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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter called the "Mortgage") is made as of the 15th day of September, 1989, between ABC RAIL CORPORATION, a Delaware corporation (the "Borrower"), having its executive offices at 200 South Michigan Avenue, Chicago, Illinois 60604 and CITICORP NORTH AMERICA, INC., a Delaware corporation, having an office and place of business at 601 Midland Avenue, Rye, New York 10580, and also having an office at 560 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 (hereinafter called the "Lender"):

W I T N E S S E T H:

WHEREAS, the Borrower has executed and delivered to the Lender two (2) Secured Promissory Notes of even date herewith (which notes, together with all notes issued in substitution or exchange therefor, as any of the foregoing may be amended, extended, modified or supplemented from time to time hereafter, are hereinafter called the "Notes"); and

WHEREAS, the Lender is desirous of securing (i) the payment of the Notes, to the extent referred to hereinafter, together with interest and premium, if any, thereon and late charges, if any, due thereunder, in accordance with the terms of the Notes, and any additional indebtedness accruing to the Lender on account of any future payments or expenditures made by the Lender pursuant to the Notes, this Mortgage, or the Loan Agreement of even date herewith between Lender and Borrower (said Loan Agreement, as the same may be amended from time to time, being herein called the "Loan Agreement"); (ii) the payment of all sums due under that certain Secured Promissory Note of even date herewith executed by ABC Rail Limited, an Ontario corporation in favor of Citibank Canada, a Canadian chartered bank (the "ABC Limited Note") and the performance by ABC Rail Limited of all the covenants, warranties, representations, terms and conditions contained therein and contained in that certain Loan Agreement of even date herewith by and between ABC Rail Limited and Citibank Canada (the "ABC Limited Loan Agreement"); (iii) the payment of all sums due and performance by Borrower of all of the covenants, warranties, representations, terms and conditions hereunder, under the Notes and the Loan Agreement; (iv) the payment of all sums due and the performance and observance of all of the covenants, warranties, representations, terms and conditions by Borrower under those certain Security Agreements between Lender and Borrower of even date herewith granting a security interest in (a) certain

THIS INSTRUMENT WAS PREPARED BY AND,  
AFTER RECORDING, SHOULD BE RETURNED TO:

Steven A. Shapiro, Esq.  
Katten Muchin & Zavis  
525 West Monroe Street - Suite 1600  
Chicago, Illinois 60606

THE PROPERTY ENCUMBERED HEREBY  
IS COMMONLY KNOWN AS:

14th Street and Woodbine Avenue  
Calera, Alabama

Jack A.

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machinery, equipment and other personal property located or hereinafter to be located on the Mortgaged Property (as herein defined) (the "Equipment Security Agreement"), (b) inventory, accounts receivable and license agreements of Borrower (the "Inventory and Receivables Security Agreement") and (c) certain patents, trademarks, tradenames and other general intangibles of Borrower (the "Patent and Trademark Security Agreement") (collectively the "Security Agreement"); and (v) the payment of all sums due and the performance and observance of all of the covenants, warranties, representations, terms and conditions under any other documents or instruments given as security for the indebtedness evidenced by the Notes or the ABC Limited Note (said documents being herein collectively called the "Other Security Documents"); and (all of the foregoing are hereinafter sometimes collectively called the "indebtedness secured hereby"); and

WHEREAS, This Mortgage shall secure the payment of the indebtedness secured hereby to the extent of the principal amount of \$5,500,000.00 plus all interest thereon;

NOW, THEREFORE, to secure the performance and observance by the Borrower of all the terms, covenants and conditions in this Mortgage, to secure the indebtedness secured hereby, to the extent referred to hereinbefore, and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America to the Borrower duly paid by the Lender on or before the delivery of this Mortgage, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Borrower has executed and delivered this Mortgage and does hereby grant, bargain, sell, convey, assign, mortgage, grant a security interest in, warrant and confirm unto the Lender and its successors and assigns, forever, all of the following described property (such property is hereinafter sometimes referred to as the "Mortgaged Property"), to-wit:

(A) All those certain tracts, pieces or parcels of land and the easements, if any, more particularly described in Schedule A attached hereto and made a part hereof (hereinafter called the "Land");

(B) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land;

(C) (i) All furnishings, furniture, fixtures, machinery; equipment, appliances, vehicles and all other tangible personal property now owned or hereafter acquired by Borrower, including, without limitation, building materials, gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges,

elevators and motors, plumbing and heating fixtures and systems, signs, carpeting and other floor coverings, water heaters, mantels, air-conditioning apparatus and systems, refrigerating plant, refrigerators, cooking apparatus and appurtenances, window screens, awnings, and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Land, or which, wherever located (including, without limitation, in warehouse or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, use, operation or enjoyment of the Land or the improvements thereon; (ii) all warehouse receipts or other documents of title relating to any of the foregoing; and (iii) all permits, licenses and franchises, now or hereafter owned by the Borrower and relating to the ownership, use, operation or enjoyment of the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with the benefit of any deposits or payments now or hereafter made by the Borrower or on its behalf in connection with any of the foregoing but specifically excluding all inventory, receivables and other intangible assets (other than the intangible assets specified in clause (iii) hereof) which are subject to the security interest granted by Borrower to First National Bank of Chicago ("FNBC"); and

(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to the Land and the property referred to in Paragraph B above, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, and the rents, issues, profits and revenues of the Land and the property referred to in Paragraph B above from time to time accruing (including, without limitation, all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same;

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns, forever, subject, however, to the terms, covenants and conditions contained herein and in the Loan Agreement;

WITHOUT limitation of the foregoing, the Borrower hereby further grants unto the Lender, pursuant to the provisions of the Uniform Commercial Code of the State of Alabama, a security interest in all of the above-described property, which property includes, without limitation, goods which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment and performance of the indebtedness secured hereby, to the extent referred to hereinbefore, and (b) performance and observance of each and every of the representations, warranties, covenants, conditions and agreements contained in this Mortgage.

It is expressly understood and agreed that the amount of the debt secured by this Mortgage will in no event exceed the principal amount of \$5,500,000.00 plus all interest thereon.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable pursuant to the Notes, the ABC Limited Note and the ABC Limited Loan Agreement, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform and observe all and singular the covenants and promises in the Notes, in the Loan Agreement and in this Mortgage expressed to be kept, performed and observed by and on the part of the Borrower, then this Mortgage shall cease, terminate and be void and Lender shall deliver a written release hereof, but shall otherwise remain in full force and effect.

AND the Borrower represents, warrants, covenants and agrees with the Lender that:

#### ARTICLE I

1.01 Performance of Notes and Mortgage. The Borrower will perform, observe and comply with all provisions hereof and of the Notes, the Loan Agreement, the Security Agreement, and the Other Security Documents and will duly and punctually pay to the Lender the sum of money expressed in the Notes with interest and premium, if any, thereon and all other sums required to be paid by the Borrower pursuant to the provisions of the Notes and this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Representation of Title. At the time of the delivery of these presents, the Borrower is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion

of the Mortgaged Property which constitutes personal property, subject only to the matters set forth in Schedule B attached hereto and made a part hereof (collectively, the "Permitted Exceptions"), and has good right, full power and lawful authority to convey and mortgage and grant a security interest in the same, in the manner and form aforesaid; that, except for the Permitted Exceptions, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including, as to the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature; and that the Borrower shall and will warrant and forever defend the title to the Mortgaged Property against the claims of all persons whomsoever.

1.03 Compliance with Laws. Except as set forth in the Loan Agreement, Borrower has received no notice of any violation of any laws, ordinances, rules and regulations of any government or any agency, body or subdivision thereof with jurisdiction bearing on the construction, maintenance, repair or operation of the Mortgaged Property, including without limitation, those relating to zoning, building use, environmental protection, health and safety, which would have a material adverse effect on the Mortgaged Property or any material portion thereof.

1.04 Tax and Insurance Deposits. If required by Lender after an "Event of Default" (as hereinafter defined) shall have occurred hereunder, Borrower will pay to Lender on the first day of each month, together with, and in addition to, the regular installment of principal and interest, until all indebtedness secured hereby is fully paid, an amount equal to one-twelfth (1/12) of the yearly (i) taxes, assessments and other similar charges as estimated by Lender to be sufficient to enable Lender to pay when due all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof, and (ii) premiums for insurance required by Paragraph 1.07 hereof as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all such premiums for insurance. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender or its designee, and no interest shall be payable in respect thereof. Payment by Lender for such purposes will be made by Lender even though subsequent owners of the Mortgaged Property may benefit thereby provided Borrower delivers to Lender, at least thirty (30) days prior to the respective due date of such insurance premiums, originals of all bills, invoices and notices, and with regard to such taxes and assessments, delivers to Lender within ten (10) days of its receipt of same, all bills and notices for such taxes and any notices of changes, or proposed changes, in the amount of taxes or in the assessed value of the Mortgaged Property. Lender shall be entitled to rely upon the amounts specified therein

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without inquiry into the validity or the amounts thereof. In refunding any of the amounts held by Lender pursuant to this Paragraph 1.04, Lender may deal with whoever Lender reasonably believes to be the owner of the Mortgaged Property at such time. Upon demand of Lender, Borrower agrees to deliver to Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and other similar charges and insurance premiums. Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount held by Lender hereunder.

1.05 Taxes, Liens and Other Charges.

(a) The Borrower will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, sewer charges, license fees, dues, charges, fines and impositions of every nature whatsoever charged, imposed, levied or assessed or to be charged, imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property, as well as all income taxes (other than income taxes imposed upon Lender as a consequence of its receipt of interest or other charges under the Notes and this Mortgage), assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality or other taxing authority in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property, or any part thereof. Notwithstanding the foregoing, the Borrower may in good faith, by appropriate proceedings diligently prosecuted (including without limitation payment of the asserted tax or assessment under protest if such payment must be made in order to contest such tax or assessment), contest the validity, applicability or amount of any asserted tax or assessment, and pending such contest, Borrower shall not be deemed in default hereunder if on or before thirty (30) days prior to the due date of the asserted tax or assessment there is established an escrow acceptable to Lender and Borrower deposits cash into said escrow in an amount reasonably estimated by Lender to be adequate to cover the payment of such tax or assessment with interest, costs and penalties, or furnishes other security reasonably acceptable to Lender; and, if the amount of such escrow is insufficient to pay any amount ultimately determined to be due, with all interest, costs and penalties thereon, Borrower shall pay such deficiency no later than the date such amount becomes due.

(b) The Borrower will not suffer any mechanic's, laborer's, materialmen's, manager's, statutory or other lien or any security interest or encumbrance to be created or to remain outstanding

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upon any of the Mortgaged Property. Notwithstanding the foregoing, Borrower may in good faith and by appropriate proceedings diligently prosecuted, contest the validity, applicability or amount of any such mechanics' lien or liens and shall not be in breach of this covenant if, immediately following notice of any such lien, Borrower complies with the requirements for contesting taxes and assessments set forth in Paragraph 1.05(a) of this Mortgage and such other reasonable requirements as Lender may impose to fully protect its interests hereunder, including, without limitation, the right to require Borrower to fully satisfy such lien upon demand by Lender if any such lien becomes a final non-appealable judgment upon the Mortgaged Property, but in no event later than the time the judgment lien may be foreclosed or otherwise enforced against the Mortgaged Property or any portion thereof.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to materially adversely affect the Lender, all sums secured by this Mortgage and all interest accrued thereon shall, upon sixty (60) days' prior written notice, become due and payable forthwith at the option of the Lender, provided, however, in the event that Borrower may lawfully pay or reimburse Lender for any such tax or charge and Borrower does, in fact, pay such tax or charge or so reimburse Lender, then all sums secured by this Mortgage and all interest accrued thereon, will not become due and payable as a result of the passage of such law, order, rule or regulation.

(d) The Borrower will pay when due any charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof and all license fees, rents or other charges for the use of vaults, canopies or other appurtenances to the Mortgaged Property.

1.06 No Tax Credits. The Borrower will not claim or demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Notes or on any other sums secured hereby for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to the Lender's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Notes or this Mortgage.

1.07      Insurance.

(a) The Borrower will procure and maintain for the benefit of the Lender during the term of this Mortgage, (i) a policy or policies insuring the Mortgaged Property against fire, lightning, extended coverage, vandalism and malicious mischief and such other insurable perils as the Lender may require and which are customarily insured against with respect to property similar to that of the Mortgaged Property, (ii) public liability insurance in an amount reasonably acceptable to the Lender, (iii) boiler and machinery insurance in such reasonable amount as Lender may from time to time reasonably require covering physical damage to boilers, pressure vessels, pressure piping and other major components of any centralized heating, air-conditioning and cooling system, or such additional equipment as Lender may reasonably require at any time (such insurance will also cover physical damage to the Mortgaged Property), and (iv) affording such other or additional coverage as from time to time may be reasonably requested by the Lender. The Borrower shall pay for all premiums on such policies, and the Borrower shall furnish to the Lender premium notices at least thirty (30) days before the same are due. The companies issuing such policies, and the amounts, forms, expiration dates and substance of such policies, shall be reasonably acceptable to the Lender, and shall contain, in favor of the Lender, a non-contributory mortgagee clause, or its equivalent, and a Lender's Loss Payable Endorsement, all in form reasonably satisfactory to the Lender, and a Replacement Cost Endorsement, in form reasonably satisfactory to Lender, and shall contain a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Lender. At least thirty (30) days prior to the expiration date of each such policy, a renewal thereof reasonably satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender the originals of all such policies, or certificates thereof together with certified copies of such policies, along with receipts evidencing the payment for all such insurance policies and renewals. The delivery of the insurance policies shall constitute an assignment as further security for the indebtedness secured hereby of all unearned premiums. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies relating to the Mortgaged Property then in force shall pass to the purchaser or grantee.

(b) Lender is hereby authorized and empowered, at its option, to make or file proofs of material loss or damage and to adjust or compromise any material claims under any insurance policies on the Mortgaged Property and to collect and receive the



proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all material losses directly to the Lender provided, that in the event an "Event of Default" (as hereinafter defined) has occurred, payment for all losses shall be made to Lender. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Lender may either apply the net proceeds or any part thereof, at its option, toward restoring the Mortgaged Property or at the option of the Lender, pay such sums either wholly or in part over to the Borrower, on such terms and conditions as the Lender in its discretion may specify, to be used to repair the buildings, structures or improvements, or for any other purpose or object satisfactory to the Lender, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place.

(c) Nothing herein shall be construed to affect or relieve Borrower of the obligation to duly and punctually pay to Lender all sums due, in the manner and at the times set forth, under the Notes.

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1.08 Condemnation. If all or any material part of the Mortgaged Property shall be damaged or taken through condemnation (which term, when used in this Mortgage, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the Lender shall be entitled to all compensation, awards and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights, actions and proceedings, and the right thereto, are hereby assigned by the Borrower to the Lender. After deducting from said condemnation proceeds all of its reasonable expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Lender may apply the net proceeds or any part thereof, at its option, either toward restoring the Mortgaged Property or as a credit on any portion of the indebtedness secured hereby selected by it, whether then matured or to mature in the future, or for any other purpose or object reasonably satisfactory to the Lender and related to Borrower's obligations under the indebtedness secured hereby, without affecting the lien of this Mortgage. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights, actions and proceedings as the Lender may require. No interest shall be allowed to Borrower on account of any condemnation awards held by Lender.

1.09 Care of the Property.

(a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition, ordinary wear and tear excepted. The Borrower will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof provided that such covenant shall not be construed as limiting Borrower in the normal conduct of Borrower's business.

(b) Except as required by law or in connection with capital improvements financed through "Advances" of the proceeds of the "Capital Expenditure Loan" (all as defined in the Loan Agreement) or as otherwise provided herein or in the Equipment Security Agreement, no buildings, structures, improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered in any material respect without the prior written consent of the Lender, which consent will not be unreasonably withheld or delayed.

(c) If the Mortgaged Property or any material part thereof is damaged by fire or any other cause, the Borrower will give prompt written notice of the same to the Lender.

(d) Each of the Lender or its representatives is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage upon reasonable notice.

(e) The Borrower will promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof and with all instruments and documents of record or otherwise affecting the Mortgaged Property, or any part thereof, or the use or occupancy thereof (collectively, the "Requirements"). The Borrower shall have the right to contest, in good faith and with due diligence, the validity of any such Requirements or the application thereof at the Borrower's expense. Prior to any such contest Borrower shall furnish to the Lender a surety company bond, a cash deposit or other security satisfactory to the Lender, sufficient to cover the cost of complying with the contested Requirements, and with interest, penalties, fines, fees and other expenses, as determined by Lender, for the period which such proceedings may reasonably be expected to take, securing compliance with such contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection

therewith. Any proceedings instituted by the Borrower shall be begun as soon as is reasonably possible after Borrower learns of such Requirements and shall be prosecuted to final adjudication with due diligence and reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or security, the Borrower shall promptly comply with any such Requirements and compliance shall not be deferred (i) if at any time the Mortgaged Property, or any part thereof, shall be in danger of being forfeited or lost, (ii) if the Borrower's failure to comply with any such Requirements would materially adversely affect the value of, or the validity of, Lender's lien on the Mortgaged Property or any part thereof, or (iii) no later than ten (10) business days' prior to the time at which any governmental authority shall have the right to attach, or pursue any right or remedy with respect to, the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be materially damaged by fire or other casualty and if, pursuant to the provisions of Section 1.07 hereof, Lender makes available to Borrower the net proceeds with respect to such casualty, then the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition. If, pursuant to the provisions of Section 1.07 hereof, payment on account of damage is payable directly to Borrower, Borrower agrees to repair and restore the Mortgaged Property. If a part of the Mortgaged Property shall be taken through condemnation, the Borrower will promptly restore, repair or alter the remaining property to a complete architectural unit in a manner reasonably satisfactory to the Lender provided, Lender furnishes net condemnation proceeds to Borrower necessary for such restoration, in accordance with Paragraph 1.08.

(g) If any work under this Paragraph 1.09 shall involve either any material structural changes or additions to the Land and/or the improvements thereon, or an estimated expenditure of more than \$100,000.00, (i) no such work shall be undertaken until plans and specifications therefor, prepared by an architect reasonably satisfactory to the Lender, have been submitted to and approved by the Lender, such approval not to be unreasonably withheld, and (ii) the Borrower shall comply with all reasonable requirements which are imposed by the Lender, which requirements may (without limitation) include the furnishing of additional title insurance against liens, architectural inspections and the furnishing of satisfactory evidence that the Borrower will complete all such work.

(h)(I) Except as disclosed in the Loan Agreement, the operations of the Borrower and the condition of, and practices at, the Mortgaged Property comply in all material respects with all applicable federal (including, without limitation, "CERCLA"

and "RCRA" [as hereinafter defined]), state and local environmental, health and safety statutes, rules, ordinances and regulations. Neither the operations of the Borrower nor the condition of, and practices at, the Mortgaged Property are subject to any judicial or administrative proceeding alleging the violation of any federal (including, without limitation, CERCLA and RCRA), state or local environmental, health or safety statutes, rules, laws or regulations, other than those which would not, in the aggregate, have a material adverse effect on the Mortgaged Property, or any portion thereof, or the Borrower's financial condition, results of operations or business. Neither the operations of the Borrower nor the condition of, and practices at, the Mortgaged Property is the subject of any federal, state or local investigation evaluating whether any remedial action is needed to respond to a release of any "Hazardous Materials" or other substance into the environment, other than those which would not, in the aggregate, have a material adverse effect on the Mortgaged Property, or any portion thereof, or the Borrower's financial condition, results of operations or business. Except as disclosed in the Loan Agreement, the Borrower has not filed, nor is it aware of, any notice filed under any federal, state or local statute, rule, law or regulation indicating past or present treatment, storage or disposal of Hazardous Materials or reporting a spill or release of Hazardous Materials or other substances into the environment, other than those which would not, in the aggregate, have a material adverse effect on the Mortgaged Property, or any portion thereof, or the Borrower's financial condition, results of operations or business. The Borrower has no contingent liability of which Borrower has knowledge or reasonably should have knowledge in connection with any treatment, storage, disposal, or release of any Hazardous Materials or other substance into the environment, other than liabilities which would not, in the aggregate, have a material adverse effect on the Mortgaged Property, or any portion thereof, or the Borrower's financial condition, results of operations or business.

(II) Borrower agrees to indemnify, defend and hold harmless Lender from and against any and all liabilities, demands, claims, actions, losses, damages or expenses (including attorneys' fees), whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, arising out of or in any way related to (i) any claim of any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, including, without limitation, those relating to environmental matters, or demanding payment, contribution, remedial action or any other action or inaction with respect to any actual or alleged environmental damage or injury to natural resources, including, without limitation, any claim

relating to or arising out of any Hazardous Materials; or (ii) any breach by Borrower of any representation, warranty or covenant of Borrower contained in this paragraph (h).

(III) "Hazardous Materials" means asbestos, PCBs, and any hazardous waste, toxic substance or related material, including (without limitation) any substance defined or treated as a "hazardous substance" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) ("RCRA") as amended in each case, and any pollutant, contaminant or hazardous, dangerous or toxic chemical, materials or substances within the meaning of any other applicable federal or state statute or county or municipal law or ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.

(IV) Borrower shall at all times, at its own expense, comply with all environmental protection laws, orders and regulations, whether federal, state or local, including, without limitation, CERCLA and RCRA, and shall pay for all costs of confirmation thereof.

1.10 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender, and where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the reasonable opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve (a) the obligations of the Borrower under the Notes, the Security Agreement and this Mortgage, and (b) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, record, file, re-record and/or refile any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender



the agent and attorney-in-fact of the Borrower so to do. The lien and security interest hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.11 Expenses. The Borrower will immediately upon demand pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in any proceedings involving the estate of a decedent, an insolvent or a bankrupt, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as an intervenor or party plaintiff or defendant, affecting or relating to the Notes, the Loan Agreement, the Other Security Documents, the Security Agreement, this Mortgage, the Borrower, or the Mortgaged Property, including, but not limited to, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and secured by the lien and security interest of this Mortgage, and shall bear interest at the rate provided in the Notes for interest payable after default (the "Default Rate").

1.12 Estoppel Affidavits. The Borrower, within ten (10) days after written request from the Lender, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defenses exist against such principal and interest.

1.13 Subrogation. The Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the loans advanced pursuant to the Loan Agreement.

1.14 Impairment of Security. Without limitation of any other provision hereof, the Borrower will not assign, in whole or in part, the rents, income and profits arising from the Mortgaged Property without the prior written consent of the Lender; any such assignment made without the Lender's prior written consent shall be null and void and of no force and effect, but the attempt at making thereof shall, at the option of the Lender, constitute an Event of Default under this Mortgage. Without limitation of the foregoing, the Borrower will not in any other manner impair this Mortgage as security for the payment and performance of the indebtedness secured hereby.

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1.15 Use of Mortgaged Property. The Borrower will not make, suffer or permit, without the prior written consent of the Lender, any use of the Mortgaged Property for any purpose other than that for which the same is used or intended to be used as of the date of this Mortgage.

1.16 Use of Proceeds.

(a) The Borrower represents, warrants and agrees that the proceeds of the Notes secured by this Mortgage will be used for the purposes specified in Section 4(1)(c) of Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes, and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said section of Paragraph 6404.

(b) All agreements between the Borrower and the Lender (including, without limitation, this Mortgage, the Notes, the Loan Agreement and the Other Security Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Notes or any other documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois, and if for any reason whatsoever, the Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not due and payable) and not to the payment of interest.

1.17 Books, Records and Accounts. Borrower will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Mortgaged Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Mortgaged Property, whether such income or expenses be realized by Borrower or by any other person or entity whatsoever excepting sublessors unrelated to and unaffiliated with Borrower and who leased from Borrower portions of the Mortgaged Property for the purposes of occupying same. Lender or its designee shall have the right at any time and from time to time, upon two (2) day's prior notice, to examine such books, records and accounts at the office of Borrower or other person or entity maintaining such books,

records and accounts and to make copies or extracts thereof as Lender may desire. Borrower will also comply with the financial reporting requirements set forth in the Loan Agreement.

1.18 Prohibition of Transfer. Except as otherwise permitted herein or in the Loan Agreement, the Borrower will not, without the prior written consent of Lender, sell, assign, transfer, or convey, whether by operation of law or otherwise, all or any portion of its interest in the Mortgaged Property. No ownership interest in Borrower or any other applicable entity shall be sold, assigned, transferred, conveyed or encumbered if the same would result in a violation of Section 3.01 of the Loan Agreement.

1.19 Prohibition of Further Encumbrance. Except as otherwise permitted herein or in the Loan Agreement, the Borrower will not, without the prior written consent of Lender, further mortgage, grant a deed of trust, pledge or otherwise encumber, whether by operation of law or otherwise, all or any of its interest in the Mortgaged Property. Any such encumbrance made without the Lender's prior written consent shall be null and void and of no force and effect, but the attempt at making thereof shall, at the option of the Lender, constitute an Event of Default under this Mortgage.

1.20 Prohibition of Certain Transactions. Borrower covenants and agrees that it will not be a party to any merger, consolidation, reorganization, acquisition of stock or assets or other transaction not in the ordinary course of Borrower's business, without Lender's prior written consent.

## ARTICLE II

2.01 Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay when due any installment of principal or interest under the Notes or this Mortgage or to make any deposits as required by Paragraph 1.04; or

(b) Any sale, transfer, assignment, further encumbrance or any other act described in Paragraphs 1.18, 1.19 or 1.20 shall occur; or

(c) Failure by the Borrower to duly observe or perform the terms, covenants, conditions and agreements contained in Paragraph 1.07 hereof; or

(d) Failure by the Borrower to duly observe or perform any other term, covenant, condition or agreement contained in this Mortgage, which failure continues for fifteen (15) days after written notice thereof from Lender to Borrower; or

(e) A breach, default or event of default (as described therein) by Borrower under the "First Chicago Loan Documents" (as defined in the Loan Agreement) shall occur and, as a result thereof, First Chicago shall have (i) accelerated all amounts due pursuant to the First Chicago Loan Documents or (ii) given to Borrower notice of such breach, default or event of default and such breach, default or event of default continues beyond the expiration of applicable notice and cure periods if any; or

(f) A "Default" under any Security Agreement or "Event of Default" under the Loan Agreement; or

(g) Failure by ABC Rail Limited to pay when due any installment of principal or interest under the ABC Limited Note; or

(h) (i) The Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any part of its assets or of all or any part of the Mortgaged Property or of all or any part of the rents, issues, profits or revenues thereof, or the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any part of its assets or of all or any part of the Mortgaged Property or of all or any part of the rents, issues, profits or revenues thereof which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the

Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(i) An Event of Default under the ABC Limited Loan Agreement or under any document evidencing or securing the loan made thereby; or

(j) Any representation or warranty made hereunder or in the Loan Agreement shall be or proves to be incorrect or false in any material respect; or

(k) Failure by the Borrower to prepay the Notes in accordance with the provisions of the Notes after Borrower has notified Lender of its intention to make such prepayment; or

(l) Any material adverse change in the financial or operational condition of Borrower; or

(m) Any material change in the nature or line of Borrower's business.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then the entire indebtedness secured hereby and, to the fullest extent permitted by applicable law, any premium with respect to prepayment, shall, at the option of the Lender, immediately become due and payable without notice or demand (notice and demand being hereby waived).

2.03 Lender's Right to Enter and Take Possession, Operate and Apply Revenues.

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender itself, or by such officers or agents as it may appoint, may enter and take possession, of all or any part of the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom, and may have joint access with the Borrower to the books, papers and accounts of the Borrower, as such relate to the Mortgaged Property.

(b) If the Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Lender, the Lender may obtain a judgment or decree conferring on the Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of such Mortgaged Property to the Lender, to the entry of which judgment or decree the Borrower specifically consents.



(c) The Borrower will pay to the Lender, upon demand, all expenses (including, without limitation, reasonable fees and expenses of attorneys, accountants and agents) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under the Notes or this Mortgage; and all such expenses shall, until paid, be secured by this Mortgage and shall bear interest at the Default Rate.

(d) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower to the same extent as the Borrower could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Lender, all as the Lender from time to time may determine to be to its best advantage. The Lender may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting (aa) all reasonable expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other similar charges as the Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, shall apply the remainder of the monies and proceeds so received by the Lender to payment of accrued interest, deposits required in Paragraph 1.04 and to the payment of principal, in such order as Lender may elect.

(e) Except as otherwise provided by law, the Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

2.04 Performance by the Lender of Defaults. If an Event of Default shall occur hereunder, the Lender may (but shall not be obligated to), at its option, pay, perform or observe the same or take any action necessary to cause any representation or warranty to be true, and all payments made or costs or reasonable expenses

incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the Default Rate. The Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Borrower or any person in possession holding under the Borrower. No payment, performance, or observance by Lender shall be deemed a waiver of, or, in any way, relieve Borrower from, any default or Event of Default hereunder.

2.05 Receiver. If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, to the extent permitted by law, without notice (unless otherwise required by law) and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment to the appointment of a receiver, to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. The Borrower will pay to the Lender upon demand (with interest thereon at the Default Rate) all reasonable expenses, including reasonable receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph; and all such expenses shall be secured by this Mortgage and shall bear interest at the Default Rate.

2.06 The Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Notes or the performance of any term, covenant, condition or agreement of this Mortgage or any other rights, (b) to foreclose this Mortgage and to sell the Mortgaged Property pursuant to Paragraph 2.07 herein, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine. The Lender may elect to pursue any one or more of the foregoing.

2.07 Foreclosure of Mortgage. Upon the occurrence of an Event of Default and the acceleration by the Lender of the indebtedness secured hereby, this Mortgage shall be subject to foreclosure and

may be foreclosed as provided by law in case of past-due mortgages; and the Lender shall be authorized to take possession of the Mortgaged Property and, after giving at least twenty-one days notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Mortgaged Property is located, to sell the Mortgaged Property in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Mortgaged Property and foreclosing this Mortgage, including reasonable attorneys' fees, reasonable cost of an appraisal, title fees and premiums, costs and expenses of the receiver if a receiver be appointed to take possession of, and/or operate the Mortgaged Property and costs incurred in the reasonable preservation of the Mortgaged Property; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, liens or other encumbrances, with interest thereon; third, to the payment in full of the balance of the indebtedness secured hereby in such order as Lender may elect, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and fourth, the balance, if any, to be paid to the party or parties appearing of record to be the owner or owners of the Mortgaged Property at the time of the sale, after deducting the cost of ascertaining who is such owner or owners. The Borrower agrees that the Lender may bid at any sale had under the terms of this Mortgage and may purchase the Mortgaged Property if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or it may be offered for sale and sold in any other manner the Lender may elect.

2.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. The Borrower agrees to the full extent permitted by law, that if an Event of Default occurs hereunder, neither the Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Borrower, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do, the benefit of all such laws (including, without limitation, all rights under and by virtue of the homestead exemption laws and the right of redemption laws of

the State of Alabama) and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.09 Discontinuance of Proceedings and Restoration of the Parties. In case the Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

2.10 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.11 Waiver. No delay or omission of the Lender or of any holder of the Notes to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender. No consent or waiver, expressed or implied, by the Lender to or of any breach or default by the Borrower in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of the Borrower hereunder. Failure on the part of the Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by the Borrower.

If the Lender (a) grants forbearance or any extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment of any sums secured hereby; (c) waives or does not exercise any right granted herein or in the Notes or in any other document or instrument securing the Notes; (d) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (e) changes any of the terms, covenants, conditions or agreements of the Notes, the

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Loan Agreement, the Security Agreement or this Mortgage or in any other document or instrument securing the Notes; (f) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (g) consents to the granting of any easement or other right affecting the Mortgaged Property; or (h) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (e) above) the original liability under the Notes, this Mortgage or any other obligation of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing. In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, the Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings relating to the indebtedness secured hereby. The foregoing shall not limit the prohibition against such sale or transfer as set forth in Paragraph 1.18 hereof.

Without limitation of the foregoing, the right is hereby reserved by the Lender to make partial release or releases of the Mortgaged Property, or of any other security held by the Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial releases or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released.

### ARTICLE III

3.01 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its



interest in the Mortgaged Property and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of the Lender, and all costs and expenses incurred by the Lender in connection therewith (including, without limitation, reasonable attorneys' fees) shall be paid by the Borrower to the Lender on demand (with interest at the Default Rate) and shall be additional indebtedness secured hereby.

3.02 The Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Borrower, its creditors or its property, the Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Lender allowed in such proceedings for the entire amount due and payable by the Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Borrower hereunder after such date.

3.03 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon the Borrower and the Lender and their respective successors and assigns. Whenever a reference is made in this Mortgage to the Borrower or to the Lender, such reference shall be deemed to include a reference to the successors and assigns of the Borrower or the Lender.

3.04 Notices. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All such notices, demands and requests by the Lender to the Borrower shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, Airborne or any other insured and reputable overnight delivery service, addressed to the Borrower at the following address:

ABC Rail Corporation  
200 South Wacker Drive  
Chicago, Illinois 6064  
Attention: President

with a copy to:

Jones, Day, Reavis & Pogue  
225 West Washington Street  
Suite 2600  
Chicago, Illinois 60606  
Attention: Douglas H. Walter, Esq.

or to such other address as the Borrower may from time to time designate by written notice to the Lender given as herein required. All notices, demands and requests by the Borrower to the Lender shall be deemed to have been properly given if served in person and if sent by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, Airborne or any other insured and reputable overnight delivery service, addressed to the Lender at:

Citicorp North America, Inc.  
560 Sylvan Avenue  
Englewood Cliffs, New Jersey 07632  
Attention: Area General Manager

and

Citicorp North America, Inc.  
200 South Wacker Drive  
Chicago, Illinois 60606  
Attention: District Manager

with a copy to:

Katten Muchin & Zavis  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60606-3693  
Attention: Steven A. Shapiro, Esq.

or to such other address as the Lender may from time to time designate by written notice to the Borrower given as herein required.

Notices, demands and requests given by mail in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder three (3) days after the time such notice, demand or request shall be deposited in the mails or, if given by overnight delivery service in the manner aforesaid, such notices, demands and requests shall be deemed sufficiently served or given for all purposes hereunder the first business day after such notice, demand or request shall be delivered to such overnight delivery service.

3.05 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for

convenience only and neither limit nor amplify the provisions of this Mortgage itself, and all references herein to Articles, Sections or Paragraphs shall refer to the corresponding Articles, Sections or Paragraphs of this Mortgage unless specific reference is made to such Articles, Sections or Paragraphs of another document or instrument.

3.06 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.07 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.08 Security Agreement. This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Alabama with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. The Lender shall have all the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded the Lender by this Mortgage or any other agreement.

3.09 Modification. No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

3.10 No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should the Lender now own or hereafter acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by the Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

3.11 Delivery of Summons, Etc. If any action or proceeding shall be instituted to evict the Borrower or recover possession of the Mortgaged Property or any part thereof or otherwise materially adversely affecting the Mortgaged Property or this Mortgage, the Borrower will reasonably promptly, upon service thereof on or by the Borrower, deliver to the Lender a true copy of each precept,

petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

3.12 Truth-In-Lending. Borrower represents and agrees that the obligation secured hereby is an exempt transaction under the Truth-In-Lending Act, 15 U.S.C., Section 1601 et seq.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed by its duly authorized officers, all on the day and year first above written.

ABC RAIL CORPORATION, a  
Delaware corporation

By: 

Name: D. Chisholm MacDonal  
Title: Vice President

ATTEST:

By: 

Name: James F. Hinel  
Title: Secretary

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STATE OF ILLINOIS)  
COUNTY OF COOK ) SS

I, Anita Hart, Notary Public in and for said county in said state, hereby certify that D. Chisholm MacDonald, whose name as Vice President of ABC Rail Corporation, a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 15th day of September, 1989.



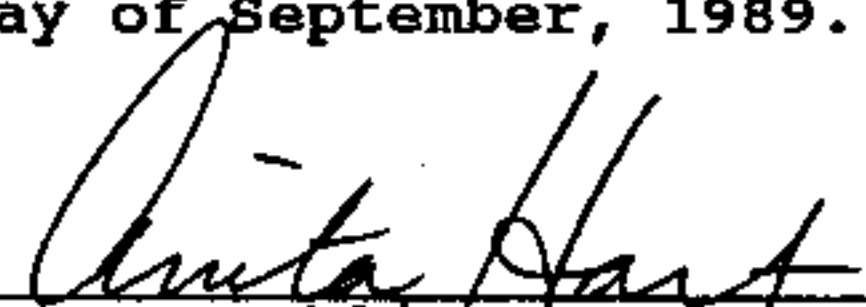
  
Notary Public



EXHIBIT A

LEGAL DESCRIPTION

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

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

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

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LEGAL DESCRIPTION, CONTINUED

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

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

ALL OF THE ABOVE DESCRIBED PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A parcel of land situated in part of Sections 20 and 21, Township 22 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the Southwest corner of Section 21, Township 22 South, Range 2 West, and run in a Northerly direction along the West line of said Section, a distance of 755.27 feet to the Northwesternly right-of-way line of the Southern

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LEGAL DESCRIPTION, CONTINUED

Railroad, being the point of beginning; thence 69 degrees 09 minutes right, in a Northeasterly direction, along said right-of-way, a distance of 292.32 feet; thence 0 degrees 01 minute right in a Northeasterly direction along said right-of-way a distance of 2064.00 feet; thence 86 degrees 46 minutes left, in a Northwesterly direction, a distance of 175.28 feet to the Southern right-of-way line of Woodbine Avenue; thence 93 degrees 14 minutes left, in a Southwesterly direction along said right-of-way line, a distance of 185.00 feet; thence 114 degrees 40 minutes right, in a Northerly direction, a distance of 454.68 feet; thence 90 degrees 00 minutes left, in a Westerly direction; a distance of 643.51 feet; thence 19 degrees 45 minutes 20 seconds right, in a Northwesterly direction, a distance of 54.95 feet; thence 70 degrees 14 minutes 40 seconds right, in a Northerly direction, a distance of 440.00 feet; thence 45 degrees 00 minutes left, in a Northwesterly direction, a distance of 200.00 feet; thence 45 degrees 00 minutes left, in a Westerly direction, a distance of 493.74 feet; thence 45 degrees left in a Southwesterly direction, a distance of 329.67 feet to the Easterly right-of-way line of 18th Street; thence 45 degrees left, in a Southerly direction along said right-of-way line a distance of 484.27 feet; thence 90 degrees right, in a Westerly direction, a distance of 260.00 feet; thence 90 degrees right, in a Northerly direction, a distance of 51.53 feet; thence 90 degrees left, in a Westerly direction, a distance of 435.34 feet; thence 90 degrees 08 minutes left, in a Southerly direction, a distance of 556.79 feet; thence 90 degrees 08 minutes right, in a Westerly direction, a distance of 450.94 feet; thence 90 degrees left, in a Southerly direction, a distance of 304.00 feet; thence 90 degrees right, in a Westerly direction, a distance of 310.00 feet; thence 108 degrees 08 minutes 50 seconds left, in a Southeasterly direction, a distance of 293.40 feet; thence 3 degrees 21 minutes 20 seconds right, in a Southeasterly direction, a distance of 203.00 feet; thence 9 degrees 16 minutes 30 seconds left, in a Southeasterly direction, a distance of 210.18 feet; thence 2 degrees 18 minutes 40 seconds left, in a Southeasterly direction, a distance of 95.74 feet; thence 90 degrees 19 minutes 20 seconds left, in a Northeasterly direction, a distance of 357.29 feet; thence 90 degrees 01 minutes right, in a Southeasterly direction, a distance of 210.01 feet to said Northwesterly right-of-way line of the Southern Railroad; thence 90 degrees left, in a Northeasterly direction along said right-of-way line, a distance of 480.14 feet to the point of beginning.

THERE IS EXCEPTED HEREFROM THE FOLLOWING DESCRIBED PARCEL:

A parcel of land situated in Section 21, Township 22 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the SW corner of said Section 21; thence in a Northerly direction along the West line of said Section 21, a distance of 755.27 feet to the intersection

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LEGAL DESCRIPTION, CONTINUED

with the Northwesterly right of way line of the Southern Railroad; thence 69 degrees 09 minutes right, in a Northeasterly direction along said right of way line, a distance of 137.00 feet to the point of beginning, said point also being that certain point of beginning as described in Deed Book 343, Page 492, in the Office of the Judge of Probate in Shelby County, Alabama; thence continue along last described course, a distance of 155.32 feet; thence 0 degrees 01 minutes right, in a Northeasterly direction along said right of way line, a distance of 571.48 feet; thence 90 degrees left, in a Northwesterly direction, a distance of 255.00 feet; thence 90 degrees left, in a Southwesterly direction, a distance of 257.00 feet; thence 90 degrees right, in a Northwesterly direction, a distance of 65.97 feet; thence 89 degrees 56 minutes left, in a Southwesterly direction, a distance of 469.80 feet; thence 90 degrees 04 minutes left, in a Southeasterly direction, a distance of 321.57 feet to the point of beginning.

**SCHEDULE B**

**PERMITTED EXCEPTIONS**

1. Taxes for 1990 and subsequent years. 1990 taxes are a lien but not due and payable until October 1, 1990.
2. Easement to Southern Natural Gas Corporation recorded in Deed Book 90, page 249, in the Probate Office of Shelby County, Alabama.
3. Transmission line permit to Alabama Power Company recorded in Deed Book 111, page 495, in said Probate Office.
4. Transmission line permit to Alabama Power Company recorded in Deed Book 134, page 31; Deed Book 118, page 582; and Deed Book 139, page 138, in said Probate Office.
5. Easement to Alabama Power Company as recorded in Deed Book 184, page 154, in said Probate Office.
6. Easement to South Central Bell recorded in Real Record 087, Page 195, in Probate Office.
7. Attention is directed to the fact that the plat of survey by Melvin R. Reynolds, Reg. No. 2087, dated August 28, 1989, shows that the fences do not coincide with the property lines.
8. Rights, if any, of property owners adjoining caption lands in and to that portion of insured premises lying between the property lines as shown on survey of Melvin R. Reynolds, Reg. No. 2087, dated August 28, 1989, and the fences inside said property lines, as shown on said survey.
9. Encroachments upon adjoining property by the fences appurtenant to insured premises, as shown on survey of Melvin R. Reynolds, Reg. No. 2087, dated August 28, 1989.
10. Any part of caption lands lying within a public road as shown on survey of Melvin R. Reynolds, Reg. No. 2087, dated August 28, 1989, 18th Street vacated.
11. Easements and licenses granted to General Electric Railcar Wheel and Parts Services Corporation, as recorded in Real Record 207, Page 01.

STATE OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 SEP 27 PM 1:46

*Thomas A. Shawley, Jr.*  
JUDGE OF PROBATE

1. Deed Tax -----	\$	_____
2. Mtg. Tax -----	\$	1,650.00
3. Recording Fee -----	\$	82.50
4. Indexing Fee -----	\$	3.00
5. No Tax Fee -----	\$	_____
6. Certified Stamp Fee --	\$	1.00
Total -----	\$	1736.50



