THE MORTGAGOR PROVIDES THE MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, THE MORTGAGEE MAY PURCHASE INSURANCE AT THE MORTGAGOR'S EXPENSE TO PROTECT THE MORTGAGEE'S INTERESTS IN THE SUBJECT PROPERTY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT THE MORTGAGOR'S INTERESTS IN THE SUBJECT PROPERTY. THE COVERAGE PURCHASED BY THE MORTGAGEE MAY NOT PAY ANY CLAIMS THAT THE MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST THE MORTGAGOR IN CONNECTION WITH THE SUBJECT PROPERTY. THE MORTGAGOR MAY LATER CANCEL ANY SUCH INSURANCE

PURCHASED BY THE MORTGAGEE, BUT ONLY AFTER PROVIDING THE MORTGAGEE WITH EVIDENCE THAT THE MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF THE MORTGAGEE PURCHASES INSURANCE FOR THE SUBJECT PROPERTY, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT THE MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE SECURED OBLIGATIONS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE THE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

9. *Damage to or Destruction of Subject Property.*

(a) *Notice.* The Mortgagor shall promptly, and in any event within ten (10) Business Days, after a Responsible Officer of the Mortgagor becoming aware of any Casualty Event, deliver a written notice to the Mortgagee generally describing the nature and extent of such damage or destruction and specifying what action the Mortgagor is taking or proposes to take, if any, with respect thereto.

(b) *Restoration.* In case of any damage to or destruction of the Subject Property or any part thereof, the obligation of the Mortgagor to restore, replace or rebuild the Subject Property shall be governed by the applicable provisions of the Trust Indenture.

(c) *Application of Insurance Proceeds.* Insurance proceeds received by the Mortgagee under any policy or policies of insurance covering the Subject Property or any part thereof shall be applied in accordance with the terms of Section 3.2 of the Trust Indenture.

10. *Eminent Domain.* The Mortgagor acknowledges that the Mortgagor's right, title and interest in and to any Condemnation Awards have been assigned to the Mortgagee, which awards the Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and to apply the same in accordance with Section 3.2 of the Trust Indenture. The Mortgagor shall promptly, and in any event within ten (10) Business Days, after a Responsible Officer of the Mortgagor becoming aware of any Condemnation Event, deliver a written notice to the Mortgagee generally describing the nature and extent of such Condemnation Event and specifying what action the Mortgagor is taking or proposes to take, if any, with respect thereto and will deliver to the Mortgagee copies of any and all papers served in connection with any such Condemnation Event. The Mortgagor further covenants and agrees to make, execute and deliver to the Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning the Mortgagor's right, title and interest in and to all awards and other compensation heretofore and hereafter for any taking, either permanent or temporary, under any such proceeding.

11. *Construction, Repair, Waste, Etc.* The Mortgagor agrees (i) to permit, commit or suffer no waste, impairment or deterioration of the Subject Property or any part thereof; (ii) to keep and maintain said Subject Property and every part thereof in good and first class repair and condition consistent with the provisions of the other Operative Agreements; (iii) to comply, in all material respects, with all statutes, orders, requirements or decrees relating to the Subject Property by any federal, state or municipal authority; (iv) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Subject Property or which have been granted to or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Subject Property or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Subject Property or any part thereof may be put without the prior written consent of the Mortgagee; and (v) to make no material alterations in or improvements or additions to the Subject Property except as required by governmental authority, as permitted by the terms of the other Operative Agreements or as otherwise permitted by the Mortgagee.

12. *Liens and Encumbrances.* The Mortgagor will not, without the prior written consent of the Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any Lien with respect to, the Subject Property or any part thereof, whether superior or subordinate to the lien hereof, except for this Mortgage or any other Permitted Lien.

13. *Right of the Mortgagee to Perform the Mortgagor's Covenants, Etc.* If the Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder within any applicable notice and/or cure periods provided for herein, the Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor, and may enter upon the Subject Property or any part thereof for such purpose and, subject to compliance with any mandatory legal requirements, including, but not limited to, any rules and regulations of the Surface Transportation Board or any successor agency, take all such action thereon as, in the opinion of the Mortgagee, may be necessary or appropriate therefor. All sums so paid by the Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute Secured Obligations and shall be paid by the Mortgagor to the Mortgagee on demand. The Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof; *provided* that the Mortgagee has provide to the Mortgagor at least five (5) business days' notice prior to making any such payment. The Mortgagee, in performing any act hereunder, shall be the sole judge of whether the Mortgagor is required to perform the same under the terms of this Mortgage. Any curing by the Mortgagee of any default shall not be construed as an assumption by the Mortgagee or any Secured Party of any obligations, covenants or agreements of the Mortgagor, and the Mortgagee shall not incur

any liability to the Mortgagor or any other Person as a result of any actions undertaken by the Mortgagee in curing or attempting to cure any such default.

14. *After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless the Mortgagor shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

15. *Inspection by the Mortgagee.* The Mortgagee and any Secured Party shall have the right, at such party's own risk, to inspect the Subject Property (i) if no Mortgage Default or Mortgage Event of Default then exists, at the expense of the Mortgagor or such Secured Party and upon reasonable prior notice to the Mortgagor, at such reasonable times and as often as may be reasonably requested in writing but not more than one time per year (and access thereto shall be permitted for that purpose); and (ii) if a Mortgage Default or Mortgage Event of Default then exists, at the expense of the Mortgagor at all reasonable times (and access thereto shall be permitted for that purpose); *provided, however*, that Mortgagor shall not be liable for any damage of property, injury to, or the death of, any Person exercising, either on behalf of Mortgagee, the rights of inspection granted under this Section 15 except as may result or arise from Mortgagor's gross negligence or willful misconduct. No inspection pursuant to this Section 15 shall interfere with the use, operation or maintenance of the Subject Property or the normal conduct of Mortgagor's business, and Mortgagor shall not be required to undertake or incur any additional liabilities in connection therewith.

16. *Subrogation.* The Mortgagor acknowledges and agrees that the Mortgagee shall be subrogated to any lien discharged out of the proceeds of any credit extended under the Operative Agreements or out of any advance by the Mortgagee or any Secured Party hereunder, irrespective of whether or not any such lien may have been released of record.

17. *No Transfer.* The Mortgagor shall not permit or suffer any sale, transfer or lease of the Subject Property (or portion thereof) to occur, unless specifically permitted by Article X of the Note Purchase Agreement or unless the Mortgagee shall consent thereto in writing.

18. *Indemnification.*

(a) *Environmental Indemnity.* The Mortgagor unconditionally agrees to forever protect, indemnify (on an after-tax basis), defend, release and hold harmless at its sole cost and expense, and covenants not to sue for any claim for contribution against, the Mortgagee, each Secured Party (including each Holder), and any security trustee therefor, and their respective directors, officers, employees, agents, financial advisors, and consultants (each such Person being called an "**Indemnitee**") for any damages, costs, loss or expense, including without limitation, response, remedial or removal costs and all fees and disbursements of counsel to any such Indemnitee, arising out of any of the following: (i) any presence, release, threatened release

or disposal of any Hazardous Materials (as defined in the Trust Indenture) or petroleum by the Mortgagor or any Subsidiary (or any invitee, tenant, contractor, subcontractor or licensee of the Mortgagor or any Subsidiary) or otherwise occurring on or emanating from or with respect to the Subject Property or any other property of the Mortgagee or its Subsidiaries (whether owned or leased), (ii) the operation or violation of any Environmental Law, whether federal, state, or local, and any regulations promulgated thereunder or any deed restrictions, by the Mortgagor or any Subsidiary (or any invitee, tenant, contractor, subcontractor or licensee of the Mortgagor or any Subsidiary) or otherwise occurring on, or emanating from or with respect to the Subject Property or any other property of the Mortgagee or its Subsidiaries (whether owned or leased), (iii) the inaccuracy or breach of any environmental representation, warranty or covenant by the Mortgagor or any Subsidiary made herein or in any other Operative Agreement evidencing or securing Secured Obligations or setting forth terms and conditions applicable thereto or otherwise relating thereto and (iv) without limiting the foregoing, any Environmental Claims (as defined in the Trust Indenture) which may be imposed upon, asserted against, or incurred or paid by any such Indemnitee by reason of, on account of, or in connection with the Subject Property, in each case, except for damages arising from the willful misconduct or gross negligence of the party claiming indemnification.

(b) *Mortgage and/or Intangible Tax.* The Mortgagor shall, at its sole cost and expense, protect, defend, indemnify (on an after-tax basis), release and hold harmless the Indemnitees from and against any and all losses imposed upon or incurred by or asserted against any Indemnitees and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Operative Agreements, but excluding any income, franchise or other similar taxes.

(c) *Duty to Defend; Attorneys' Fees and Other Fees and Expenses.* Upon written request by any Indemnitee, the Mortgagor shall, at its expense, defend such Indemnitee (if requested by any Indemnitee, in the name of such Indemnitee) by attorneys and other professionals approved by such Indemnitee. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both the Mortgagor and any Indemnitee and the Mortgagor and such Indemnitee shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnitees that are different from or additional to those available to the Mortgagor, such Indemnitee shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnitee at the Mortgagor's expense; *provided* that no compromise or settlement shall be entered without the Mortgagor's consent, which consent shall not be unreasonably withheld. Upon demand, the Mortgagor shall pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(d) *No Limitation on Liability.* The liability of the Mortgagor pursuant to this Section 18 is not limited to the original principal amount of the Secured Obligations.

(e) *Survival.* The indemnification set forth in this Section 18 shall survive the payment and satisfaction of all Secured Obligations, the removal or resignation of the Trustee, and the termination of this Mortgage, and shall remain in force beyond the expiration of any

applicable statute of limitations and payment or satisfaction in full of any single claim under this Section 18.

(f) *Bankruptcy of Mortgagor.* If the Trustee incurs expenses in connection with a bankruptcy of the Mortgagor, the expenses (including the reasonable fees and expenses of Trustee counsel) are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

19. *Mortgage Events of Default.* Any one or more of the following shall constitute a **“Mortgage Event of Default”** hereunder: (a) the Mortgagor shall fail to observe or perform any obligation or agreement contained herein beyond applicable grace and cure periods; (b) any representation or warranty of the Mortgagor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) the occurrence of any Event of Default under any other Operative Agreement. A **“Mortgage Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become a Mortgage Event of Default.

20. *Remedies.* When any Mortgage Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing the Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Secured Obligations) and in addition to such other rights as may be available under the Security Documents or applicable law, but subject at all times to any mandatory legal requirements, including, but not limited to, any rules and regulations of the Surface Transportation Board or any successor agency:

(a) *Declare Debt Due.* The Mortgagee may declare the entire unpaid Debt to be immediately due and payable.

(b) *Foreclosure.* The Mortgagee may proceed to protect and enforce the rights of the Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage.

(c) *Appointment of Receiver.* The Mortgagee shall, as a matter of right, without notice and without giving bond to the Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of the Mortgagor or the then value of the Subject Property, be entitled to have a receiver appointed of all or any part of the Subject Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and the Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Subject Property or any part thereof by force, summary proceedings, ejection or otherwise, and may remove the Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive

all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(d) *Taking Possession, Collecting Rents, Etc.* The Mortgagee may enter and take possession of the Subject Property or any part thereof and manage, operate, insure, repair and improve the same and take any action that, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Subject Property. The Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Subject Property and used in the operation, rental or leasing thereof or any part thereof. The Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Subject Property or any part thereof (and for such purpose the Mortgagor does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, the Mortgagor irrevocably acknowledging that any payment made to the Mortgagee hereunder shall be a good receipt and acquittance against the Mortgagor to the extent so made) and to apply same to the reduction of the Secured Obligations. The right to enter and take possession of the Subject Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsels' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be Secured Obligations, which the Mortgagor promises to pay upon demand together with interest at the Default Rate. The Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee. Without taking possession of the Subject Property, the Mortgagee may, in the event the Subject Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Subject Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute Secured Obligations payable upon demand with interest thereon at the Default Rate.

(e) *Sale of the Subject Property.* The Mortgagee may sell for cash or upon credit the Subject Property or any part thereof and all estate, claim, demand, right, title and interest of the Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law.

(f) *Recovery of Judgment.* The Mortgagee may recover judgment on the Debt either before, during or after any proceedings for the enforcement of this Mortgage or the other Operative Agreements.

(g) *Uniform Commercial Code.* The Mortgagee shall, with respect to any part of the Subject Property constituting property of the type in respect of which realization on

a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including attorneys' fees and legal expenses incurred in connection therewith, shall constitute Secured Obligations and shall be payable upon demand with interest at the Default Rate.

21. *Tenancy at Sufferance Following Foreclosure.* If at the time of foreclosure sale the Mortgagor or any of its heirs, legal representatives, successors or assigns are occupying the Subject Property, each and all shall immediately become the tenant at sufferance of the purchaser at such sale, which tenancy shall be terminable at will, at a reasonable rental per day based upon the value of the Subject Property, such rental to be due daily to the purchaser. An action of forcible detainer shall lie if the Mortgagor or any of its heirs, legal representatives, successors or assigns holds over after a demand in writing for possession of the Subject Property.

22. *Waiver of Right to Redeem From Sale – Waiver of Appraisal, Valuation, Etc.* To the extent permitted by law, the Mortgagor hereby waives and agrees to not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called “**Moratorium Laws**”, now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Subject Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Subject Property sold as an entirety. In the event of any sale made under or by virtue of this Mortgage in accordance with the terms herein, the whole of the Subject Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine, but subject at all times to any mandatory legal requirements. The Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage and the Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by the Mortgagee with the amount payable to the Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Secured Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. The Mortgagor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Mortgagor, and each and every person acquiring any interest in, or title to the Subject Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

23. *Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys'

fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Subject Property, all of which expenditures shall become Secured Obligations which the Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

24. *Application of Proceeds.* The proceeds of any foreclosure sale of the Subject Property or of any sale of property pursuant to Section 20 hereof shall be distributed in the manner set forth in Section 3.5 of the Trust Indenture.

25. *Deficiency Decree.* If at any foreclosure proceeding the Subject Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against the Mortgagor and against the property of the Mortgagor for the amount of such deficiency; and the Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Subject Property and the property of the Mortgagor and until such deficiency decree is satisfied in full.

26. *The Mortgagee's Remedies Cumulative – No Waiver.* No remedy or right of the Mortgagee shall be exclusive of but shall be separate, distinct and cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee.

27. *The Mortgagee Party to Suits.* If the Mortgagee or any Secured Party shall be made a party to or shall intervene in any action or proceeding affecting the Subject Property or the title thereto or the interest of the Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if the Mortgagee employs an attorney to collect any or all of the Secured Obligations or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if the Mortgagee or any Secured Party shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Subject Property or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, the Mortgagor agrees to pay to the Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorney's fees incurred by the Mortgagee and any Secured Party in any such case, and the same shall constitute Secured Obligations payable upon demand with interest at the Default Rate.

28. *Other Rights, Etc.* (a) The failure of the Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage.

The Mortgagor shall not be relieved of the Mortgagor's obligations hereunder by reason of (i) the failure of the Mortgagee to comply with any request of the Mortgagor or any guarantor or indemnitor with respect to the Secured Obligations to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Secured Obligations or the other Operative Agreements, (ii) the release, regardless of consideration, of the whole or any part of the Subject Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by the Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Secured Obligations, this Mortgage or the other Operative Agreements.

(b) It is agreed that the risk of loss or damage to the Subject Property is on the Mortgagor, and the Mortgagee shall have no liability whatsoever for decline in value of the Subject Property, for any failure to maintain the insurance required hereunder, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by the Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Subject Property or collateral not in Mortgagee's possession.

29. *Violation of Laws.* If the Subject Property is not in material compliance with applicable law, the Mortgagee may impose additional requirements upon the Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents; *provided, however,* that, except in the event of an emergency or a health or safety concern, the Mortgagee must provide the Mortgagor with notice and a reasonable opportunity to promptly cure any material non-compliance with applicable law before imposing such additional requirements upon the Mortgagor.

30. *Modifications Not to Affect Lien.* The Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Subject Property, may in its discretion release any part of the Subject Property or any person liable for any of the Secured Obligations, may extend the time of payment of any of the Secured Obligations and may grant waivers or other indulgences with respect hereto and thereto, and may agree with the Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the Secured Obligations (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the Secured Obligations or the priority of the lien of this Mortgage upon all of the Subject Property not expressly released, and any party acquiring any direct or indirect interest in the Subject Property shall take same subject to all of the provisions hereof.

31. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as the Mortgagor or the Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section.

32. *Security Documents.* The Mortgagor acknowledges that this Mortgage is one of several mortgages and/or other security documents (the aforesaid being together called the

“**Security Documents**”) that secure the Secured Obligations or portions thereof. The Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Mortgagee or any other Secured Party relating to any of the Secured Obligations, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by the Mortgagee or any other Secured Party relating to any of the Secured Obligations of any security for or guarantors upon any of the Secured Obligations or by any failure, neglect or omission on the part of the Mortgagee or any other Secured Party to realize upon or protect any of the Secured Obligations or any collateral or security therefor including any Security Documents. The lien and security interest hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations, or of any of the collateral or security therefor, including, without limitation, the Security Documents or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. The Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Security Documents without first exercising or enforcing any of its right and remedies hereunder. Such exercise of the Mortgagee’s rights and remedies under any or all of the Security Documents shall not in any manner impair the Secured Obligations, except to the extent of payment, or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Security Documents or any of the Mortgagee’s or any Secured Parties’ rights and remedies thereunder. The Mortgagor specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the Security Documents separately or concurrently and in any order that it may deem appropriate.

33. *Default Rate.* For purposes of this Mortgage, the term “**Default Rate**” means the applicable rate of interest per annum from time to time as set forth in the Operative Agreements, or with respect to the Mortgagee, shall be the highest Default Rate applicable to any of the Secured Obligations.

34. *Governing Law.* The creation of this Mortgage, the perfection of the lien and security interest in the Subject Property, and the rights and remedies of the Mortgagee with respect to the Subject Property, as provided herein and by the laws of the state in which the Subject Property is located, shall be governed by and construed in accordance with the internal laws of the state in which the Subject Property are located without regard to principles of conflicts of law. Otherwise, the Security Documents and all other obligations of the Mortgagor (including, but not limited to, the liability of the Mortgagor for any deficiency following a foreclosure of all or any part of the Subject Property) shall be governed by and construed in accordance with the internal laws of the State of New York without regard to principles of conflicts of laws.

35. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any

term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

36. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of the Mortgagor, or by or on behalf of the Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not. If more than one party signs this instrument as the Mortgagor, then the term “Mortgagor” as used herein shall mean all of such parties, jointly and severally.

37. *Headings.* The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

38. *Changes, Etc.* This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

39. *Right of Redemption.* The Mortgagor releases all right of redemption under the laws of Illinois, to the extent permitted by applicable law.

40. *Rights of the Mortgagee.* The Mortgagee shall be entitled to the rights, protections, immunities and indemnities set forth in the Trust Indenture, and the other Operative Agreements, as if specifically set forth herein. With respect to the duties, obligations and rights of the Mortgagee, if any conflict between the terms of this Mortgage and the terms of the Trust Indenture arises, the terms of the Trust Indenture shall govern and control. The recitals herein are not statements of the Mortgagee and the Mortgagee shall have no responsibility for the truth or accuracy of such recitals.

41. *Relationship of the Parties.* (a) The relationship between the Mortgagor, on the one hand, and the Mortgagee and Secured Parties, on the other, is solely that of debtor and creditor, and neither the Mortgagee nor any Secured Party has a fiduciary or other special relationship with the Mortgagor, and no term or condition of any of the Secured Obligations, this Mortgage and the other Operative Agreements shall be construed so as to deem the relationship between the Mortgagor, on the one hand, and the Mortgagee and Secured Parties, on the other, to be other than that of debtor and creditor.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to the Mortgagee or any Secured Party pursuant to this Mortgage or the other Operative Agreements, including, without limitation, any officer’s certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Mortgagee nor any Secured Party shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by the Mortgagee or any Secured Party.

42. *Changes in Tax, Debt, Credit and Documentary Stamp Laws.* Without limiting Section 18: (a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Subject Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or the Mortgagee's interest in the Subject Property, the Mortgagor will pay the tax, with interest and penalties thereon, if any.

(b) The Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the taxes assessed against the Subject Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Subject Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Notes, this Mortgage, or any of the other Operative Agreements or impose any other tax or charge on the same, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

43. *Waiver of Counterclaim.* To the extent permitted by applicable law, the Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by the Mortgagee or any Secured Party arising out of or in any way connected with this Mortgage, the Secured Obligations, any of the other Operative Agreements.

44. *Waiver of Notice.* To the extent permitted by applicable law, the Mortgagor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Mortgagor and except with respect to matters for which the Mortgagee is required by applicable law to give notice, and the Mortgagor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Mortgagee to the Mortgagor.

45. *Waiver of Statute of Limitations.* To the extent permitted by applicable law, the Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of the Secured Obligations.

46. *Provisions Subject to Applicable Law.* All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term, covenant or condition of the Notes, this Mortgage or any other Operative Agreement is held to be invalid, illegal or unenforceable in any respect, the Note, this Mortgage or such other Operative Agreement shall be construed without such provision.

47. *Waiver of Trial by Jury.* The MORTGAGOR AND THE MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE SECURED OBLIGATIONS, THIS MORTGAGE, OR THE OTHER OPERATIVE AGREEMENTS OR ANY ACTS OR OMISSIONS OF THE MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

48. *State Specific Provisions.*

(a) *Principles of Construction.* In the event of any inconsistencies between the terms and conditions of this Article 48 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 48 shall control and be binding.

(b) *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 Subject 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 Mortgagors which may arise out of the foreclosure proceedings; all to be 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 sale 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 real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successors in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem 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 Mortgagors shall be a presumption that the property is 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.

(c) *Business Purpose.* Mortgagor represents that the Subject Property is not used for agricultural purposes as defined in Iowa Code § 535.13 and that the Subject Property is not agricultural land as defined in Iowa Code § 9H.1. Further, Mortgagor represents that the Property is not a one-family or two-family dwelling and that the Secured Obligations secured by this Mortgage do not constitute a consumer credit transaction as defined in Iowa Code § 537.1301(12).

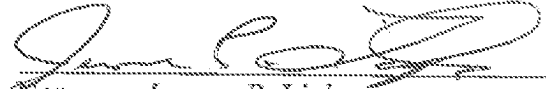
NOTICE: This Mortgage secures credit in the amount of \$300,000,000. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

[CONTINUES WITH SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Mortgagor has caused these presents to be signed and sealed the day and year first above written.

IOWA INTERSTATE RAILROAD, LTD., a Delaware corporation

By 
Name: Jerome P. Lipka
Title: President

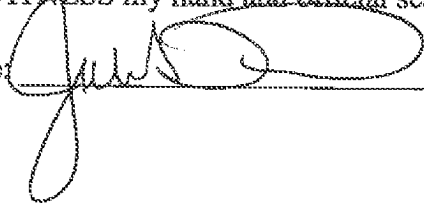
ACKNOWLEDGMENT

S T A T E O F Iowa)
C O U N T Y O F Linn) S S.:

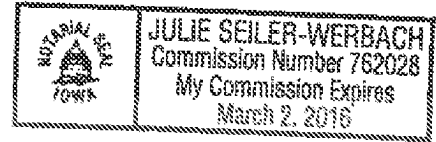
On January 27, 2016 before me, Julie Seiler-Werbach, personally appeared Jerome P. Lipka, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as President of Iowa Interstate Railroad, Ltd., and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Iowa that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

(Seal)



SCHEDULE I

LEGAL DESCRIPTION

Being a description of parcels of land and strips of land of varying widths constituting a continuous line of railroad property:

SECTION FIVE

W. Des Moines to Council Bluffs, Iowa

Dallas and Madison Counties, Iowa

Thence westerly through Sections 25, 26, 27, 28, 29 and 30, Township 78 North, Range 26 West of the 5th P.M., Dallas County; thence westerly through Sections 25, 26, 27, 22, 21, 20, 29 and 30, Township 78 North, Range 27 West of the 5th P.M., Dallas County; thence southerly through Sections 25 and 36, Township 78 North, Range 28 West of the 5th P.M., Dallas County; thence westerly through Sections 1, 2, 3, 4, 5 and 6 (Excluding all that part of the Southwest Quarter of said Section 4 lying southerly of a line fifty feet southerly of and parallel to said main track centerline), Township 77 North, Range 28 West of the 5th P.M., Madison County; thence westerly through Sections 1, 2, 3 and 4, Township 77 North, Range 29 West of the 5th P.M., Madison County; thence westerly through Sections 33, 32 and 31, Township 78 North, Range 29 West of the 5th P.M., Dallas County.

AND, INCLUDING THE FOLLOWING PARCELS:

Being particular descriptions of certain parcels already described in general terms above and not within any exclusion to the Property conveyed:

MADISON COUNTY, IOWA

Earlham, Iowa

Parcel 29: The Point of Beginning being on the west line of Section 6 and on a line twenty feet southerly of and parallel to the centerline of Grantor's main track; thence southeasterly along said line southerly of said main track centerline to the westerly line of Chestnut Street extended northerly; thence southerly along said street line to a line fifty feet southerly of and parallel to said main track centerline; thence northwesterly along the last line intersected to a line fifty-three feet easterly of and parallel to the easterly line of Locust Street; thence southerly along the last line intersected approximately one hundred fifty feet to the northerly line of Lot 11, Block 16; thence westerly along said lot line to said easterly line of Locust Street; thence northerly along said street line to a line one hundred fifty feet southerly of and parallel to said main track centerline; thence westerly along the last line intersected to the westerly line of Locust Street; thence northerly along said street line to said line fifty feet southerly of said track centerline; thence westerly along the last line intersected to said west line of Section 6; thence northerly along said

west line to the Point of Beginning; all in the Southwest Quarter of the Southwest Quarter of Section 6, Township 77 North, Range 28 West of the Fifth Principal Meridian.

Parcel 30: All of Grantor's interest in the South Half of the Southeast Quarter of the Southwest Quarter lying northerly of a line twenty-five feet northerly of and parallel to the centerline of Grantor's main track, lying easterly of the easterly line of Sycamore Street and westerly of the westerly line of Maple Street; Township 77 North, Range 28 West of the Fifth Principal Meridian.