CHICAGO AND NORTHWESTERN SYSTEM TRANSPORTATION COMPANY

RECORDATION NO. 14082 Filed 1425
JUN 30 1983 -10 20 AM
INTERSTATE COMMERCE COMMISSION

3-181A030

File No: A-11547

No.
Date JUN 30 1983
Fee $ 200.00
ICC Washington, D. C.

OFFICE OF THE SECRETARY
DIRECT DIAL NUMBER
312 - 559-6165

RECORDATION NO. 14081 Filed 1425
JUN 30 1983 -10 20 AM
INTERSTATE COMMERCE COMMISSION

Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to Section 11303, (formerly Section 20c) of the Interstate Commerce Act, attached hereto for recordation are counterparts of Mortgage Indenture and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement A for $35,000,000.00 and Mortgage Indenture and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement B for $58,000,000.00, both dated as of June 29, 1983 covering Mortgages by Chicago and North Western Transportation Company of all of its property including but not limited to all interests of the Company in railroad rolling stock.

The names and addresses of the parties to the transaction are as follows:

Mortagors	Mortgagees
Chicago and North Western Transportation Company One North Western Center 165 North Canal Street Chicago, Illinois 60606	Continental Illinois National Bank and Trust Company of Chicago 231 South LaSalle Street Chicago, Illinois 60697
Midwestern Railroad Properties, Incorporated One North Western Center 165 North Canal Street Chicago, Illinois 60606	The First National Bank of Chicago One First National Plaza Chicago, Illinois 60670

Enclosed is our check in the amount of $100.00 to cover the filing fees for both recordings. Please assign separate recordation numbers to each Indenture. Keep one counterpart for each document and return the other counterparts for each showing your recordation data.

RECORDATION NO. 14083 Filed 1425
JUN 30 1983 -10 20 AM
INTERSTATE COMMERCE COMMISSION

Very truly yours,

J. S. Edwards
Assistant Secretary

RECEIVED
JUN 30 10 15 AM '83
I.C.C.
FEE OPERATION BR.

Enclosures

cc: G. R. Charles
R. D. Smith
F. E. Cunningham
F. R. Guenther, Attn: J. James
D. E. Stockham, Attn: G. Ogurek
Z. Steiger
Arthur Andersen & Co.
Attn: G. Holdren

RECORDATION NO. 14084 Filed 1425
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INTERSTATE COMMERCE COMMISSION

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14082
RECORDATION NO. Filed 1425

JUN 30 1983 - 10 20 AM

INTERSTATE COMMERCE COMMISSION

MORTGAGE INDENTURE AND DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT A

Dated as of June 29, 1983

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by

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

MIDWESTERN RAILROAD PROPERTIES, INCORPORATED,

Mortgagors

to

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

and

THE FIRST NATIONAL BANK OF CHICAGO,

as Co-Agents, Mortgagees

Securing, *Inter Alia*,
Mortgagors' Floating Rate Mortgage Notes due June 29, 1993
in the Aggregate Original Principal Amount of $35,000,000

This instrument drawn by
Richard T. Kortright of Mayer, Brown & Platt
231 South LaSalle Street, Chicago, Illinois 60604

This instrument shall be deemed to be a DEED OF TRUST with respect to the Mortgaged Property (as defined herein) situated in the States of Missouri and Nebraska.

This instrument is a Uniform Commercial Code Financing Agreement for fixture filing.

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EXHIBIT A — Form of A Note
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SCHEDULE I — List of the Banks
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MORTGAGE INDENTURE AND DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT A*

THIS MORTGAGE INDENTURE AND DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT A* (hereinafter, together with any amendments and supplements which may hereafter be made hereto, called "Mortgage and Security Agreement"), dated as of the 29th day of June, 1983, by CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (herein called "CNW") and MIDWESTERN RAILROAD PROPERTIES, INCORPORATED, a Delaware corporation (herein called "MRPI"; CNW and MRPI, together with their successors and assigns, are hereinafter collectively sometimes called "Mortgagors"), having their principal offices at One North Western Center, Chicago, Illinois 60606, to CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association (hereinafter called "Continental"), having its principal office at 231 South LaSalle Street, Chicago, Illinois 60697, and THE FIRST NATIONAL BANK OF CHICAGO, a national banking association (hereinafter called "First National"), having its principal office at One First National Plaza, Chicago, Illinois 60670, as co-agents under the Loan Agreement referred to in the fourth recital hereto (Continental and First National, as such co-agents, together with any successor or successors thereto as co-agents under the Loan Agreement and any separate or additional mortgagees or trustees appointed and acting as mortgagees from time to time hereunder, are hereinafter collectively sometimes called "Mortgagees").** Capitalized terms used herein without other definition have the respective meanings specified in *Article I.*

WITNESSETH:

WHEREAS, CNW is engaged in the business of owning and operating the railroad commonly known as the Chicago and North Western Railroad (herein called the "Railroad"), which includes on the date hereof the lines of railroad and track, properties and interests therein specifically described in *clauses FIRST* and *FOURTH* of the *Granting Clause*;

WHEREAS, CNW owns directly, beneficially and of record all of the outstanding shares of capital stock of MRPI;

WHEREAS, pursuant to the contract, dated February 24, 1983, between William M. Gibbons, Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company (said trustee, together with any successor from time to time appointed by the Bankruptcy Court and acting, being herein called the "Trustee"), and CNW, as amended by the First Supplemental Agreement, dated March 15, 1983, between the Trustee and CNW, and the Second Supplemental Agreement, dated March 18, 1983, between the Trustee and CNW (the contract, as so supplemented and amended and as the same may hereafter be amended, modified and supplemented in compliance with the provisions of *clause (a)* of *Section 6.2.8* of the Loan Agreement, is herein called the "Purchase Agreement"), MRPI has purchased or is purchasing simultaneously with the delivery hereof the railroad lines, properties and interests in property specifically described in *clauses SECOND* and *FIFTH* of the *Granting Clause* (herein called the "New Track");

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* This instrument shall be deemed to be a DEED OF TRUST with respect to the Mortgaged Property (as defined herein) situated in the States of Missouri and Nebraska.

** With respect to Mortgaged Property located in the State of Missouri, David M. Harding, Esq., who resides in the State of Missouri and is an attorney and member of The Missouri Bar having his principal office and place of business at 515 Commerce Bank Building, Kansas City, Missouri 64106 (herein, together with his successors in such capacity hereunder, referred to as the "Missouri Trustee"), shall serve as co-trustee. With respect to Mortgaged Property located in the State of Nebraska, the Chicago Title Insurance Company, a title insurance company authorized to do business in the State of Nebraska, having its principal office and place of business at 111 West Washington Street, Chicago, Illinois 60602 (herein, together with its successors in such capacity hereunder, referred to as the "Nebraska Trustee"), shall be trustee for the benefit of the Noteholders.

WHEREAS, Mortgagors are authorized by law and deem it necessary from time to time to borrow money for proper corporate purposes and to that end in the exercise of said authority have duly authorized and directed the execution and delivery of the Loan Agreement, dated as of February 15, 1983, among Mortgagors, certain commercial banking institutions named in *Schedule 1* hereto (the "Banks") and Continental and First National as co-agents for the Banks (herein, together with any successor or successors thereto, collectively called "Co-Agents") (such Loan Agreement, together with any amendments and supplements which may hereafter be made thereto, herein called the "Loan Agreement"), pursuant to which the Banks are making loans to Mortgagors in the aggregate original principal amount of $93,000,000 (herein called the "Loans") to finance the purchase of the New Track;

WHEREAS, the Loans are evidenced by Mortgagors' (a) Floating Rate Mortgage Notes due on June 29, 1993, in the aggregate original principal amount of $35,000,000, substantially in the form of *Exhibit A* attached hereto (herein, as such notes may be modified, amended, renewed, extended or otherwise changed from time to time, together with any notes or other obligations issued in renewal, extension or replacement thereof or in exchange or substitution therefor, collectively called the "A Notes"), and (b) Floating Rate Mortgage Notes due on August 15, 1991, in the aggregate original principal amount of $58,000,000, substantially in the form of *Exhibit B* attached hereto (herein, as such notes may be modified, amended, renewed, extended or otherwise changed from time to time, together with any notes or other obligations issued in renewal, extension or replacement thereof or in exchange or substitution therefor, collectively called the "B Notes"; the A Notes and the B Notes are herein collectively called the "Notes");

WHEREAS, the A Notes are secured, among other things, by this Mortgage and Security Agreement and the B Notes are secured, among other things, by the Mortgage Indenture and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement B, dated as of the date hereof, by Mortgagors to Mortgagees covering the same properties and interests in property which are subject hereto (herein, together with any amendments and supplements which may hereafter be made thereto, the "B Mortgage");

WHEREAS, this Mortgage and Security Agreement is a purchase money mortgage, Mortgagors having applied the entire proceeds of the Loans to the purchase of the New Track; and

WHEREAS, all acts and things prescribed by law and by the respective certificates of incorporation and by-laws of each of the Mortgagors necessary to make the Loan Agreement, the Notes, the B Mortgage and this Mortgage and Security Agreement valid and legally binding on Mortgagors in accordance with their respective terms, have been duly done and performed;

NOW, THEREFORE, THIS MORTGAGE AND SECURITY AGREEMENT WITNESSETH, that in order to induce the Banks to make the Loans in accordance with the terms, conditions and provisions of the Loan Agreement and to secure the payment of the principal of and interest on the A Notes, according to their tenor and effect, the payment of all other Liabilities and the performance and observance of the covenants, agreements and conditions contained in this Mortgage and Security Agreement, the Loan Agreement and the other Instruments executed and delivered by Mortgagors pursuant to or in connection with the Loan Agreement and evidencing or securing the Loans and the other Liabilities (herein collectively called the "Loan Documents"), and in consideration of the premises and of the sum of Ten Dollars in hand paid by the Banks to Mortgagors upon the execution and delivery of this Mortgage and Security Agreement, the receipt and sufficiency whereof are hereby acknowledged, Mortgagors have granted, bargained, sold, conveyed, released, confirmed, mortgaged, warranted (subject to the provisions of, and to the extent set forth in, *Section 3.1*), pledged, granted a security interest in, assigned, transferred and set over, and by these presents do hereby irrevocably grant, bargain, sell, convey, release, confirm, mortgage, warrant (subject to the provisions of, and to the extent set forth in, *Section 3.1*), pledge, grant a security interest in, assign, transfer and set over, WITH POWER OF SALE, unto and in favor of Mortgagees and their successors and assigns and to such separate and co-trustees appointed herein and their successors and assigns forever, subject to the terms and conditions of this Mortgage and Security Agreement, all of the estate, right, title and interest of Mortgagors in and to the following described property, privileges and franchises:

FIRST. All property, real, personal and mixed, and all rights therein and with respect thereto, comprising the lines of railroad and tracks now or hereafter owned by CNW, including the following (main

and principal branch lines of railroad now owned by CNW are described in I. through XV., below, with approximate mileages shown being as at January 1, 1983):

		Miles
I.	A line of railroad beginning adjacent to the Passenger Terminal Station, near the intersection of Canal and Madison Streets, in the City of Chicago, Illinois, and extending in a westerly direction by way of Dixon, in the State of Illinois, thence westerly by way of Clinton, Cedar Rapids and Boone, in the State of Iowa, to Council Bluffs, Iowa, having a length of about	484.42
II.	A line of railroad extending from Nelson, Illinois, southerly via Peoria to De Camp, Illinois, including a line from Kickapoo Junction to Peoria Junction, Illinois, having a length of about	201.58
III.	A line of railroad beginning at Missouri Valley, in the State of Iowa, and extending westerly (including between California Junction, Iowa, and Fremont, Nebraska) via Norfolk, Oakdale and Chadron, in the State of Nebraska, to Crandall, in the State of Wyoming, having a length of about	511.10
IV.	A line of railroad extending westerly from Shawnee to Casper, Wyoming, having a length of about	79.10
V.	A line of railroad beginning at Clybourn, in the City of Chicago, State of Illinois, and extending therefrom in a northwesterly direction by way of Crystal Lake and Harvard, in the State of Illinois, and Clinton Junction, Janesville, Madison and Elroy, in the State of Wisconsin, having a length of about	201.50
VI.	A line of railroad beginning at Winona, Minnesota, and extending westerly therefrom via Mankato and Tracy in the State of Minnesota; and thence by way of Huron and Pierre to Rapid City, in the State of South Dakota, having a length of about	636.32
VII.	A line of railroad beginning adjacent to the Passenger Terminal Station, near the intersection of Canal and Madison Streets, in the City of Chicago, State of Illinois, and extending therefrom northerly by way of Evanston, Illinois, Kenosha, Racine, Milwaukee, Fond du Lac, Oshkosh and Green Bay, in the State of Wisconsin, and via Menominee and Escanaba to Ishpeming, in the State of Michigan, having a length of about	386.54
VIII.	A line of railroad beginning at the Burlington Northern Railway Terminal at Minneapolis, Minnesota, and extending in an easterly direction via St. Paul and Stillwater Junction, Minnesota, and Hudson, Woodville, Menomonie Junction, Fairchild and Merrillan to Elroy in the State of Wisconsin, having a length of about	187.78
IX.	A line of railroad beginning at Eau Claire, Wisconsin, and extending therefrom northerly via Chippewa Falls, Rice Lake, Tuscobia, Spooner, Trego, Hawthorne, Itasca and Superior, Wisconsin, to Duluth, Minnesota, having a length of about	152.73
X.	A line of railroad beginning at the Passenger Terminal at St. Paul, Minnesota, and extending therefrom southwesterly via Cliff, Shakopee, Merriam, Mankato, Lake Crystal, Madelia, St. James and Worthington, Minnesota, and LeMars, Iowa, to Sioux City, Iowa, having a length of about	241.23
XI.	A line of railroad extending from Oelwein, Iowa, southwesterly through the Cities of Waterloo, Marshalltown and Des Moines, Iowa, St. Joseph, Missouri, and Leavenworth, Kansas, to Kansas City, Missouri, having a length of about	318.28
XII.	A line of railroad extending from Manly, Iowa, by way of Mason City and Fort Dodge, Iowa, to Sommers, Iowa, having a length of about	96.57
XIII.	A line of railroad extending from Oelwein, Iowa, to Coulter, Iowa, having a length of about	80.50
XIV.	A line of railroad beginning in Minneapolis, Minnesota, and extending in a southwesterly direction to Hopkins, Minnesota, then in a southerly direction to Albert Lea, Minnesota, having a length of about	104.90

		Miles	Miles
XV.	A line of railroad beginning in Northwood, Iowa, and extending in a southerly direction to Manly, Mason City, Marshalltown and Oskaloosa to Albia, all in the State of Iowa, having a length of about		179.29

SECOND. All property, real, personal and mixed, and all rights therein and with respect thereto, comprising the lines of railroad and tracks now or hereafter owned by MRPI, including the following (main and principal branch lines of railroad now owned by MRPI are described in I. through IX., below, with approximate mileages shown being as at January 1, 1983):

		Miles	Miles
I.	A line of railroad extending from Minneapolis—St. Paul, Minnesota, to Kansas City, Missouri, as follows:		
	A. Rock Jct. (M.P. 5.2)—Q Jct. (M.P. 1.54) (including industrial trackage to American Hoist & Derrick Co.) (M.P. 8.44)	6.9	
	B. Inver Grove Switch (M.P. 343.86)—Rosemount (M.P. 333.71) (including 26.99 miles of trackage rights over MILW between MP 333.71 and MP 306.62)	10.15	
	C. Comus (M.P. 306.62)—Northwood (M.P. 236.41) (22.17 miles of trackage rights over C&NW used between M.P. 236.41 and 191.08)	70.21	
	D. Clear Lake Jct. (M.P. 191.08)—Short Line (M.P. 73.6)	117.48	
	E. Short Line (M.P. 73.6)—Allerton (M.P. 0.0) (364.79)	73.6	
	F. Allerton (0.0) (M.P. 364.79)—Trenton (M.P. 415.9)	49.64	
	G. Trenton (M.P. 415.9)—Air Line Jct. (M.P. 502.93) (including (x) agreements with MILW for trackage rights and joint ownership and operation between Polo and Sheffield and (y) trackage rights agreement over KCS, Air Line Jct.—Sheffield, Missouri)	87.89	
	H. Short Line Yard (M.P. 350.8)—West Des Moines (M.P. 365.0)	14.20	430.07
II.	A line of railroad extending from Dows (M.P. 112.54) to Clarion (M.P. 128.60)		16.06
III.	A line of railroad extending from Goldfield (M.P. 135.75) to Estherville (M.P. 206.9)		71.15
IV.	A line of railroad extending from Bricelyn (M.P. 57.62) to Sibley (M.P. 259.49), as follows:		
	A. Bricelyn (M.P. 57.62)—Esterville (M.P. 0.6)	57.02	
	B. Esterville (M.P. 206.9)—Sibley (M.P. 259.49)	52.59	109.61
V.	A line of railroad extending from Belmond (M.P. 128.71) to Forest City (M.P. 158.1)		29.39
VI.	A line of railroad extending from Royal (M.P. 502.74) to Palmer (M.P. 453.60) (including trackage rights agreement over MILW between Emmetsburg, Spencer and Webb, Iowa)		49.14
VII.	A line of railroad extending from Cedar Rapids, Iowa (M.P. 96.3 to M.P. 100.12)		3.82
VIII.	A line of railroad located in Hartley, Iowa (including trackage rights agreement over MILW between Emmetsburg and Hartley, Iowa)		.10
IX.	A line of railroad extending from Carlisle (M.P. 368.3)—Indianola (M.P. 379.6)		11.30
		TOTAL	720.64

THIRD. All other property, real, personal and mixed, and all interests therein and with respect thereto, constituting or included in:

A. all other branch lines owned by the Mortgagors and all lines of railroad owned by the Mortgagors crossing or connecting with any of the lines described in *clauses FIRST* and *SECOND*, above, or crossing or extending from points on said crossing or connecting lines;

B. all and singular the main tracks owned by the Mortgagors additional to the first main track and used as part of and in connection with any of the main, branch, crossing or connecting lines referred to in *clauses FIRST* and *SECOND*, above;

C. all and singular the spur tracks, yard tracks, side tracks, turnouts, passing tracks and shop tracks owned by the Mortgagors and used, or provided for use, in connection with any of the main, branch, crossing or connecting lines referred to in *clauses FIRST* and *SECOND*, above;

D. all and singular other lines of railroad and tracks now or hereafter owned by the Mortgagors.

FOURTH. All leases, contracts, agreements, options and other rights to acquire any tangible or intangible property or any interest therein (which property, if owned by CNW, would be subject to the lien and/or Security interest of this Mortgage and Security Agreement) and all other Instruments, and all easements, privileges, licenses, rights of way or use, trackage rights and all other interests, rights and privileges, now owned or hereafter acquired by CNW, or in which CNW now has or may hereafter have any interest, for use upon or in connection with or appertaining to any of the lines of railroad of CNW or relating to the ownership, use or operation of any terminals or union or other stations situated along, or at the terminus of, any of the lines of railroad of CNW, or relating to the use of any telegraph, telephone or other communication facilities along any of the lines of railroad of CNW, including the following leases, contracts and agreements now owned by CNW (approximate mileages shown being as at January 1, 1983):

		Miles
1.	With the Union Pacific Railroad Company, covering trackage rights between Council Bluffs, Iowa, and South Omaha, Nebraska, having a length of about	8.73
2.	With the Consolidated Rail Corporation, covering trackage rights between Roosevelt and Pershing Roads, Chicago, Illinois, having a length of about	2.77
3.	With the Peoria and Pekin Union Railway Company, (a) covering the joint use of the freight station and other facilities at Peoria, Illinois, and trackage rights between Peoria Junction and Peoria, Illinois, having a length of about	2.02
	(b) and also covering trackage rights between Iowa Junction and C.&N.W. Jct., near Peoria, Illinois, having a length of about	.77
4.	With the Burlington Northern Railroad Company, granting permanent trackage rights between Illco and Shobon, Wyoming, having a length of about	87.16
5.	With the Illinois Terminal Railroad Company, covering trackage rights between Madison, and Bridge Junction, Illinois, having a length of about	2.58
6.	With Green Bay and Western Railroad Company, covering trackage rights in Green Bay, Wisconsin, having a length of about	.30
7.	With the Illinois Central Gulf Railroad Company, covering trackage rights between Council Bluffs, Iowa, and Omaha, Nebraska, having a length of about	4.51
8.	With the Burlington Northern Railroad Company, covering trackage rights in Des Moines, Iowa, having a length of about	.52
9.	With the Burlington Northern Railroad Company, covering trackage rights in St. Joseph, Missouri, having a length of about	.81
10.	With St. Joseph Terminal Railroad Company, covering trackage rights in St. Joseph, Missouri, having a length of about	.40
11.	With the Atchison, Topeka & Santa Fe Railway Company, covering trackage rights between St. Joseph, and Bee Creek, Missouri, having a length of about	7.63
12.	With the Leavenworth Depot & Railroad Company, covering trackage rights in Leavenworth, Kansas, having a length of about	.20
13.	With the Union Pacific Railroad Company, covering trackage rights in Leavenworth, Kansas, having a length of about	.06
14.	With the Missouri Pacific Railroad Company, covering trackage rights between Leavenworth, Kansas, and Kansas City, Kansas, having a length of about	24.88
15.	With the Kansas City Terminal Railroad Company, covering trackage rights in Kansas City, Missouri, having a length of about	2.84
16.	With Winona Bridge Company, covering trackage rights in Winona, Minnesota, having a length of about	.06
17.	With Burlington Northern Railroad Company, covering trackage rights in Winona, Minnesota, having a length of about	1.22
18.	With MRPI, covering trackage rights in Des Moines, Iowa, having a length of about	3.91

		Miles
19.	With Burlington Northern Railroad Company, covering trackage rights between Superior, Wisconsin, and Duluth, Minnesota, having a length of about	1.59
20.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights in Milwaukee, Wisconsin, having a length of about	10.89
21.	With the Illinois Central Gulf Railroad Company, covering trackage rights between Tara and Fort Dodge, Iowa, having a length of about	5.67
22.	With the Chicago, Rock Island and Pacific Railroad Company, covering trackage rights between Givin and Eddyville, Iowa, having a length of about	3.56
23.	With MRPI, covering trackage rights between Albert Lea, Minnesota, and Northwood, Iowa, having a length of about	16.15
24.	With the St. Paul Union Depot Company, covering trackage rights in St. Paul, Minnesota, having a length of about	.74
25.	With Burlington Northern Railroad Company, covering trackage rights between St. Paul and Minneapolis, Minnesota, having a length of about	10.89
26.	With the Illinois Central Gulf Railroad Company, covering trackage rights between LeMars and Sioux City, Iowa, having a length of about	25.95
27.	With the Soo Line Railroad Company, covering trackage rights between Wisconsin Rapids and Nekoosa, Wisconsin, having a length of about	6.56
28.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Tunnel City, Wisconsin, and Winona, Minnesota, having a length of about	67.79
29.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Wisconsin Rapids and Necedah, Wisconsin, having a length of about	37.42
30.	With the Burlington Northern Railroad Company, covering trackage rights between Sioux City, Iowa, and Ferry, Nebraska, having a length of about	3.82
31.	With the Burlington Northern Railroad Company, covering trackage rights in Des Moines, Iowa, having a length of about	2.65
32.	With MRPI, covering trackage rights between South St. Paul and Inver Grove, Minnesota, having a length of about	3.66
33.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights in Aberdeen, South Dakota, having a length of about	1.90
34.	With the Burlington Northern Railroad Company, covering trackage rights between Minneapolis and St. Paul, Minnesota, having a length of about	9.82
35.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights in Iron Mountain, Michigan, having a length of about	1.30
36.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Merriam Park and Norwood, Minnesota, having a length of about	43.64
37.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Wolsey and Aberdeen, South Dakota, having a length of about	70.60
38.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Northfield and Faribault, Minnesota, having a length of about	13.42
39.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Schofield and Rothschild, Wisconsin, having a length of about	1.58
40.	With the Indiana Harbor Belt Railroad Company, covering trackage rights between Elmhurst and Blue Island, Illinois, having a length of about	20.80
41.	With the Burlington Northern Railroad Company, covering trackage rights between St. Paul, Minnesota, and Superior, Wisconsin, having a length of about	134.80
42.	With the Duluth, Missabe and Iron Range Railway Company, covering trackage rights between Saunder and South Itasca, Wisconsin, having a length of about	5.26
43.	With Western, covering trackage rights between Crandall and Shawnee, Wyoming, having a length of about	45.20
44.	Lease between MRPI and CNW with respect to the New Track	957.94

FIFTH. All leases, contracts, agreements, options and other rights to acquire any tangible or intangible property or any interest therein (which property, if owned by MRPI, would be subject to the lien

and/or security interest of this Mortgage and Security Agreement) and all other Instruments, and all easements, licenses, rights of way or use, trackage rights and other interests, rights or privileges, now owned or hereafter acquired by MRPI, or in which MRPI now has or may hereafter have any interest, for use upon or in connection with or appertaining to any of the lines of railroad of Mortgagors or relating to the ownership, use or operation of any terminals or union or other stations situated along, or at the terminus of, any of the lines of railroad of Mortgagors, or relating to the use of any telegraph, telephone or other communications facilities along any of the lines of Mortgagors, including all right, title and interest of MRPI in, to and under the following leases, contracts and agreements:

		Miles
1.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering trackage rights between Rosemount and Comus, Minnesota, having a length of about	27.1
2.	With the Kansas City Southern Railway Company covering trackage rights between Air Line Junction and Sheffield, Missouri, having a length of about	0.8
3.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering trackage rights between Emmetsburg via Spencer to Webb, Iowa, having a length of about	38.5
4.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering trackage rights between Emmetsburg and Hartley, Iowa, having a length of about	43.7
5.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering paired trackage between Polo and Birmingham, Missouri, having a length of about	37.7
6.	With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering trackage rights between Birmingham and Air Line Junction, Missouri, including a connection to the Kansas City Southern Railway Company, having a length of about	4.4
7.	With CNW, as follows:	
	(a) covering crossover track in Des Moines, Iowa, at Hull Avenue Yard, north of Easton Boulevard	0.1
	(b) covering joint line between Des Moines and Gowrie, Iowa	62.7
	(c) covering joint use of tracks and facilities between Manly, Iowa, and Northwood, Minnesota	11.5
	(d) covering trackage and facilities between Clear Lake Junction and Manly, Iowa	10.8
8.	All easements and rights of MRPI in and to the Excluded Land (as defined in the Purchase Agreement) granted by the Trustee or any successor or assign under or pursuant to the Purchase Agreement;	

SIXTH. All property, real, personal and mixed, and rights therein or with respect thereto, including all lines of railroad and tracks, and all leases, contracts, agreements, options and other rights to acquire tangible or intangible property or any interest therein (which property, if owned by Mortgagors, or either of them, would be subject to the lien and/or security interest of this Mortgage and Security Agreement) and all other Instruments, and all easements, licenses, rights of way or use, trackage rights and other interests, rights or privileges, now owned or hereafter acquired by Mortgagors if and to the extent that such property, lines of railroad, tracks, leases, contracts, agreements, options, Instruments, easements, privileges, licenses, rights of way or use, trackage rights, interests or rights are necessary for the continuous, uninterrupted and full use, operation and enjoyment of the properties, rights and interests of Mortgagors referred to in *clauses FIRST, SECOND, THIRD, FOURTH* and *FIFTH*, above.

SEVENTH. All other land and interests and estates therein now owned or hereafter acquired by Mortgagors or otherwise made subject to the lien hereof from time to time by supplemental mortgage or otherwise, together with all and singular all right, title and interest of Mortgagors in and to: the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise pertaining to such lands and interests and estates therein (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, riparian rights, water, water rights, water stock, oil, gas, minerals, coal and other substances of any kind or character underlying or relating to such lands and interests and estates therein and any interest therein; any street, road, highway or alley, vacated or other, adjoining the land or any part thereof at any time subject to the lien hereof; all strips and gores belonging,

adjacent or pertaining to such lands or such interests and estates; and any after-acquired title to any of the foregoing.

EIGHTH. All right, title and interest of Mortgagors in and to: all buildings, structures and other improvements and any additions and alterations thereto or replacements thereof, now or hereafter built, constructed, installed or located upon any of the lands subject to the lien of this Mortgage and Security Agreement; all affixed or installed superstructures, tracks, roadbeds, bridges, trestles, culverts, fences, posts, signs, grade crossings, grade crossing protection signals, ties, rails, fastenings, anchors, braces, chairs, plates, bars, bolts, washers, nuts, spikes, switches and switch devices, electrical, signal and communication facilities and equipment, including traffic control systems, hot box detectors, depots, station buildings, and other miscellaneous buildings, sheds, shanties, and all other structures, fixtures, affixed equipment and facilities, and all other appurtenances thereto of whatsoever kind and description in any manner forming a part of the properties subject hereto, or now or hereafter located thereupon or connected therewith; all furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building and construction materials and other articles of every kind and nature whatsoever and all replacements thereof, now or hereafter affixed or attached to, installed in or on, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupation, operation, development and maintenance of the lands subject hereto or such buildings, structures and other improvements, including, but not limited to, partitions, furnaces, boilers, oil burners, radiators and piping, plumbing and bathroom fixtures, refrigeration, heating, ventilating, air conditioning and sprinkler systems, other fire prevention and extinguishing apparatus and materials, vacuum cleaning systems, gas and electric fixtures, incinerators, compactors, elevators, engines, motors, generators and all other articles of property which are considered fixtures under applicable law.

NINTH. All equipment (whether or not transportation equipment) and additions, betterments and improvements thereto, all building materials, construction materials, goods, appliances, supplies, blinds, shades, drapes, carpets, floor coverings, office equipment, growing plants and shrubberies, control devices, motor vehicles, tools, furnishings, furniture, lighting, non-structural additions to the lands and improvements subject to the lien of this Mortgage and Security Agreement, and all other tangible property of every kind or character, together with all replacements thereof, now or hereafter owned by Mortgagors or in which Mortgagors now have or may hereafter have any interest.

TENTH. All option rights and purchase contracts relating to property which, if owned by Mortgagors, or either of them, would be subject to the lien and/or security interest of this Mortgage and Security Agreement; all goodwill, trademarks, trade names, books and records and general intangibles of Mortgagors; all contract rights, instruments, chattel paper and other rights of Mortgagors for the payment of money for property sold or lent, for services rendered, for money lent or for advances or deposits made; and all other intangible property of Mortgagors.

ELEVENTH. All rights of Mortgagors in, to and under all leases, licenses, occupancy agreements, concessions and other arrangements, oral or written, now existing or hereafter entered into, whereby any Person agrees to pay money or any other consideration for the use, possession or occupancy of, or any estate in, any line of railroad or tracks or any other property of Mortgagors or any portion thereof or interest therein (herein collectively referred to as the "Leases"), and all rents, income, profits, benefits, avails and advantages of, and claims against guarantors under, any thereof and any cash or other securities deposited thereunder to secure performance by such Persons of their obligations thereunder, and the right, upon the occurrence of any Event of Default hereunder, to receive and collect the rents and all other amounts paid or payable thereunder.

TWELFTH. All corporate rights, powers, franchises, privileges and immunities now or hereafter owned or possessed by Mortgagors, and all rights of Mortgagors in, to and under all permits, licenses, certificates, approvals and other authorizations which now or at any time hereafter may be necessary for or appurtenant to the use, operation, management, maintenance, renewal, alteration or improvement of any of the lines of railroad of Mortgagors or of any other property now or hereafter subject to the lien and security interest of this Mortgage and Security Agreement.

THIRTEENTH. All rights of Mortgagors, or either of them, as seller or borrower in, to and under any agreement, contract, commitment, understanding or arrangement pursuant to which Mortgagors have obtained the agreement of any Person to pay or disburse any money or any other property or consideration

for or in connection with the sale of any of the above-described Mortgaged Property or any portion thereof or interest therein or any borrowing on security of any of the above-described Mortgaged Property or any portion thereof or interest therein.

FOURTEENTH. All other property and interests in property of every kind and description which Mortgagors may hereafter convey, mortgage, pledge, assign or transfer to Mortgagees.

FIFTEENTH. All shares of stock, proprietary interests and indebtedness (whether or not evidenced by any instrument), now owned or hereafter acquired by CNW, of or in MRPI.

SIXTEENTH. All rents, issues, profits, royalties, avails, income and other benefits derived or owned, directly or indirectly, by Mortgagors from the property, estates and interests described in *clauses FIRST* through *FIFTEENTH.*

SEVENTEENTH. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including proceeds of insurance and condemnation awards.

For purposes of the foregoing *clauses FIRST* through *SEVENTEENTH*:

A. The term "lines of railroad and tracks" shall include all main or branch or cut-off lines of railroad, and all spur, industrial, switch, connecting, storage, yard, terminal or other tracks, and, unless otherwise specified, "lines of railroad of Mortgagors" shall include all lines of railroad which Mortgagors may own in fee, either solely or jointly, or over which Mortgagors may operate or have any right to operate under any lease or trackage or other agreement.

B. The terms "equipment", "inventory", "accounts", "chattel paper", "documents", "instruments", "money", and "general intangibles" shall have the same respective meanings as such terms have under the Uniform Commercial Code Article on Secured Transactions, as in effect in the State of Illinois on the date hereof.

C. Out of the grants hereby made, the last day of the term of each leasehold estate (whether falling within the general or particular description of property herein) now or hereafter enjoyed by Mortgagors is hereby excepted and reserved.

D. It is not intended to subject to the lien and security interest hereof, and, notwithstanding any other provision herein to the contrary, this grant shall not be deemed to apply to:

(i) shares of stock or instruments now owned or hereafter acquired by Mortgagors, unless the same are hereby, or hereafter shall be, specifically pledged hereunder;

(ii) any leases, contracts, agreements, options, rights and privileges now owned or hereafter acquired by CNW, or in which CNW now has or may hereafter have any interest, under or arising out of activities pursuant to the Participation and Loan Agreement, dated as of June 1, 1982, with respect to the Wyoming Powder River Basin Coal Transportation Project and the "Project Agreements," as defined therein;

(iii) any of the property and franchises of any Person other than Mortgagors, any securities of which or proprietary interest in which may be now owned or hereafter acquired by Mortgagors;

(iv) the inventory and accounts of CNW; and

(v) unless an Event of Default shall have occurred and be continuing, any other rights to money or money, except money required to be deposited with the Depository Agent under *Section 4.16.*

E. The provisions of this Mortgage and Security Agreement shall be construed, and the lien and security interest of this Mortgage and Security Agreement at any time shall be determined, in conformity with the following provisions, which shall prevail over any other provision of this Mortgage and Security Agreement in the event of any inconsistency therewith:

(i) Subject to the limitations of *Article V* hereof, the provisions of this Mortgage and Security Agreement which may reasonably be construed to subject to the lien and security interest hereof property which may be hereafter acquired by Mortgagors, or in which Mortgagors may hereafter

acquire an interest, shall be construed as applying to the interest of Mortgagors in such property, and a liberal scope and effect shall be given to such provisions.

(ii) Nothing in this Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right or power of Mortgagors, which is hereby expressly reserved:

(x) to acquire any property or any interest therein, including property or interests acquired pursuant to an option or other right to acquire the same which is subject to the lien of this Mortgage and Security Agreement, subject to the liens and charges existing or created thereon at the time of acquisition thereof, or to create any lien or charge thereon at the time of acquisition thereof, subject, however, to the limitations contained in *Section 6.2.2* of the Loan Agreement (relating to the creation, incurrence or assumption of "Restricted Indebtedness" as defined therein); and

(y) to subject transportation equipment constructed or acquired by CNW or MRPI for its use at any time within three years from the date the same shall be so constructed or acquired to any Equipment Obligations which CNW or MRPI may desire to create or undertake for the purpose of financing the cost of such transportation equipment, and of upgrading and repairs made thereto; and the right, charge, lien or title of any such Equipment Obligation with respect to transportation equipment subjected thereto as aforesaid shall in all respects be prior to the lien and security interest of this Mortgage and Security Agreement, and the lien and security interest of this Mortgage and Security Agreement shall attach only to the right, title and interest of CNW or MRPI, as the case may be, then or thereafter existing with respect to such transportation equipment.

(iii) Nothing in this Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right or power of CNW and Subsidiaries, which is hereby expressly reserved, to consolidate with, merge into or convey or lease all or substantially all of the Mortgaged Property, subject to this Mortgage and Security Agreement, to a railroad company which is a Class I Carrier (as defined by the rules of the Interstate Commerce Commission as in effect on February 15, 1983), or to merge another Person into CNW or any Subsidiary (other than MRPI), or to acquire all or any part of the property of another Person, all as provided and with the exceptions and upon the terms and conditions set forth in *Article V* hereof.

AND WITHOUT LIMITING any of the other provisions of this Mortgage and Security Agreement, Mortgagors, as debtors, expressly grant unto the Mortgagees and the Banks, as secured parties, a security interest in all those portions of the Mortgaged Property (now or hereafter existing) which may be subject to the Uniform Commercial Code provisions applicable to secured transactions under the laws of any state;

TO HAVE AND TO HOLD unto Mortgagees and their successors and assigns, and to such separate and co-trustees appointed herein and their successors and assigns, forever, with power of sale, all property, real, personal and mixed, tangible and intangible, and interests therein, hereby granted, bargained, sold, conveyed, released, confirmed, set over, warranted as aforesaid, mortgaged, pledged, assigned or transferred, or in which a security interest is granted, or intended so to be, or which may in any manner become subject to the lien and security interest of this Mortgage and Security Agreement, whether by indenture supplemental hereto or otherwise (all of which property at any given time subject to the lien and security interest of this Mortgage and Security Agreement, whether by the terms of this Mortgage and Security Agreement, including the after-acquired property clauses hereof, or by subsequent transfer, delivery or pledge to the Mortgagees, or otherwise, is herein sometimes referred to as the "Mortgaged Property");

UNDER AND SUBJECT, HOWEVER, to the prior lien and security interest of all Initial and Subsequent Prior Permitted Encumbrances (hereinafter defined) as shall at the time be in effect with respect to any of the Mortgaged Property;

BUT NEVERTHELESS as security for, and in order to enforce, the payment of the principal of and interest on the A[B] Notes according to their tenor and effect, and for the enforcement of and compliance with the covenants, agreements and conditions contained in this Mortgage and Security Agreement, the Loan Agreement and the other Loan Documents and all other Liabilities;

AND IT IS HEREBY COVENANTED, AGREED AND DECLARED that the Mortgaged Property is to be held and disposed of upon and subject to the following covenants, agreements, conditions and understandings:

ARTICLE I
DEFINITIONS

The terms defined in this *Article I* shall (unless the context otherwise requires), for all purposes of this Mortgage and Security Agreement, have the respective meanings specified in this *Article I*, and each such term defined in the singular shall include the plural and each such term defined in the plural shall include the singular.

"*A Notes*" shall have the meaning specified in the fifth recital.

"*Additions; Amount of Additions; Available Additions*:"

A. "*Additions*" shall mean all physical property, including equipment, and capitalized replacements and improvements thereto, (i) becoming subject to the lien and security interest of this Mortgage and Security Agreement free from all prior liens except Initial or Subsequent Prior Permitted Encumbrances, (ii) acquired, constructed or installed by CNW or MRPI (x) on or after May 1, 1983, or (y) before such date only in the case of such property which is subject to Initial Prior Permitted Encumbrances described in *clause 9(ii)* of the definition of "*Initial Prior Permitted Encumbrances*" or Subsequent Prior Permitted Encumbrances described in *clause 7* of the definition of "*Subsequent Prior Permitted Encumbrances*", and (iii) the cost or investment in which, at the time of such acquisition, construction or installation, is properly chargeable to the property accounts of CNW or MRPI. Tangible personal property and fixtures installed on property held under lease by CNW or MRPI shall qualify as Additions only (1) if such lease is an equity lease (as hereinafter defined in *sub-paragraph numbered 3* of the definition of "*Amount of Additions*"), or (2) if such tangible personal property or such fixtures can be removed, without material impairment of their usability, from such property and if CNW or MRPI has the right of such removal at all times under the terms of such lease.

B. "*Amount of Additions*" as of any particular time shall mean the cost to CNW or MRPI of such Additions; *provided that*: (i) if such Addition is a Financed Addition, the cost included in "Amount of Additions" shall include only the downpayment, if any, paid by CNW or MRPI for such Addition, principal payments when made on the Equipment Obligation or other Lien to which such Financed Addition is subject and other capitalized costs actually paid with respect to such Financed Addition; (ii) "Amount of Additions" shall not include any cost (x) financed with the proceeds of the Notes, or, (y) in the case of property subject to the lien of an Old Mortgage, incurred prior to the last date included in the computation under *clause (b)* of *Section 4.17* of amounts that could be withdrawn immediately prior to the satisfaction or defeasance of such Old Mortgage or, (z) in the case of Financed Additions, paid or due prior to May 1, 1983, and, if subject to an Old Mortgage, paid or due prior to the date specified in the immediately preceding *clause (y)*; and (iii) salvage value shall be determined in accordance with the Uniform System of Accounts (pursuant to which, on May 1, 1983, salvage value is equal to (1) the lesser of market value or depreciated cost for material retained for re-use and (2) market value for materials which are sold, in each case determined at the time of dismantling, demolition or scrapping).

The foregoing definition is subject to the following:

1. The cost of Additions shall mean the amount of expenditures (including without limitation the value of any property delivered as consideration for such Additions and the aggregate of the amounts actually paid in respect of interest or premium for the payment or discharge of any indebtedness secured by a lien existing on such Additions at the time of their acquisition) made therefor, including the costs of initial acquisition (including without limitation the costs of any franchises or governmental permits acquired in connection with any Additions purchased from others), capitalized replacements and improvements thereto and, in the case of Additions constructed or installed, the cost of all materials

and supplies which have been installed as part of such Additions, including the salvage value of all salvaged or reclaimed property of Mortgagors so installed, and labor and other costs entering into such acquisition, construction, installation or replacement, all to the extent and in the amounts capitalized pursuant to the Uniform System of Accounts, or if no such system is then applicable, in any manner which is in accordance with generally accepted accounting principles.

2. In determining the cost of Additions in any case in which property, part of which constitutes Additions and part does not, is acquired for consideration not divided between such parts, or in any case in which the consideration given for Additions is not allocated to the various items acquired, the consideration may be allocated to the various parts and items acquired in any reasonable manner which is in accordance with the applicable system of accounting set forth in the preceding sub-paragraph.

3. In the case of costs constituting down payments and principal payments on Equipment Obligations and other Liens referred to in the definition of "*Financed Additions*", no such payments shall constitute an Amount of Additions if they are payments on a lease (or other obligation which is in substance a lease) which is not an equity lease. An "equity lease" shall mean a lease (or other obligation which is in substance a lease) under which the lessee has the option or duty to acquire the property during and/or at the termination of the lease for a price that, together with the amount accounted for as down payment and principal payments under the applicable system of accounts set forth in the second preceding sub-paragraph, can be demonstrated, at the time that CNW or MRPI contracts such lease, not to substantially exceed the cost to the lessor (or value if such cost is not known to lessee or if the property is not contemporaneously acquired by the lessor) of the property subject to the lease or equivalent obligation.

C. "*Available Additions*" at any date shall mean the excess of the Amount of Additions to such date over the sum of (i) the Amount of Additions included therein which has theretofore been made the basis for the withdrawal of cash under any provision of this Mortgage and Security Agreement or of the B Mortgage, or of cash on deposit with the trustee under an Old Mortgage, and (ii) the Amount of Additions included therein which have theretofore been made the basis for reduction of the amount of cash otherwise required to be deposited with the Depository Agent under *Section 4.16* of this Mortgage and Security Agreement or with the Depository Agent under the B Mortgage or with the trustee under an Old Mortgage, except to the extent to which the inclusion of any Amount of Additions in either *clause (i)* or *clause (ii)* of the foregoing computation would duplicate the effect of any other provision of this Mortgage and Security Agreement having the effect of precluding the withdrawal of cash on the basis thereof.

"*Additional Mortgagee*" shall have the meaning specified in *Section 8.13.*

"*Affiliate*" shall mean, with reference to any Person, (i) any other Person which is a Subsidiary of such Person, (ii) any other Person (and each other Subsidiary thereof) of which such Person is a Subsidiary and (iii) any Person which is under common control with such Person.

"*Applicable Rate*" shall mean the rate of interest which shall accrue and be payable on the outstanding Notes with respect to any Interest Period, and shall with respect to any Interest Period be either the Prime Rate or the Eurodollar Rate (Reserve Adjusted) plus the Additional Percentage, as determined in accordance with the procedures set forth in *Sections 3.1* and *3.2* of the Loan Agreement.

"*B Mortgage*" shall mean the Indenture of Mortgage and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement B, dated as of the date hereof, by Mortgagors to Mortgagees covering the Mortgaged Property and securing the B Notes and the other Liabilities.

"*B Notes*" shall have the meaning provided in the fifth recital.

"*Banks*" shall have the meaning provided in the fourth recital.

"*Bankruptcy Court*" shall mean the United States District Court for the Northern District of Illinois, Eastern Division, or any other court having jurisdiction at the time of the proceedings for the reorganization or liquidation of the Chicago, Rock Island and Pacific Railroad Company.

"*Board of Directors*" shall mean, with respect to any Person which is a corporation, the Board of Directors of such Person as from time to time constituted, and, except when the vote of a specified percentage or number of a Board of Directors is required under the by-laws of such Person or applicable law,

any action by any executive committee or other committee of a Board of Directors, in accordance with authority duly granted it by resolution of the Board of Directors or by the by-laws of such Person to act in place of the Board of Directors for any purpose or during any period, shall for all purposes of this Mortgage and Security Agreement be deemed to be the action of the Board of Directors.

"*Business Day*" shall mean a banking business day of Co-Agents at their principal offices in Chicago, Illinois.

"*CNW*" shall mean Chicago and North Western Transportation Company, a Delaware corporation, and its successors and assigns in accordance with the provisions of *Article V* hereof.

"*Chemco Mortgage*" shall mean the Indenture of Mortgage and Security Agreement, dated as of June 1, 1972, between CNW and the Chicago and North Western Railway Company ("North Western"), as hereafter supplemented, amended or otherwise changed from time to time in a manner not involving a breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*Closing Date*" shall mean the date on which the proceeds of the Loans were actually released in accordance with the terms of the Loan Agreement and applied to the purchase of the New Track.

"*Co-Agents*" shall mean Continental and First National, in their capacity as co-agents under the Loan Agreement, and any other Bank from time to time appointed and acting as a successor co-agent under the Loan Agreement.

"*Commuter Service Assets*" shall mean "Contract Services Property" as defined in section 3.01 of the Purchase of Service Agreement, dated as of October 2, 1980, between the Regional Transportation Authority and CNW.

"*Continental*" shall mean Continental Illinois National Bank and Trust Company of Chicago, a national banking association, and its successors and assigns.

"*Default*" shall mean any Event of Default or any condition or event which, after notice or lapse of time, or both, would constitute an Event of Default.

"*Default Interest Rate*" shall mean (i) a rate per annum 2% per annum in excess of the otherwise applicable interest rate on the Notes through the end of the current Interest Period and, (ii) thereafter, a rate per annum equal to 2% per annum in excess of the Prime Rate from time to time most recently announced by Continental as its "prime rate" at Chicago, Illinois.

"*Depository Agent*" shall mean First National, as Mortgagee, in its capacity as agent for the receipt, investment and application of deposited moneys under *Sections 3.13.4*, *4.4*, *4.6*, *4.11*, *4.16*, *4.17*, and *4.18*, and any successor mortgagee from time to time appointed and acting in such capacity.

"*Disbursement Agent*" shall mean Continental, as Co-Agent under the Loan Agreement, and any other or successor Co-Agent from time to time appointed and acting as Disbursement Agent under the Loan Agreement.

"*Dollar*" and the sign "*$*" shall mean lawful money of the United States of America.

"*Equipment Obligations; transportation equipment*"

A. The term "Equipment Obligation" shall mean any obligation of CNW or MRPI issued under, and secured by a right, charge, lien or title with respect to any transportation equipment evidenced by, an equipment trust agreement, lease, conditional sale agreement, chattel mortgage or other writing, or any of such writings.

B. The term "transportation equipment" shall include locomotives, freight-train cars, passenger-train cars, work equipment, roadway machines (such terms having for the purposes of this definition, the meanings assigned to them under the Uniform System of Accounts), trailers, containers and highway vehicles and appurtenances attached to the foregoing (including automobile racks, automobile frame racks, heating and cooling units, machinery, tie down equipment and other specialized equipment designed for carriage and protection of lading), airplanes, vessels, boats, tugs, lighters, floats, barges and ferries, and any and all other vehicles which are used by CNW or MRPI for the transportation of freight or material or for the carriage of passengers or its employees.

"*equity lease*" shall have the meaning set forth in *sub-paragraph numbered 3* of the definition of "*Amount of Additions.*"

"*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"*Event of Default*" shall have the meaning set forth in *Section 6.1* hereof.

"*Financed Addition*" shall mean any Addition (a) acquired before May 1, 1983, and subject to an Initial Prior Permitted Encumbrance described in *clause 9(ii)* of the definition of Initial Prior Permitted Encumbrances or a Subsequent Prior Permitted Encumbrance described in *clause 7* of the definition of Subsequent Prior Permitted Encumbrances or (b) acquired on or after May 1, 1983, and subject to a Subsequent Prior Permitted Encumbrance described in *clause 1*, *7* or *9* of the definition of Subsequent Prior Permitted Encumbrances.

"*First Mortgage Bonds*" shall mean the Great Western First Mortgage Bonds, the M. & St. L. Mortgage Bonds and the North Western First Mortgage Bonds.

"*First National*" shall mean The First National Bank of Chicago, a national banking association, and its successors and assigns.

"*Fiscal Year*" shall mean any period of twelve consecutive calendar months ending on December 31.

"*FRA Financing Agreement*" shall mean either of the Financing Agreements, dated September 9, 1977, and August 4, 1978 (the second as amended September 12, 1978), each by and between the United States of America, represented by the Secretary of Transportation, acting through the Administrator of the Federal Railroad Administration and CNW, with respect to the issuance and purchase of FRA Preference Shares, as hereafter supplemented, amended or otherwise changed from time to time in a manner not involving a breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*FRA Mortgage*" shall mean the Indenture of Mortgage and Security Agreement, dated as of March 8, 1978, between CNW and the United States of America, represented by the Secretary of Transportation, acting by and through the Administrator of the Federal Railroad Administration, as hereafter supplemented, amended or otherwise changed from time to time in a manner not involving a breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*FRA Preference Shares*" shall mean CNW's existing class of not in excess of 15,000 shares of Preference Shares with a par value of $10,000 per share, all of which have heretofore been and may hereafter be issued solely to the Federal Railroad Administration.

"*Great Western First Mortgage*" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by Chicago Great Western Railway Company, an Illinois corporation ("Great Western"), to Guaranty Trust Company of New York (now Morgan Guaranty Company, New York), Trustee ("Morgan"), dated as of January 1, 1938, as supplemented and amended prior to the date hereof by a Supplemental First Indenture, dated as of January 1, 1938, by Great Western to Morgan and Commerce Trust Company, as co-trustee, and supplemental indentures, dated April 29, 1942, December 26, 1952, and June 11, 1954, from Great Western to Morgan, an Assumption Agreement and Supplemental Indenture, dated as of January 1, 1956, by the Chicago Great Western Railway Company, a Delaware corporation ("CGW"), to Morgan and by supplemental indentures, dated June 13, 1956, February 24, 1958, March 16, 1959, March 22, 1960, July 31, 1963, August 20, 1965, and November 1, 1966, by CGW to Morgan, an Assumption Agreement and Supplemental Indenture, dated as of July 1, 1968, by North Western to Morgan and an Assumption Agreement and Supplemental Indenture, dated as of June 1, 1972, by CNW to Morgan, and, unless the context otherwise requires, as hereafter from time to time supplemented, amended or otherwise changed in a manner not involving breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*Great Western First Mortgage Bonds*" shall mean the First Mortgage 4% Bonds, Series A, due January 1, 1988, in the aggregate original principal amount of $19,130,100, which are secured by the Great Western First Mortgage.

"*herein*", "*hereof*", "*hereto*", "*hereunder*" and similar terms shall refer to this Mortgage and Security Agreement and not to any particular Section or provision of this Mortgage and Security Agreement.

"*Impositions*" shall mean all taxes (including sales and use taxes), assessments (including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed prior to the stated maturity of the A Notes), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character, including all interest and penalties thereon, which at any time may be assessed, levied, confirmed or imposed on, or in respect of or be a Lien upon:

(a) the Mortgaged Property or any part thereof or any estate, right or interest therein;

(b) any occupancy, use or possession of, or business or activity conducted on or from, the Mortgaged Property or any part thereof or any estate, right or interest therein;

(c) the gross receipts from the Mortgaged Property, including any basic rent, additional rent and other compensation payable under or with respect to all Leases;

(d) Mortgagors, including franchise, capital stock and other, similar taxes and income, excess profits and other, similar taxes determined on the basis of income or revenues of Mortgagors; and

(e) this Mortgage and Security Agreement, the Loan Agreement, the Loans, the Notes or any other Loan Document or Liability, other than any income, excess profits or other, similar taxes imposed on the basis of or measured by the Noteholders' receipt of payments on the indebtedness secured hereby.

"*Including*" shall mean including, without limiting the generality of the foregoing.

"*Instrument*" shall mean any document or writing (whether by formal agreement, letter or otherwise) under which any obligation is evidenced, acknowledged, assumed or undertaken, or any right to any Lien is granted or perfected.

"*Insurance Requirement*" shall mean all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof or Mortgagors, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof or any use or condition of the Mortgaged Property or any part thereof or Mortgagors.

"*Interest Period*" shall mean (i) the period commencing on and including the Closing Date and ending on and including the fourteenth day of the first February, May, August or November to occur after the Closing Date and (ii) each succeeding period commencing on the day following the last day of the immediately preceding Interest Period and ending on the fourteenth day of the first February, May, August or November occurring thereafter; *provided that* any Interest Period that would otherwise end on a day which is not a Business Day shall end on the next succeeding Business Day, except as otherwise provided in *Section 3.3* of the Loan Agreement.

"*Leases*" shall have the meaning provided in *clause Eleventh* of the *Granting Clause*.

"*Legal Requirement*" shall mean all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Mortgaged Property or any part thereof, or to Mortgagors.

"*Liabilities*" shall mean and include:

(a) the principal of and interest on the A Notes;

(b) the commitment fee and the facility fee payable to the Banks pursuant to *Section 1.3* of the Loan Agreement;

(c) all other indebtedness of any kind arising under, and all amounts of any kind which at any time become due and owing to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, the Banks or any

other Noteholder under or with respect to, the Loan Agreement, the A Notes, this Mortgage and Security Agreement or the other Loan Documents;

(d) all of the covenants, obligations and agreements, and the truth and completeness in all material respects of all representations and warranties, of Mortgagors in, under and pursuant to the Loan Documents;

(e) any and all advances, costs and expenses, including all costs of enforcement and collection, paid or incurred by Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, the Banks or any other Noteholder to protect any of the Mortgaged Property, perform any obligation of Mortgagors or any other Person under or with respect to the Loan Documents or collect any amount owing to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, the Banks or any other Noteholder which is secured or evidenced hereby or by any other Loan Document;

(f) any other liabilities, obligations and indebtedness, direct or indirect, absolute or contingent, recourse or nonrecourse, howsoever created, arising or evidenced, now or hereafter existing or due or to become due, owing by Mortgagors under the Loan Documents to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, the Banks or any other Noteholder; and

(g) interest on all of the foregoing;

provided that the principal amount of and interest on the B Notes shall not be included.

"*Lien*" shall mean any interest in property, whether such interest is based on the common law, statute or contract, including, but not limited to, the security interest lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, or a lease, consignment or bailment for security purposes.

"*Loan Agreement*" shall have the meaning specified in the fourth recital.

"*Loan Documents*" shall have the meaning set forth in the *Granting Clause.*

"*Loans*" shall have the meaning set forth in the fourth recital.

"*MRPI*" shall mean Midwestern Railroad Properties, Incorporated, a Delaware corporation.

"*M. & St. L. Mortgage*" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by the Minneapolis & St. Louis Railway Company to The First National Bank of Chicago, Trustee, dated as of October 1, 1960, as supplemented and amended prior to the date hereof by a First Supplemental Indenture, dated as of October 1, 1960, between North Western and First National and Edward M. Bullard, trustees, and a Second Supplemental Indenture dated as of June 1, 1972, by CNW to First National and Jon R. Lind, trustees, and, unless the context otherwise requires, as hereafter from time to time supplemented, amended or otherwise changed in a manner not involving breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*M. & St. L. Mortgage Bonds*" shall mean the First Mortgage Bonds, 6%, due November 1, 1985, of the Minneapolis & St. Louis Railway Company, in the aggregate original principal amount of $17,441,600, which are secured by the M. & St. L. Mortgage.

"*Mortgage and Security Agreement*" shall mean this Indenture of Mortgage and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement A, dated as of the Closing Date, by CNW and MRPI to Continental and First National, securing the A Notes and the other Liabilities, as the same may from time to time be supplemented, amended, partially released or otherwise modified by any supplemental indenture(s) thereto executed by Mortgagors and Mortgagees.

"*Mortgaged Property*" shall have the meaning set forth in the *Preamble.*

"*Mortgagees*" shall have the meaning set forth in the *Preamble.*

"*Mortgagors*" shall mean CNW and MRPI and their successors and assigns in accordance with the provisions of *Article V* hereof.

"*New Carrier Affiliate*" shall mean an Affiliate of CNW which, after the date of this Mortgage and Security Agreement, shall acquire, by consolidation, merger or conveyance, all or substantially all of the property of any other corporation which immediately prior to such consolidation, merger or conveyance shall

have been a Class I Carrier (as defined by the rules of the Interstate Commerce Commission in force on June 1, 1972) and not an Affiliate of CNW.

"*New Track*" shall have the meaning set forth in the third recital.

"*New Track Lease*" shall mean the lease referred to in item numbered 44 of *clause FOURTH* of the *Granting Clause.*

"*North Western First Mortgage*" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by North Western to First National, Trustee, dated as of January 1, 1939, as supplemented and amended prior to the date hereof by six supplemental indentures, dated January 1, 1945, February 19, 1957, July 8, 1959, July 19, 1961, January 1, 1962, and March 31, 1970, between North Western and First National, as trustee, and an Assumption Agreement and Seventh Supplemental Indenture, dated as of June 1, 1972, between CNW and First National, as trustee, and, unless the context otherwise requires, as hereafter from time to time supplemented, amended or otherwise changed in a manner not involving breach of any agreement of Mortgagors, or either of them, under this Mortgage and Security Agreement.

"*North Western First Mortgage Bonds*" shall mean the First Mortgage 3% Bonds, Series B, due January 1, 1989, of the Chicago and North Western Railway Company in the aggregate original principal amount of $54,000,000, which are secured by the North Western First Mortgage.

"*Noteholder*" shall mean each of the Banks so long as it shall be the holder of any Note and any other holder from time to time and at any time of any Note.

"*Notes*" shall have the meaning set forth in the fifth recital.

"*NWL*" shall mean North Western Leasing Company, a Delaware corporation and a Wholly-owned Subsidiary of CNW.

"*NWLC*" shall mean North Western Locomotive Company, a Delaware corporation and a Wholly-owned Subsidiary of CNW.

"*Officers' Certificate*" shall mean a certificate signed by the President or a Vice President and by the Treasurer or any financial or accounting Vice President of CNW.

"*Old Mortgage*" shall mean each of the North Western First Mortgage, Great Western First Mortgage and M. & St. L. Mortgage.

"*Opinion of Counsel*" shall mean a written opinion of counsel, who may be counsel for Mortgagors, which opinion shall be satisfactory in form and substance to Mortgagees.

"*Permitted Encumbrances*" shall mean Initial Prior Permitted Encumbrances, Initial Subordinate Permitted Encumbrances, Subsequent Prior Permitted Encumbrances and Subsequent Subordinate Permitted Encumbrances.

For the purposes of the foregoing definition:

A. The term "Initial Prior Permitted Encumbrances" shall mean:

1. the respective liens of each of the Great Western First Mortgage, the M. & St. L. Mortgage and the North Western First Mortgage with respect to the Mortgaged Property other than the New Track and any other property and estates and interests therein now or hereafter owned or acquired by MRPI (including the interest of MRPI as lessor under the New Track Lease);

2. the lien and security interest of the B Mortgage with respect to the New Track and any other property and estates and interests therein now or hereafter owned or acquired by MRPI;

3. rights reserved to or vested in any governmental authority or agency or in any municipality by the terms of any franchise, grant, license or permit, or by any provision of law, to terminate such franchise, grant, license or permit or to purchase or appropriate or recapture or to designate a purchaser of any of the Mortgaged Property, or to demand and collect any tax or other compensation for the use of streets or other public places or to control or regulate the Mortgaged Property; any zoning, land use, environmental, health, building and other similar governmental laws, rules and regulations, any other obligation or duty affecting the Mortgaged Property or the uses,

removal, control or regulation thereof arising under any provision of law or any franchise, grant, license or permit granted or issued by any public authority; and governmental police powers generally (herein collectively called "Police Powers");

4. rights of lessees under Leases entered into prior to the date of this Mortgage and Security Agreement and the interests of Persons other than CNW or MRPI in property owned jointly or in common by CNW or MRPI and such other Person, *provided, however, that* the New Track Lease, and any other Lease between MRPI as lessor and CNW as lessee, shall be subject and subordinate in all respects to this Mortgage and Security Agreement;

5. Liens for Impositions not due and payable pursuant to the provisions of *Section 3.8*;

6. Liens on property with respect to which Mortgagors own easements, rights of way or other similar rights or interests only securing indebtedness neither assumed by Mortgagors nor on which either or both of them customarily pays interest;

7. the lien of the mortgage, dated as of March 1, 1968, made by the City of Escanaba, Michigan, to First National which encumbers iron ore loading and dock facilities in which CNW owns a leasehold estate and which, on June 27, 1983, secures indebtedness in the outstanding principal amount of $9,770,000;

8. the rights reserved by the Trustee in the New Track, and the interests of the Trustee in other Mortgaged Property, under the Purchase Agreement; and

9. all other Liens (including Equipment Obligations) outstanding on the date hereof affecting the Mortgaged Property which by their respective terms, by the terms of this Mortgage and Security Agreement or by operation of law are prior in rank and priority to this Mortgage and Security Agreement but only to the extent that any such Lien (i) constitutes an easement, right of way, reservation, restriction, condition, limitation, covenant or other encumbrance affecting the Mortgaged Property which, in the judgment of Mortgagors, reasonably exercised, does not materially affect the use of the Mortgaged Property for the purposes for which it is held by Mortgagors and may properly be ignored as to its effect upon the lien and security interest of this Mortgage and Security Agreement or (ii) secures indebtedness, obligations and liabilities in existence or obligatory advances or payments required to be made by the secured party thereunder on the date of this Mortgage and Security Agreement.

B. The term "Initial Subordinate Permitted Encumbrances" shall mean;

1. the lien and security interest of the B Mortgage in the Mortgaged Property (except the portion of the Mortgaged Property with respect to which such lien and security interest is prior hereto);

2. the Chemco Mortgage;

3. the FRA Mortgage;

4. the leasehold estate of CNW in the New Track pursuant to the New Track Lease.

5. all other Liens (including Equipment Obligations) outstanding on the date hereof affecting the Mortgaged Property which by their respective terms, by operation of law or otherwise are subject and subordinate to the lien and security interest of this Mortgage and Security Agreement.

C. The term "Subsequent Prior Permitted Encumbrances" shall mean:

1. any Lien on or with respect to any transportation equipment or any lease thereof or other agreement with respect thereto under any Equipment Obligation hereafter issued and incurred within three years after the date such transportation equipment is constructed or acquired by CNW or MRPI;

2. Easements, rights of way and other similar rights granted or consented to by Mortgagors and necessary or advisable for the use or operation of the Mortgaged Property, or otherwise granted or consented to by Mortgagors in the ordinary course of business which do not interfere with the ordinary conduct of the business or use of the Mortgaged Property by Mortgagors; and easements, rights of way, exceptions, reservations, restrictions, conditions, limitations, covenants,

adverse rights and interests and any other defects and irregularities in title affecting the Mortgaged Property which in the reasonable judgment of Mortgagors do not, in any case or in the aggregate, materially affect the use of the Mortgaged Property for the purposes for which it is held by Mortgagors and may properly be ignored as to their effect upon the lien and security interest of this Mortgage and Security Agreement;

3. Tax Leases entered into by Mortgagors after the date of this Mortgage and Security Agreement in compliance with *Section 4.6*;

4. Leases entered into by CNW or MRPI after the date of this Mortgage and Security Agreement in compliance with *Section 4.5*;

5. Liens for Impositions, the payment of which is not at the time required by *Section 3.8* hereof;

6. nonconsensual Liens of landlords, carriers, warehousemen, mechanics and similar Persons arising by operation of law and incurred by CNW or MRPI in the ordinary course of business, securing the payment of sums not yet due and payable or being contested in good faith by appropriate proceedings in accordance with *Section 3.11*, if such reserve or other provision, if any, as shall be required by generally accepted accounting principles shall have been made therefor and if the payment thereof is not at the time required by *Section 6.2.2* of Loan Agreement;

7. new Equipment Obligations and other obligations entered by CNW or MRPI to refinance the outstanding principal amount of the indebtedness secured by the Equipment Obligation or other obligation (other than any Old Mortgage) refinanced;

8. Police Powers;

9. purchase money liens and charges created at the time of acquisition of Mortgaged Property acquired after the date hereof and rights and interests in and liens and charges on any such property existing, reserved or created at the time of acquisition thereof, if and to the extent permitted by *Section 6.2.2* of the Loan Agreement;

10. oil, gas and mineral conveyances, leases and servitudes granted to others which do not grant any rights to the surface of the land subject thereto to the grantees or lessees or materially interfere with the use of the surface of the land by Mortgagors;

11. Liens on property with respect to which Mortgagors own easements, rights of way or other similar rights or interests only securing indebtedness neither assumed by Mortgagors nor on which either or both of them customarily pays interest; and

12. with respect to Mortgaged Property located in the State of Iowa, the lien of any judgment against CNW for any injury to any person or property, and the lien securing any claim for compensation under the workers' compensation act of the State of Iowa for personal injury sustained by employees of CNW arising out of and in the course of their employment, referred to in Iowa R.C.P. section 624.27, having priority over this Mortgage and Security Agreement under Iowa R.C.P. section 624.28.

D. The term "Subsequent Subordinate Permitted Encumbrances" shall mean:

1. the lien and security interest of any Consolidated Railroad Mortgage (as defined in *Section 6.2.3* of the Loan Agreement), covering the Mortgaged Property (other than the New Track and any other property now or hereafter owned by MRPI);

2. Liens (other than any Lien imposed by or pursuant to ERISA or the Internal Revenue Code of 1954, as amended), incurred or deposits made in the ordinary course of business of CNW in connection with workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of letters of credit, tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and other similar obligations (exclusive of obligations incurred in connection with the borrowing of money, the obtaining of advances or the payment of the deferred purchase price of property), subject to *Section 6.2.2* of the Loan Agreement;

3. any attachment Lien being contested in good faith by appropriate proceedings promptly initiated and diligently conducted with continuity by Mortgagors in compliance with *Section 3.11*, if such reserve or other appropriate provision, if any, as shall be required by generally accepted accounting principles shall have been made therefor, and any judgment Lien so long as the judgment it secures shall have been discharged or the execution thereof stayed pending appeal, in either case prior to the earlier of the commencement of proceedings for the enforcement thereof or 45 days after the entry thereof, and so long as such judgment shall have been discharged within 45 days after the expiration of any such stay; and

4. any other Lien which is permitted by the terms of this Mortgage and Security Agreement to be a Prior Permitted Encumbrance but which is or becomes by its terms, by operation of law or otherwise subordinate in lien and priority to this Mortgage and Security Agreement.

"*Person*" shall mean any natural person, partnership, corporation, firm, joint venture, trust or other unincorporated association, government or governmental agency.

"*Prime Rate*" shall mean the rate per annum most recently announced by Continental as its prime rate at Chicago, Illinois.

"*Prior Mortgage*" shall mean any mortgage which constitutes a Prior Permitted Encumbrance.

"*Prior Permitted Encumbrances*" shall mean Initial Prior Permitted Encumbrances and Subsequent Prior Permitted Encumbrances.

"*Purchase Agreement*" shall have the meaning set forth in the third recital.

"*Quarterly Payment Date*" shall mean the Business Day immediately following the last day of each Interest Period.

"*Railroad*" shall have the meaning set forth in the first recital.

"*Railroad Leases and Trackage Agreements*" shall mean the portions of the Mortgaged Property described in *clauses FOURTH* and *FIFTH* of the *Granting Clause.*

"*Request, Order or Direction*" of a Person shall mean a writing signed on behalf of the Person by its President or any Vice President.

"*Reportable Event*" shall have the meaning provided in section 4043 of ERISA.

"*Requisite Holders*" shall mean at any time not fewer than four Noteholders holding Notes in an aggregate principal amount equal to or greater than 54% of the aggregate principal amount of all Notes at the time outstanding. For the purpose of this definition, Notes held by Mortgagors, or either of them, or any Affiliate of either Mortgagor (including Western, NWLC and North Western Realco) shall be disregarded and be deemed not to be outstanding.

"*Restricted Subsidiary*" shall mean MRPI, NWL and any other Subsidiary of CNW which at any time satisfies any of the following:

(i) the total assets of which Subsidiary constitute 5% or more of the total consolidated assets of CNW and Subsidiaries, as determined in each case in accordance with generally accepted accounting principles; or

(ii) the total equity of which Subsidiary, as determined in accordance with generally accepted accounting principles, constitutes 5% or more of common shareholders' equity (excluding treasury stock and capital stock subscribed and unissued) plus preferred and preference share equity of CNW, determined in accordance with generally accepted accounting principles on a consolidated basis, except that the investment of CNW in Western will be accounted for by the cost method if and so long as the liability of CNW and its successors and assigns and their respective Subsidiaries for the obligations of Western is limited to the extent described in the Western Disclosure Letter; or

(iii) in the opinion of the Requisite Holders, the assets, properties, operations or business of which Subsidiary are an integral part of the operations, business or properties of CNW and Subsidiaries, or are essential to the condition, financial or other, of Mortgagors or to the ability of Mortgagors to perform their obligations hereunder or under the Loan Agreement or any other Loan Document,

provided that, in the event of any such determination by the Requisite Holders that a Subsidiary is a Restricted Subsidiary pursuant to this *clause (iii)*, Mortgagees will give Mortgagors notice of any such determination and such Subsidiary shall become a Restricted Subsidiary on the ninetieth day after the date of such notice.

Notwithstanding the foregoing, (x) NWLC shall not be considered a Restricted Subsidiary as long as it is engaged solely in the business it is engaged in, and owns only those assets it owns, on the date hereof, (y) Western shall not be considered a Restricted Subsidiary as long as the liability of CNW and its successors and assigns and their respective Subsidiaries for the obligations of Western is limited as disclosed and described in the Western Disclosure Letter and (z) any Wholly-owned Subsidiary of CNW the business of which, and the liability of CNW and its successors and assigns and their respective Subsidiaries for the obligations of which, are limited as described in the West Parcel Disclosure Letter shall not be considered a Restricted Subsidiary if and as long as such business and such liability is so limited.

"*RTA Sale*" shall have the meaning set forth in *clause (c)(i)* of *Section 2.3.2* of the Loan Agreement.

"*Subordinated Debt*" shall mean any unsecured indebtedness of CNW which (i) is converted from FRA Preference Shares after the date hereof pursuant to the FRA Financing Agreement or (ii) is for borrowed money and is subordinated to the Liabilities pursuant to valid, binding and legally enforceable Instruments containing subordination provisions which are reasonably satisfactory in form and substance to the Requisite Holders, and which has a maturity, terms of payment and other provisions reasonably satisfactory to the Requisite Holders.

"*Subsidiary*" shall when used with respect to any corporation mean any other corporation more than 50% of the outstanding shares of capital stock of which having ordinary voting power for the election of directors is owned directly or indirectly by such corporation, and, except as otherwise indicated herein, references to Subsidiaries shall refer to Subsidiaries of C&NW or MRPI, as appropriate, provided that, if and so long as the liability of C&NW, its successors and assigns, and their respective Subsidiaries for the obligations of Western is limited as disclosed and described in the Western Disclosure Letter, Western shall not be included in any reference to the Subsidiaries of C&NW herein unless specifically included by name.

"*Trustee*" shall have the meaning set forth in the third recital.

"*Uniform System of Accounts*" shall mean the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission (or any regulatory agency successor thereto), as at the time in effect.

"*Value*" shall mean fair market value. The value of property acquired, constructed, installed or replaced shall be determined as of a date within 90 days of such acquisition, construction, installation or replacement (regardless of the date when such determination is made). In the case of property subject to a prior lien, the value of such property shall be determined as if such property were free of such prior lien. The value of the property disposed of shall be determined as of a date within 90 days prior to the date of disposition thereof, except that in the case of property demolished or scrapped such value shall be determined after such demolition or scrapping as of the date of such demolition or scrapping and shall be reduced by an amount equal to the cost of such demolition or scrapping. In determining value the engineer or appraiser making the valuation shall consider such factors as he deems pertinent and in accordance with accepted valuation practices.

"*West Parcel Disclosure Letter*" shall mean the disclosure letter, dated June 24, 1983, from CNW to the Banks with respect to the development by North Western Realco, a Delaware corporation all of the authorized, issued and outstanding shares of which are owned beneficially and of record by NWL, of a parcel of land located in Chicago, Illinois, bounded by Clinton, Madison, Jefferson and Washington Streets.

"*Western*" shall mean Western Railroad Properties, Incorporated, a Delaware corporation and Wholly-owned Subsidiary of CNW.

"*Western Disclosure Letter*" shall mean the disclosure letter, dated June 24, 1983, from CNW to the Banks with respect to the participation by CNW and Western in the Powder River Basin (Wyoming) Coal Transportation Project and CNW's liability for the obligations of Western.

"*Wholly-owned*", as applied to any Subsidiary shall mean a Subsidiary not less than 95% of the outstanding shares (other than directors' qualifying shares, if any, required by law), of every class of stock of which are at the time owned by CNW or by one or more other Wholly-owned Subsidiaries.

ARTICLE II
THE NOTES, ETC.

SECTION 2.1. *Payment of Notes and Other Liabilities.* Mortgagors will duly and punctually pay

(a) the principal of and interest on the A Notes at the time outstanding in accordance with the terms thereof and hereof and of the Loan Agreement, and

(b) when and as due and payable from time to time as provided herein and in the other Loan Documents all other Liabilities payable hereunder and thereunder and evidenced or secured hereby or thereby.

Mortgagors will also pay interest on any such amounts (including interest, to the extent permitted by law) as shall not be paid when due and payable (at maturity, by voluntary or required repayment, declaration or otherwise), regardless of the rate which would otherwise apply, at the Default Interest Rate, from the date such amount becomes due and payable (whether during a grace period, if any, or otherwise) until paid, payable on demand.

SECTION 2.2. *Optional Prepayments.* Mortgagors may, upon at least five Business Days' prior notice to Mortgagees, make a voluntary prepayment in part (in an integral multiple of $1,000,000) or in full of the outstanding principal amount of the Notes.

SECTION 2.3. *Maturity of Payments; Allocation of Partial Payments of Notes, etc.*

SECTION 2.3.1. *Maturity of Payments.* In the case of each payment of the Notes (including any optional prepayment pursuant to *Section 2.2*), the principal amount of each Note to be paid shall mature and become due and payable on the Quarterly Payment Date on which such payment is required or on the date fixed by Mortgagors for any prepayment in accordance with *Section 2.2*, together with all interest accrued on such principal amount to such date. Each payment (including any optional prepayment pursuant to *Section 2.2*) shall be without premium or penalty. No payment, including any optional prepayment pursuant to *Section 2.2*, of the Notes shall reduce any required amortization payment required to be made pursuant to *Section 2.3.1* of the Loan Agreement, except as provided in *Section 2.3.7* of the Loan Agreement with respect to the effect in certain circumstances of payments required to be made pursuant to *Section 4.17* of this Mortgage and Security Agreement and *Section 2.3.5* of the Loan Agreement.

SECTION 2.3.2. *Allocation of Partial Payments of Notes.* Each payment of the principal amount of the Notes (including any optional prepayment pursuant to *Section 2.2*) shall be applied, first, to the payment of the principal of the B Notes and, only after the B Notes have been paid in full, to the principal amount of the A Notes. In the case of each partial payment of the Notes, the principal amount of the Notes to be paid shall be allocated among all of the outstanding Notes to be paid in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof immediately prior to such payment, with adjustments, to the extent practicable, to compensate for any prior payments not made exactly in such proportion.

SECTION 2.4. *Payments, Computations, etc.* Each payment by Mortgagors of principal of, or interest on, the Notes shall be made in immediately available funds by Mortgagors to Disbursement Agent for the account of the Noteholders pro rata according to the respective unpaid principal amounts of the Notes held by them. All such payments shall be made to Disbursement Agent at its principal office in Chicago, Illinois, not later than noon, Chicago time, on the date due; funds received after that hour shall be deemed to have been received by Disbursement Agent on the next following Business Day. Disbursement Agent shall promptly remit to each Noteholder its share of such payments received by Disbursement Agent for the account of such Noteholder. Each remittance by the Disbursement Agent to a Bank shall be in immediately available funds. Interest on the Notes with respect to any Eurodollar Interest Period (as defined in the Loan Agreement) shall be computed on the basis of the actual number of days occurring during the Interest Period over a year comprised of 360 days; and, in any other case, interest on the Notes and all other Liabilities shall be computed on the basis of the actual number of days occurring during the

period for which such interest or other liability is payable over a year comprised of 365 days or, when appropriate, 366 days.

SECTION 2.5. *Net Payments.* All payments made by Mortgagors to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or any Bank or other Noteholder which is a branch or an Affiliate of a Bank under the Notes, this Mortgage and Security Agreement or any other Loan Document shall be made without any setoff or counterclaim, and free and clear of and without deduction or withholding for or on account of, any present or future Taxes now or hereafter imposed by any governmental or other authority. As used herein, the term "Taxes" shall include, without limitation, all levies, imposts, duties, charges, fees and income, excise and other taxes of whatever nature (other than taxes generally assessed on net income of Mortgagees, Disbursement Agent, Depository Agent or any Co-Agent, Bank or such other Noteholder, as the case may be). If Mortgagors, or either of them, are compelled by law to make any such deduction or withholding, Mortgagors will pay such additional amounts as may be necessary in order that the net amount received by Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, Banks and any other such Noteholders after such deduction or withholding (including any required deduction or withholding on such additional amounts) shall equal the amount such payees would have received had no such deduction or withholding ever been made, except that Mortgagors shall not be required to pay any amount to compensate Disbursement Agent, Depository Agent or any Mortgagee, Co-Agent, Bank or other such Noteholder for any withholding tax levied or imposed with respect to any payment to such Person which is intended to be a prepayment of any tax generally imposed on the net income of such Person or any other tax imposed in lieu of a net income tax, and Mortgagors will provide Mortgagees with evidence satisfactory to Mortgagees that they have duly and fully paid such deduction or withholding. Moreover, if any Taxes are directly assessed, levied or imposed against or on Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, Banks or any other such Noteholders, or any of their property, assets or businesses, but only if such Taxes are assessed, levied or imposed as a result of the execution of the Loan Agreement, the Notes, this Mortgage and Security Agreement, the B Mortgage or any other instrument executed or delivered pursuant hereto or in connection herewith, or as a result of any payment made or received pursuant hereto or thereto, such Person may pay such Taxes and Mortgagors will promptly pay such additional amount as may be necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such Person would have received had no such Taxes been assessed, levied or imposed. For purposes of this Section, a remittance hereunder by Mortgagees, Co-Agents, Depository Agent or Disbursement Agent to or for the account of any Bank or other Noteholder shall be deemed to be a remittance (and payment) by Mortgagors. The agreement of Mortgagors contained in this Section shall survive the payment in full of the Liabilities and discharge of this Mortgage and Security Agreement. Mortgagors shall not be required to pay any Tax if and so long as Mortgagors are contesting the amount, validity or application of such Tax in accordance with the provisions of the second sentence of *Section 6.1.4* of the Loan Agreement.

ARTICLE III
COVENANTS OF MORTGAGORS

SECTION 3.1. *Representations, Warranties and Covenants as to Title to the Mortgaged Property, etc.* Mortgagors represent, warrant and covenant that:

(a) Mortgagors have good and sufficient right, title and interest in and to their respective properties and assets included in the Mortgaged Property, and enjoy peaceful and undisturbed possession under all leases, easements, rights of way and use, trackage agreements and other Instruments included in the Mortgaged Property, to the extent necessary in any material respect for the operation of their respective properties and assets and the conduct and operation of their respective businesses as currently conducted and operated and all such leases, easements, rights of way and use, trackage agreements and other Instruments are valid and subsisting and in full force and effect.

(b) Mortgagors have good right, full power and lawful authority to execute and deliver this Mortgage and Security Agreement and to mortgage, pledge, grant a security interest in, assign all their right, title and interest in and convey the Mortgaged Property as provided herein and Mortgagees may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof.

(c) The Mortgaged Property is free and clear of all Liens whatsoever except the Initial Prior Permitted Encumbrances and the Initial Subordinate Permitted Encumbrances (collectively herein called the "Initial Permitted Encumbrances"), and the lien and security interest of this Mortgage and Security Agreement constitutes a valid, direct mortgage or deed of trust lien of record on and a perfected security interest in the Mortgaged Property subject only to this Mortgage and Security Agreement:

(i) there is in existence no Lease with respect to all or any material portion of the Mortgaged Property;

(ii) there is outstanding no Lien described in *clause 9(ii)* of the definition of "*Initial Prior Permitted Encumbrances*", other than Equipment Obligations, which secures indebtedness the aggregate principal amount of which exceeds $5,000,000, and the aggregate principal amount secured by all Liens described in said *clause 9(ii)*, excluding Equipment Obligations, does not exceed $25,000,000; and

(iii) *Schedule II* hereto contains an accurate and complete list of the States and the counties in each State in which Mortgaged Property is located and *Schedule III* hereto contains an accurate and complete list of the sections in the States of Kansas, North Dakota and South Dakota in which Mortgaged Property is located.

(d) This Mortgage and Security Agreement has been duly executed, acknowledged and delivered, and the Loan Agreement, the Notes and the other Loan Documents have been duly executed and delivered, by the duly authorized officers of Mortgagors and constitute the legal, valid and binding obligations of Mortgagors, enforceable against Mortgagors in accordance with their respective terms.

(e) Mortgagors, at their sole cost and expense, will warrant and defend to Mortgagees, the Noteholders and any purchaser at any foreclosure sale and any grantee under a transfer or conveyance in lieu of foreclosure or pursuant to the exercise of any power of sale, all right, title and interest of Mortgagors as aforesaid in and to the Mortgaged Property and the lien and security interest of this Mortgage and Security Agreement thereon and therein, against all claims and demands and will maintain and preserve such lien and security interest and will keep this Mortgage and Security Agreement a direct mortgage or deed of trust lien on and a perfected security interest in the Mortgaged Property, subject only to Prior Permitted Encumbrances.

(f) If at any time after the date of this Mortgage and Security Agreement, Mortgagors, or either of them, enter into or grant any Consolidated Railroad Mortgage (as defined in *Section 6.2.3* of the Loan Agreement) or any other mortgage constituting a Lien on any portion of the Mortgaged Property (whether the Lien thereof is or is intended to be prior or subordinate to the lien of this Mortgage and Security Agreement) containing a legal description of such portion of the Mortgaged Property which is more specific than the description contained in the *Granting Clause* of this Mortgage and Security Agreement, Mortgagors shall, prior to or simultaneously with the delivery and recording of any such mortgage, duly execute, acknowledge and deliver to Mortgagees and cause to be recorded as provided in *Section 3.3.1* an indenture supplemental hereto confirming the lien of this Mortgage and Security Agreement on, or subjecting to the lien and security interest hereof, the Mortgaged Property subject to any such mortgage using the legal description of such Mortgaged Property contained in such new mortgage (such supplemental indenture to contain provisions subordinating the lien of this Mortgage and Security Agreement to the lien of such new mortgage, if appropriate under the provisions hereof, and Mortgagees will join in such supplemental indenture if required).

SECTION 3.2. *Covenant Regarding Loan Agreement, etc.* Mortgagors agree that they will duly and punctually perform, observe and comply with, and cause each Subsidiary to perform, observe and comply with, each of the terms, conditions and covenants of the Loan Agreement and the other Loan Documents applicable to it.

SECTION 3.3. *Recordation; Annual Opinion.*

SECTION 3.3.1. *Recordation.* Mortgagors, at their sole cost and expense, will at all times cause this Mortgage and Security Agreement and any amendment or supplement hereto, any instrument of assignment hereof or thereof, and any other instrument modifying the provisions hereof which is intended to be

recorded, and any appropriate financing statements, continuation statements and other instruments with respect to any thereof, and each other Loan Document intended to be recorded, to be recorded, registered, lodged and filed, and to be kept recorded, registered, lodged and filed, in such manner and in such places, and will pay all recording, registration, lodging, filing, transfer and other fees, taxes and other charges, and will comply with all statutes, laws, ordinances, regulations and orders and take any other action, as may be required in order to establish, preserve, protect and defend the lien and security interest of this Mortgage and Security Agreement as a valid, direct mortgage (or deed of trust) lien of record on and a perfected security interest in the Mortgaged Property, free and clear of all Liens other than Permitted Encumbrances. Mortgagors will pay or cause to be paid, and will indemnify Mortgagees, Co-Agents, Disbursement Agent, Depository Agent and the Noteholders from, against and in respect of, all taxes, including interest and penalties, at any time payable in connection with the recording, registration, lodging and filing of this Mortgage and Security Agreement and any supplements or amendments hereto, partial or full reconveyances, releases and assignments hereof and any other instruments with respect to this Mortgage and Security Agreement and any other Loan Documents; and, if the Federal government or any state, county, local, municipal or other governmental authority or any subdivision, office or official thereof shall levy, assess, impose or charge any tax (other than any income, excess profits or other similar tax imposed on or measured by the Noteholders' receipt of payments on the indebtedness secured hereby), assessment or imposition upon this Mortgage and Security Agreement, the Notes, any other Loan Document or the Liabilities, the interest of the Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or the Noteholders in the Loan Documents, the Liabilities or the Mortgaged Property, or the Mortgaged Property, or any of the foregoing, or upon the Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or any Noteholder as holder of any of the foregoing, or shall at any time or times require revenue or tax stamps to be affixed to the Notes, this Mortgage and Security Agreement or any other Loan Document, Mortgagors shall pay all such taxes, impositions, assessments and stamps as they become due and payable.

SECTION 3.3.2. *Annual Opinion.* Mortgagors, at their expense, will furnish to the Mortgagees annually, on or within 30 days prior to each anniversary of the Closing Date, an Opinion of Counsel, dated the date of delivery and addressed to Mortgagees and the Noteholders:

1. specifying the action, if any, taken by Mortgagors to comply with *Section 3.3.1* since the later of the date of this Mortgage and Security Agreement and the date of the last such opinion delivered hereunder;

2. specifying all action, if any, which counsel can on the date of such opinion anticipate will be required to be taken by Mortgagors during the period of eighteen months succeeding the date of such opinion to comply with this *Section 3.3*, or stating that no such action is anticipated to be necessary; and

3. concluding that all action required to be taken by Mortgagors to comply with this *Section 3.3* through the date of such opinion has been duly, timely and effectively taken; or

4. specifying the required actions which Mortgagors have failed to take hereunder and the actions required to be taken to remedy such failures.

SECTION 3.4. *Covenant Against Liens.* Mortgagors will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any Lien on or in the Mortgaged Property or any part thereof or any interest of Mortgagors, Mortgagees, Co-Agents, Depository Agent, Disbursement Agent or Noteholders therein, other than Permitted Encumbrances. So long as this Mortgage and Security Agreement remains undischarged, Mortgagors will take all action necessary to keep this Mortgage and Security Agreement, together with the financing statements filed with respect thereto, a valid, direct mortgage (or deed of trust) lien of record on, and a perfected security interest in, the Mortgaged Property subject only to Prior Permitted Encumbrances.

SECTION 3.5. *Further Assurances.* Mortgagors agree that they will execute and deliver to Mortgagees such Instruments (including financing statements) as Mortgagees may from time to time reasonably request for the purpose of evidencing, confirming, perfecting or continuing in effect any lien or security interest granted or intended to be granted hereunder.

SECTION 3.6. *Covenant Regarding Equipment Obligations.* Mortgagors agree that they will duly and punctually make, or cause to be made, any and all payments required to be made under and by the

terms of any Equipment Obligation, and will do or cause to be done all and every such further acts as may be necessary to assure to themselves the use of the equipment to which such Equipment Obligation relates, and the ultimate acquisition of complete title thereto. Nothing in this Section contained and nothing in any other provision of the Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right or power of Mortgagors, which is hereby expressly reserved, prior to the maturity of any Equipment Obligation, to extend the time for payment of the balance of the rental or other payments remaining to be paid thereunder or secured thereby, or to refinance the principal balance or remaining payments then outstanding under any Equipment Obligation by entering into a new Equipment Obligation.

SECTION 3.7. *Covenant Regarding Prior Liens, Other Agreements Affecting Mortgaged Property, etc.*

A. Mortgagors agree that they will well and truly pay and discharge or cause to be paid and discharged upon presentation thereof for payment when due the principal of and premium, if any, and interest on, and will duly, timely and fully perform, observe and comply with each and every material covenant, agreement, term, condition and provision of, all obligations having, constituting or secured directly or indirectly by a Lien on the Mortgaged Property or any part thereof or interest therein prior to the lien or the security interest of this Mortgage and Security Agreement; and that until paid or discharged at maturity or otherwise they will pay or cause to be paid the interest payable thereon at the time and at the place or places therein or in the coupons attached thereto set forth; and that they will prevent any default or other thing from happening whereby the right might arise to enforce by foreclosure or otherwise any such obligations; *provided, however, that*, anything herein to the contrary notwithstanding, Mortgagors may extend or renew the outstanding principal balance of any such obligations, except the Old Mortgages, or refinance said outstanding principal balance by entering into a new obligation, subject to the limitations, conditions and provisions contained in *Sections 6.2.5, 6.2.6, 6.2.9* and *6.2.13* of the Loan Agreement and the other provisions of this Mortgage and Security Agreement.

B. Mortgagors will not, without the prior written consent of Mortgagees, permit, suffer, consent to or be a party to any amendment, modification or change of:

1. the New Track Lease;

2. any subordination or sinking fund provision or terms of required repayment or redemption contained in any agreement, indenture or other Instrument governing any Subordinated Debt;

3. any provision of any Old Mortgage or, so long as any amount is outstanding on the B Notes, any provision of the Chemco Mortgage, if, in any such case, in the sole discretion of Mortgagees, reasonably exercised, such amendment may reasonably be anticipated to adversely affect the interests of Mortgagees, Disbursement Agent, Depository Agent, Co-Agents or the Noteholders under this Mortgage and Security Agreement or any other Loan Document.

C. Subject to *Section 3.11* (relating to permitted contests), Mortgagors, at their expense, will keep, observe, perform and comply with: (i) all Legal and Insurance Requirements, (ii) all covenants, conditions and restrictions affecting the Mortgaged Property, (iii) all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all Instruments creating or evidencing the same, any operating, reciprocal easement, maintenance, use or right of way agreements and other agreements, whether oral or written and whether benefitting or encumbering the Mortgaged Property or both, in any way relating to the Mortgaged Property, (iv) all Leases, permits, licenses, franchises, approvals, certificates, authorizations, construction contracts, leases of furniture, furnishings and equipment and other Instruments relating to the Mortgaged Property or to the ownership, occupancy, operation, use or development thereof, and (v) all Instruments evidencing or securing any Liabilities or any other obligation secured thereby. Mortgagors, at their expense, will perform, observe and comply with all conditions and requirements necessary to create, exercise, preserve, protect, renew and extend any and all permits, rights, licenses, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, waste disposal and pollution), which are or may be applicable at any time to Mortgagors or the Mortgaged Property or which have been or may be granted for the Mortgaged Property or the use thereof.

SECTION 3.8. *Covenant Regarding Impositions, etc.* Subject to *Section 3.11*, Mortgagors agree that they will pay and discharge, or cause to be paid and discharged, all Impositions so that the lien and security interest and the priority of this Mortgage and Security Agreement shall be fully preserved without expense to the Mortgagees or the Noteholders; *provided, that* Mortgagors shall not be required to pay any such Imposition which shall be imposed or levied on any portion of the real or tangible personal property included in the Mortgaged Property which has been abandoned by Mortgagors in accordance with the covenants, terms, conditions and provisions of this Mortgage and Security Agreement and, if required, in accordance with and pursuant to permission granted by the Interstate Commerce Commission or any other governmental agency, authority, officer, official or other entity having jurisdiction.

SECTION 3.9. *Covenant Regarding Railroad Leases and Trackage Agreements.* Subject to *Section 3.11*, Mortgagors agree that they will duly, fully and timely perform, observe and comply with all of their obligations from time to time as required by the terms of, and will pay and discharge or cause to be paid and discharged all sums payable under and by virtue of, any Railroad Lease or Trackage Agreement held by Mortgagors which is necessary to the efficient and proper conduct of the business and operations of Mortgagors as then proposed to be conducted. Mortgagors will not suffer or permit any default for which any such Railroad Lease or Trackage Agreement may be terminated, so that, subject to the provisions of *Article IV*, the interests of Mortgagors in all such Railroad Leases and Trackage Agreements shall be preserved unimpaired.

SECTION 3.10. *Covenant Regarding Mechanics', etc., Liens.* Subject to *Section 3.11*, Mortgagors agree that within 60 days after the same shall become or are secured by a Lien on the Mortgaged Property, they will pay, or cause to be discharged, or will make adequate provision for the satisfaction or discharge of, all claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence to this Mortgage and Security Agreement as a lien or charge upon the Mortgaged Property or any part thereof, or the income thereof. Mortgagor will not postpone the payment of any sums for which liens of mechanics, materialmen, suppliers or vendors or rights thereto have been incurred (unless such liens or rights thereto are at the time being contested as permitted as provided in *Section 3.11*), or enter into any contract under which payment of such sums is postponable (unless such contract expressly provides for the legal, binding and effective waiver of any such liens or rights thereto for the period of such postponement), in either case, for more than 60 days after the completion of the action giving rise to such liens or rights thereto.

SECTION 3.11. *Permitted Contests.* Mortgagors may, at their sole cost and expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence and continuity the amount or validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, any obligation under or in respect of any agreement referred to in *clauses (i), (ii), (iii)* and *(iv)* of the first sentence of *paragraph C* of *Section 3.7* or of any Railroad Lease or Trackage Agreement or any Lien referred to in *Section 3.10, provided that*:

(a) Mortgagors will deliver a written notice to Mortgagees prior to or simultaneously with the initiation of any such contest in the case of any contest which, or any number of related contests which in the aggregate, involves an amount or claim in excess of $500,000;

(b) such proceedings shall suspend the collection of any Imposition or other amount from, and the enforcement of any Lien, claim or other charge against, Mortgagors, Mortgagees, Disbursement Agent, Depository Agent, Co-Agents and the Noteholders, and the Mortgaged Property, and shall not interfere with the payment of any rent or other income from the Mortgaged Property;

(c) neither the Mortgaged Property nor any part thereof or interest therein or any rent or other income or proceeds therefrom or any other property or assets of Mortgagors, Mortgagees, Disbursement Agent, Depository Agent, Co-Agents or the Noteholders would be in any danger of being sold, forfeited, lost or interfered with;

(d) neither Mortgagor, Disbursement Agent, Depository Agent nor any Mortgagee, Co-Agent or Noteholder would be in any danger of any civil liability (other than for the contested amount and for interest and penalties thereon, which amount, interest and penalties shall be payable by Mortgagors) or any criminal liability for nonpayment or otherwise in connection therewith;

(e) the payment of any amount required to be paid under or with respect to this Mortgage and Security Agreement, the Notes, the Loan Agreement or any other Loan Document shall not be interfered with or otherwise affected;

(f) Mortgagors shall have set aside on their books such reserves, if any, with respect thereto as shall be required in accordance with generally accepted accounting principles and shall have furnished such bond or other security therefor, if any, as shall be required in the proceedings and/or as may reasonably be requested by Mortgagees or any Noteholder; and

(g) the security afforded by this Mortgage and Security Agreement shall not, in the sole judgment of Mortgagees, be materially impaired or endangered.

SECTION 3.12. *Covenant Regarding Maintenance.* Mortgagors agree that, subject to the provisions of *Articles IV* and *V*, to the extent needful and proper for the efficient and economic operation of the Mortgaged Property, Mortgagors will:

(a) diligently preserve all of the rights and franchises granted to or conferred upon them;

(b) at all times maintain, preserve and keep their railroads, fixtures and appurtenances in good repair, working order and condition and from time to time make all needful and proper repairs thereto and renewals and replacements thereof; and

(c) at all times keep the lines of railroad subject to this Mortgage and Security Agreement supplied with equipment together with machinery, tools and other supplies, maintain the same in good order and condition, reasonable wear and tear excepted, and from time to time make all needful and proper repairs thereto and renewals and replacements thereof.

SECTION 3.13. *Covenant Regarding Insurance.*

SECTION 3.13.1. *Risks to be Insured.* Mortgagors agree that they will maintain or cause to be maintained with responsible insurance companies insurance with respect to the Mortgaged Property, and with respect to their businesses and other properties, of such types, against such casualties, contingencies and risks and in such amounts and with such deductibles or exclusions as is customary in the case of similar businesses and such other and further insurance, and will deliver or cause to be delivered such certificates, reports and other information with regard to their insurance programs, all as may be required under the Loan Agreement, and will punctually do, perform, observe and comply with all of the covenants, terms, provisions and conditions of the Loan Agreement and this Mortgage and Security Agreement relating to insurance.

SECTION 3.13.2. *Policy Provisions.* All insurance maintained by Mortgagors with respect to loss, damage or destruction of the Mortgaged Property and public liability shall:

(a) name Mortgagors as insureds and Mortgagees, Co-Agents, Disbursement Agent and the Noteholders as additional insureds as their respective interests may appear;

(b) except for public liability insurance, provide that all proceeds shall be adjusted by Mortgagors, subject to the approval of the Mortgagees in the event the proceeds shall exceed $1,000,000 with respect to any one loss, and shall be payable to Mortgagors;

(c) include effective waivers by the insurer of all rights of subrogation against Mortgagees, Co-Agents, Disbursement Agent and the Noteholders, the Mortgaged Property and the indebtedness secured by this Mortgage and Security Agreement and all claims for insurance premiums against Mortgagees, Co-Agents, Disbursement Agent and the Noteholders;

(d) except for automobile, aircraft and nuclear insurance policies, provide that any loss shall be payable notwithstanding:

(i) any negligent act or failure to act by any named insured or any additional insured,

(ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of and such policy,

(iii) any foreclosure or other action or proceeding taken by Mortgagees or any Noteholder pursuant to any provision of this Mortgage and Security Agreement, and

(iv) any change in title to or ownership of the Mortgaged Property or any portion thereof;

(e) except for automobile, aircraft and nuclear insurance policies, provide that any loss payable as the respective interests of the Mortgagees, Co-Agents, Disbursement Agent or the Noteholders may appear shall be payable notwithstanding any violation of any warranty, declaration or condition contained in any such policy by any named insured or additional insured;

(f) except for automobile, aircraft and nuclear insurance policies, provide that no cancellation or material change thereof or any portion thereof shall be effective for a period of at least 30 days after receipt by Mortgagees of written notice thereof;

(g) except for automobile, aircraft and nuclear insurance policies, provide that if all or any material part of any such policy is not renewed or is allowed to lapse, or is cancelled or terminated, the insurer will forthwith give notice thereof to Mortgagees; and

(h) except for automobile, aircraft and nuclear insurance policies, provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagors, Mortgagees or any Noteholder and that all of the provisions thereof shall operate in the same manner as if there were a separate policy covering each insured, except that the naming of more than one insured under the policy shall not serve to increase the insurers' limit of liability thereunder.

Any insurance maintained pursuant to this *Section 3.13* may be evidenced by blanket insurance policies covering the Mortgaged Property and other property of Mortgagors and their Subsidiaries (which may include Western), *provided that* any such policy shall specify the amount, if less than all, of the total coverage of such policy that is allocated to the Mortgaged Property and shall in all other respects comply with the requirements of this *Section 3.13*.

SECTION 3.13.3. *Right of Mortgagees or Noteholders to Insure.* If Mortgagors shall fail to perform duly and punctually any obligation under this *Section 3.13*, the Mortgagees, at the direction of the Requisite Holders, or the Requisite Holders may, but shall not be obligated to, obtain such insurance or perform such other act in accordance herewith at the expense of Mortgagors and, in such event, Mortgagors shall reimburse Mortgagees or such Requisite Holders, as the case may be, immediately upon demand the full amount incurred by Mortgagees or such Requisite Holders in performance of such obligation.

SECTION 3.13.4. *Proceeds.* All proceeds of insurance received by Mortgagors on account of loss, damage or destruction of any of the Mortgaged Property (including any amounts charged against a self-insurance fund) shall, subject to the prior rights of any trustee, mortgagee or other holder under a Prior Permitted Encumbrance thereon, be deposited with the Depository Agent as, and to the extent, and subject to the same provisions for withdrawal, provided in *Sections 4.16* and *4.17* in the case of the value of property released and applied after an Event of Default shall have occurred and be continuing as provided in *Section 6.10*; *provided, however, that* proceeds of insurance need not be so deposited, or may be withdrawn, to the extent of an amount equal to expenditures by Mortgagors for the replacement and/or repair of any such lost, damaged or destroyed Mortgaged Property but any such expenditures to such extent shall not constitute an Amount of Additions.

SECTION 3.14. *Covenant Regarding Inspection and Information.* Mortgagors agree that at all reasonable times they will permit any Mortgagee or Noteholder and its duly authorized representatives to inspect the Mortgaged Property or any portion thereof and upon request of any Mortgagee or Noteholder will furnish to such Person such information with respect to the Mortgaged Property as such Mortgagee or Noteholder may reasonably request.

SECTION 3.15. *Covenant Regarding Inventory and Accounts.* Mortgagors agree that they, will not, directly or indirectly, use their inventory or accounts, or any other right to receive money or money, as collateral for any financing without the consent of the Requisite Holders.

SECTION 3.16. *Representation, Warranty and Covenant Regarding First Mortgage Bonds.* Mortgagors hereby represent and warrant to Mortgagees and the Noteholders that, on the date hereof:

(a) the aggregate outstanding principal amount of the Great Western First Mortgage Bonds, less the aggregate principal amount of such bonds held in treasury by CNW, does not exceed $3,284,000;

(b) the aggregate outstanding principal amount of the M. & St. L. Mortgage Bonds, less the aggregate principal amount of such bonds held in treasury by CNW, does not exceed $2,914,640; and

(c) the aggregate outstanding principal amount of the North Western First Mortgage Bonds, less the aggregate principal amount of such bonds held in treasury by CNW, does not exceed $22,030,000.

Mortgagors agree that, except with the consent of all of the Noteholders they will not issue, reissue, hypothecate or otherwise dispose of bonds secured by an Old Mortgage other than (i) in connection with the surrender of bonds by bondholders for exchange, transfer, registration or release from registration or (ii) to the trustee under an Old Mortgage pursuant to its terms in a transaction which will require their cancellation.

SECTION 3.17. *Restriction on Business Activities of MRPI.* So long as any amounts are payable on the A Notes or any other Liability has not been fully paid, performed or complied with and this Mortgage and Security Agreement is outstanding, MRPI will not, and CNW will not cause, suffer or permit MRPI to, directly or indirectly engage in any business or activity other than (a) purchasing the New Track in accordance with the terms and conditions of the Purchase Agreement, (b) leasing the New Track to CNW in accordance with the New Track Lease and, (c) subject to the covenants, terms, conditions and provisions of this Mortgage and Security Agreement, the Loan Agreement and the other Loan Documents, acquiring lines of railroad and track, trackage rights and other property reasonably incidental to the New Track, leasing such additional lines of railroad and track, trackage rights and other property to CNW and abandoning and otherwise disposing of its property in the ordinary course of business.

SECTION 3.18. *Indemnification.* Mortgagors will protect, indemnify, save harmless and defend Mortgagees, Disbursement Agent, Depository Agent, Co-Agents and the Noteholders from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagees, Disbursement Agent, Depository Agent, Co-Agents or any Noteholder by reason of:

(a) the ownership of any interest in this Mortgage and Security Agreement, the Notes, any other Liabilities or the Mortgaged Property;

(b) any use, non-use or condition of the Mortgaged Property or any part thereof or of the adjoining sidewalks, curbs, vaults and vault space, if any, streets, alleys or ways;

(c) any failure on the part of the Mortgagors to perform or comply with any of the terms of this Mortgage and Security Agreement;

(d) the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof;

(e) any negligence or tortious act on the part of Mortgagors or any of their agents, contractors, lessees, licensees or invitees, or any other Person whomsoever;

(f) any work in connection with any alterations, changes, new construction or demolition of or additions to the Mortgaged Property; or

(g) any litigation, arbitration, investigation or other proceeding initiated by any Person with respect to the Loan Documents, the Mortgaged Property or any transaction contemplated by the Loan Documents, any amount, consideration or other benefit paid, received or deposited hereunder or thereunder or any other matter relating to the Loans.

If any action or proceeding be commenced, except an action to foreclose this Mortgage and Security Agreement or to collect the Liabilities, to which action or proceeding any Mortgagee, Co-Agent or Noteholder or Disbursement Agent or Depository Agent is made a party by reason of the execution of this Mortgage and Security Agreement, the Notes or any other Loan Document, or the performance of or compliance with any of the obligations or provisions hereof or thereof, or in which it becomes necessary to defend or uphold the lien of this Mortgage and Security Agreement, all sums paid by such Mortgagee, Co-Agent or Noteholder or Disbursement Agent or Depository Agent for the expense of any litigation to prosecute or defend the rights and lien created hereby shall be paid by Mortgagors to such Person as hereinafter provided. In case any action, suit or proceeding is brought against any Mortgagee, Co-Agent or Noteholder or Disbursement Agent or Depository Agent by reason of any such occurrence, Mortgagors,

upon request of such Person, will, at Mortgagors' expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagors and approved by such Mortgagee, Co-Agent or Noteholder or the Disbursement Agent or the Depository Agent, as the case may be. Mortgagors will pay and save Mortgagees, Co-Agents, Disbursement Agent, Depository Agent and the Noteholders harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the Federal government or any state, local, municipal or other government or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or any Noteholder in respect of this Mortgage and Security Agreement or the Notes. All amounts payable to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or any Noteholder under this Section shall be deemed indebtedness secured by this Mortgage and Security Agreement and any such amounts which are not paid within ten days after written demand therefor by any Mortgagee, Co-Agent or Noteholder or the Disbursement Agent or Depository Agent shall bear interest at the Default Interest Rate from the date of such demand. The obligations of Mortgagors under this *Section 3.18* shall survive any discharge of this Mortgage and Security Agreement and payment in full of the Notes and all other Liabilities secured hereby.

SECTION 3.19. *Notice of Default, Litigation, etc.* Mortgagors will promptly give notice to Mortgagees, Co-Agents, the Disbursement Agent, the Depository Agent and the Noteholders of:

(a) the occurrence of any Default hereunder or under the Loan Agreement;

(b) any notice of default given, or any legal action taken against Mortgagors, or either of them, by any Person with respect to any default or claimed default, under or in respect of any Prior Mortgage or any Railroad Lease or Trackage Agreement if, as a consequence of such default, Mortgagors could suffer the loss of ownership or use of a material portion of the Mortgaged Property or any main or principal branch line of railroad;

(c) any litigation, arbitration, investigation or proceeding previously not disclosed by Mortgagors to the Noteholders which has been instituted or, to the knowledge of Mortgagors, is threatened against Mortgagors or the Mortgaged Property which:

(i) can reasonably be expected to materially adversely affect the consolidated financial condition or operations of CNW and Subsidiaries or materially adversely impair the ability of Mortgagors to perform their obligations hereunder or under the other Loan Documents, or

(ii) relates to the legality, validity, enforceability or interpretation of the Purchase Agreement, the New Track Lease, the Loan Agreement, the Notes, this Mortgage and Security Agreement or any other Loan Document, or the ownership by MRPI of, or any lien or security interest of Mortgagees in, the New Track, or any transaction financed in whole or in part with the proceeds of the Loans;

(d) any material development which shall occur in any litigation, arbitration, investigation or proceeding previously disclosed by Mortgagors to the Noteholders;

(e) the occurrence of a Reportable Event under, or the institution of steps by either Mortgagor or any Subsidiary to withdraw from, or the institution by the Pension Benefit Guaranty Corporation or any other Person of any steps to terminate, any employee benefit plan (as defined in Section 3(3) of ERISA) as to which such Mortgagor or any Subsidiary may have any liability; and

(f) any actual or threatened condemnation or other taking, whether for a temporary or permanent use, or any negotiations with respect to any taking of, or any loss of or substantial damage to, any material portion of the Mortgaged Property;

specifying, in each case, the action Mortgagors have taken and propose to take with respect to such condition or event.

ARTICLE IV

POSSESSION, USE AND RELEASE OF MORTGAGED PROPERTY AND WITHDRAWAL OF CASH

SECTION 4.1. *Possession and Use.* While Mortgagors shall remain in possession of the Mortgaged Property or any part thereof and as long as no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and is continuing, Mortgagors shall be entitled, as against Mortgagees, to manage, operate, use, enjoy and be suffered and permitted to remain in the actual and undisturbed possession of all and singular the Mortgaged Property (except any cash or securities or other property deposited or pledged or required to be deposited or pledged with the Disbursement Agent, Depository Agent, Co-Agents or Mortgagees hereunder or under the Loan Agreement or any other Loan Document), and to receive, take and use all rents, issues, tolls, profits, dividends, income and proceeds thereof.

SECTION 4.2. *Disposition and Release.* Provided that no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, Mortgagors, subject to the conditions and limitations in this Article prescribed, may dispose of, and Mortgagees, upon the Mortgagors' compliance with such conditions and limitations as may be applicable, shall release from the lien of this Mortgage and Security Agreement, any of the Mortgaged Property disposed of or to be disposed of, the release of which, in the judgment of CNW's Board of Directors stated in a duly adopted resolution, is desirable in the conduct of the business of CNW. The terms "disposed of" or "disposition" as used in this *Article IV* shall mean and include any sale, exchange, abandonment, taking by eminent domain or governmental authority, demolition, scrapping, dismantling (including release from the lien and security interest hereof of dismantled material transferred to inventory for re-use or sale) or other deprivation or relinquishment of property, resulting in the retirement of such property and its removal from the property accounts of the Mortgagors, and shall also include the relinquishment of trackage and other rights and partial interests therein. The terms "disposed of" or "disposition" shall not include the subjecting of equipment to a prior right, charge, lien or title securing Equipment Obligations, which are provided for in *Section 4.14.*

Except as otherwise provided under *Section 4.3, 4.6,* or *4.16,* Mortgagors shall, as provided in *Section 4.16,* deposit with the Depository Agent cash equal to the value of Mortgaged Property disposed of free from the lien of this Mortgage and Security Agreement, whether upon release thereof by the Mortgagees or without such release.

SECTION 4.3. *Dispositions Free of Lien Without Deposit.* Notwithstanding anything to the contrary contained in this Article, provided that no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing;

(a) any portion of or interest in the Mortgaged Property which is owned by CNW and which is subject to an Old Mortgage or the prior lien of the B Mortgage shall, if released from the lien thereof in compliance with the terms, provisions and conditions thereof, be automatically released from the lien of this Mortgage and Security Agreement without the necessity of any accounting to Mortgagees, and no instrument of release from the lien of this Mortgage and Security Agreement and no deposit with the Depository Agent shall be required in connection therewith, but the Mortgagees will execute such instruments of confirmatory release thereof from the lien and security interest hereunder as Mortgagors may reasonably request, *provided, however, that,* in each case: (i) any deposit of cash or pledge of purchase money obligations required under such Prior Mortgage to obtain such release is actually made by Mortgagors, (ii) Mortgagors shall deliver to Mortgagees copies of each certificate, opinion or other document delivered by Mortgagors under such Prior Mortgage in connection with such release and such evidence of the release of such portion of the Mortgaged Property from the lien thereof as Mortgagees may reasonably request and (iii) the provisions of this *Section 4.3* are intended to apply and shall apply only to partial releases of Mortgaged Property from the lien of such Prior Mortgage in accordance with the provisions thereof and no portion of the Mortgaged Property shall be released from the lien of this Mortgage and Security Agreement by reason of the satisfaction, discharge or complete defeasance or release of the lien of such Prior Mortgage upon the payment in full or retirement of all the bonds or Notes secured by such Prior Mortgage or otherwise; and

(b) Mortgagors may from time to time dispose of options or other rights to acquire tangible or intangible property free from the lien of this Mortgage and Security Agreement without the necessity of any accounting to Mortgagees, and no instrument of consent or of release from the lien of this Mortgage and Security Agreement and no deposit with the Depository Agent shall be required in connection therewith, but the Mortgagees will execute such instruments of consent or of confirmatory release from the lien and security interest hereunder as Mortgagors may reasonably request.

SECTION 4.4. *Other Dispositions Free of Lien.* Notwithstanding anything to the contrary contained in this Article, provided that no Event of Default hereunder nor any Default under *Section 7.1.1* of *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, Mortgagors may from time to time dispose of, free from the lien of this Mortgage and Security Agreement and without release by the Mortgagees, any of the Mortgaged Property which, in the opinion of Mortgagors, it shall no longer be necessary or expedient to retain in connection with the operation, maintenance or use of Mortgagors' transportation system, if the value of the property so disposed of at any one time, less the amount of indebtedness outstanding under a prior lien thereon at the time of such disposition, does not, in the opinion of the Chief Engineer or any Assistant Chief Engineer of CNW, exceed $250,000, and if the aggregate of

(a) the value of all properties then being and theretofore during the current calendar year so disposed of, less the amount of all indebtedness outstanding under a prior lien thereon at the respective times of such dispositions, and

(b) the value of all property disposed of pursuant to the provisions of *paragraph A* of *Section 4.8* during the current calendar year,

does not exceed $1,500,000.

On or before March 31, 1984, and on or before March 31 of each succeeding year, Mortgagors (i) shall deliver to Mortgagees, Co-Agents, Disbursement Agent, Depository Agent, and the Noteholders a report for the preceding calendar year signed as in the case of an Officers' Certificate and signed also, as to matters of value, by the Chief Engineer or any Assistant Chief Engineer of CNW, setting forth in reasonable detail (x) the property disposed of under this Section and under the provisions of *paragraph A* of *Section 4.8* during the preceding calendar year; (y) the aggregate value of the property so disposed of and the amount of any indebtedness outstanding under a prior lien thereon at the respective times of disposition thereof; and (c) the amount of cash and the value of all other consideration received by Mortgagors for the property disposed of; and (ii) shall deposit with the Depository Agent such cash, if any, as is required in connection with such dispositions pursuant to *Section 4.16*. Any prior liens on any of such other consideration shall be described and the amount of indebtedness outstanding thereunder at the date of receipt of such consideration shall be stated. Transportation equipment disposed of under this Section shall be identified and the value thereof and the cash and other consideration received therefor shall be separately stated.

SECTION 4.5. *Leases.* Provided that no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, Mortgagors may from time to time hereafter enter into Leases of any Mortgaged Property (other than a Lease of all or substantially all of the Mortgaged Property), *provided that*:

(a) any Lease of equipment shall be for a term of two years or less or shall be cancellable without significant penalty to either CNW or MRPI on not more than twelve months' prior notice; and

(b) in the case of any Lease of all or any portion of any of the following lines of railroad, Mortgagors, or either of them, shall retain reasonable rights to operate over such line of railroad:

(i) CNW's line of railroad between Chicago, Illinois, and Fremont, Nebraska,

(ii) MRPI's line of railroad between Mason City, Iowa, and Kansas City, Missouri, and

(iii) Mortgagors' line of railroad (utilizing lines of railroad of CNW and/or MRPI) or any other route or line between Minneapolis—St. Paul, Minnesota, and Mason City, Iowa; and

(c) Mortgagors shall not, without the prior written consent of the Requisite Holders (which consent shall not be unreasonably withheld), enter into any Lease granting or relinquishing all rights of Mortgagors to operate over any of the following lines of railroad:

(i) CNW's line of railroad between Nelson, Illinois, and East St. Louis, Illinois,

(ii) a CNW line of railroad between St. Paul, Minnesota, and California Junction, Iowa, or

(iii) a CNW line of railroad running from Chicago, Illinois, to Milwaukee, Wisconsin, and thence to Minneapolis—St. Paul, Minnesota,

which may include rights now owned and, in each case, except those lines of railroad referred to in *clause (b)(i)* and *(ii)*, above, may include rights hereafter acquired to operate over lines of other railroads. Mortgagors shall promptly furnish Mortgagees with a copy of each such Lease of all or any portion of a line of railroad and of any amendment, extension or instrument of termination thereof. The interest of Mortgagors in such Leases and any rental or other compensation to be received by them thereunder and any reciprocal leases, agreements or other benefits obtained by Mortgagors in consideration therefor or in connection therewith shall be subject to the lien and security interest of this Mortgage and Security Agreement. Mortgagees may accept an Opinion of Counsel, delivered to Mortgagees, that such interest of Mortgagors is so subject to the lien and security interest of this Mortgage and Security Agreement. Every such Lease shall provide that, subject to the rights of the holders of Prior Permitted Encumbrances, upon written notice from Mortgagees that an Event of Default under this Mortgage and Security Agreement shall have occurred and be continuing, the lessee shall pay to Mortgagees all rents and other compensation payable thereunder during the term of such Lease and shall further provide that, in all cases, any rent or other compensation payable otherwise than in installments shall in any event be paid to Mortgagees.

SECTION 4.6. *Tax Leases.* Mortgagors may from time to time, as long as no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, dispose of tax benefits, which may be effected, without limitation, by means of sale, lease or other disposition, effective only for tax purposes, of the Mortgaged Property or any portion thereof or interest therein (herein referred to as a "Tax Lease"). Any such disposition may be by means of an Instrument or other arrangement to which this Mortgage and Security Agreement is subject and subordinate, in which case Mortgagors shall deposit with the Depository Agent pursuant to *Section 4.16* cash equal to the aggregate amount of the rents, proceeds or other consideration from time to time received by Mortgagors in connection with such Tax Lease. In the case of any other disposition under this *Section 4.6*, Mortgagors shall not be required to make any deposit or to account to Mortgagees for the proceeds.

SECTION 4.7. *Abandonment of Use.* If Mortgagors, (a) by agreement with a State, municipality or other political division or subdivision of a State, or (b) pursuant to an order of any governmental body having jurisdiction in the premises, or (c) pursuant to any Legal Requirement, or (d) in the judgment of CNW's Board or Directors stated in a duly adopted resolution, determine abandonment is desirable in the conduct of the business of CNW, and, in any such case, in compliance with the provisions of *Section 4.12* if such abandonment is voluntary, shall abandon the use of any of the Mortgaged Property in place, and shall deliver to Mortgagees a copy of such agreement or order, or evidence of such Legal Requirement, together with an Opinion of Counsel that such abandonment is thereby authorized or required, Mortgagors may relinquish or otherwise terminate any franchise, operating agreement, leasehold or trackage rights or similar interests appurtenant to such Mortgaged Property and may, in accordance with such provisions of this Article as shall be applicable, dispose of any or all the Mortgaged Property the use of which has been so abandoned.

SECTION 4.8. *Certain Dispositions, Changes and Terminations.* A. Mortgagors shall have full power, in their discretion and without release by Mortgagees, from time to time, as long as no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and is continuing, to dispose of any machinery, tools and other chattels which may have become obsolete or otherwise unfit for use, free from the lien of this Mortgage and Security Agreement.

B. Mortgagors may at any time, as long as no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and is continuing, make any changes in the location of any of the tracks, station houses, buildings or other structures situated

upon a part of the Mortgaged Property, *provided that* any property to which such tracks, station houses, buildings or other structures are relocated and which is not subject to the lien and security interest of this Mortgage and Security Agreement shall be or become subject to the lien and security interest hereof prior to such relocation or simultaneously therewith or with the acquisition of such property by Mortgagors. Mortgagees, upon receipt of an Opinion of Counsel or other or additional evidence reasonably satisfactory to Mortgagees that such new tracks, station houses, buildings or other structures and the premises on which the same may be relocated are subject to the lien and the perfected security interest of this Mortgage and Security Agreement, shall, upon the request of Mortgagors, release from the lien of this Mortgage and Security Agreement the tracks, station houses, buildings and other structures, the location of which shall be so changed, and the premises on which they were located.

C. Notwithstanding the provisions of *Section 3.9*, Mortgagors shall have the right from time to time, as long as no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and is continuing, to change, amend, supplement or surrender in whole or in part any Railroad Lease or Trackage Agreement, *provided that* such change, amendment, supplement or surrender shall not impair the economical and efficient overall operation of the business of Mortgagors.

SECTION 4.9. *Third Party Protection.* Except as otherwise provided in the last sentence of this paragraph, the certification by CNW or MRPI in any instrument of conveyance, transfer, assignment, grant or other disposition or Lease made pursuant to the provisions of *Section 4.3*, *4.4* or *4.5* or *paragraph A* of *Section 4.8* that the property or interest thereby conveyed, transferred, assigned, granted or otherwise disposed of or leased may be so conveyed, transferred, assigned, granted or otherwise disposed of or leased free from or in priority to the lien of this Mortgage and Security Agreement shall conclusively protect the grantee, transferee, assignee or lessee against any claim based upon the lien of this Mortgage and Security Agreement and shall be binding upon the Mortgagees. No third party accepting any such instrument containing any such certification from Mortgagors or either of them shall be required to inquire whether the provisions of said *Section 4.3*, *4.4* or *4.5* or *paragraph A* of *Section 4.8* have been complied with. Nothing contained in the preceding two sentences shall, however, relieve any Person of liability for fraud or wilful misconduct.

Nevertheless, Mortgagees shall, if Mortgagors or either of them shall so request, execute and deliver confirmatory releases, instruments of subordination or certificates evidencing that the property or interest so conveyed, transferred, assigned, granted or otherwise disposed of or leased is free from or prior to the lien of this Mortgage and Security Agreement upon the delivery to Mortgagees of an Officers' Certificate describing in reasonable detail such property or interest and setting forth facts showing to Mortgagees' reasonable satisfaction that such property or interest therein has been conveyed, transferred, assigned, granted or otherwise disposed of or leased in accordance with the provisions of *Section 4.3, 4.4* or *4.5*, or *paragraph A* of *Section 4.8*, as the case may be.

In no event shall any purchaser of any part of the Mortgaged Property be required to see to the application of the purchase money.

SECTION 4.10. *Documentation Required for Release.* When requesting any release, except any confirmatory release of property disposed of pursuant to *Section 4.3*, *4.4* or *4.5*, or *paragraph A* of *Section 4.8*, Mortgagors shall deliver to Mortgagees a written request therefor and an Officers' Certificate, signed also by the Chief Engineer or any Assistant Chief Engineer of CNW as to matters of value, which shall set forth:

(a) a description and statement of the value of the property as to which a release is requested and a statement of the amount of any indebtedness outstanding under a prior lien thereon;

(b) such facts as shall be necessary to show to Mortgagees' reasonable satisfaction that the release thereof is authorized under the applicable provisions and restrictions of this Article;

(c) the selling price, if any, of the property, the release of which is requested; and

(d) a statement of the amount of cash and a description and statement of the value of the consideration other than cash, if any, to be received in exchange therefor and a statement of the amount of any indebtedness outstanding at the time of receipt of such consideration under a prior lien thereon.

In the case of any confirmatory release of property pursuant to *Section 4.3*, *4.4* or *4.5*, or *paragraph A* of *Section 4.8*, an Officers' Certificate setting forth the matters referred to in *clause (b)*, above, shall be required to be delivered to Mortgagees. Any Officers' Certificate referred to in this Section may be accepted by Mortgagees as conclusive evidence of any of the facts recited therein required to be established in order to authorize the release of any property and the recital therein of all facts required to be established in order to authorize such release under the provisions and restrictions of this Article shall be full warrant to Mortgagees for any action taken upon the faith thereof; but Mortgagees, in their sole discretion, reasonably exercised, may require such further and additional evidence or Opinion of Counsel as to them may seem reasonable.

SECTION 4.11. *Eminent Domain.* Should any part of the property subject to the lien or security interest of this Mortgage and Security Agreement be taken by the exercise of the power of eminent domain or should any governmental body at any time exercise any right which it may have to require the sale to it or to a purchaser designated by it of any part of the property subject to the lien of this Mortgage and Security Agreement, Mortgagees, upon request of Mortgagors delivered to Mortgagees, shall release the property so taken or sold. Any awards or other compensation or consideration received by or payable to Mortgagors, Mortgagees or Depository Agent in connection with any such taking or sale shall, subject to the rights of any trustee, mortgagee or other holder under a Prior Permitted Encumbrance on the Mortgaged Property so taken or sold, be deposited with the Depository Agent as, and to the extent, and subject to the same provisions for withdrawal, provided in *Section 4.16* and *4.17* in the case of the value of property otherwise released and shall be applied, after an Event of Default shall have occurred and is continuing, as provided in *Section 6.10*.

SECTION 4.12. *Abandonment or Disposition of Lines of Railroad.* Subject to Mortgagors' rights to enter into transactions permitted under *clause (g)* of *Section 6.2.7* of the Loan Agreement and *clause (g)* of *Section 5.1* and *Section 5.2* hereof, CNW and/or MRPI, as the case may be:

(a) shall not dispose of, or abandon authority to operate over, CNW's line of railroad between Chicago, Illinois, and Fremont, Nebraska, or MRPI's line of railroad between Mason City, Iowa, and Kansas City, Missouri, and shall not relinquish the right to operate over at least one CNW and/or MRPI line and/or any line of any other railroad between Minneapolis—St. Paul, Minnesota, and Mason City, Iowa, *provided, however, that* Mortgagors may admit other railroads to joint use or similar non-exclusive Leases of such lines of railroad as provided in *Section 4.5* and *provided, further, however, that* CNW may sell portions of its Chicago—Fremont line in and around Chicago, Illinois, in connection with an RTA Sale, so long as the efficiency of transcontinental freight service between Chicago and Fremont is not substantially impaired;

(b) without making a payment of a principal amount of the Notes as hereinafter in this Section provided, shall not dispose of, or abandon authority to operate over:

(i) CNW's line of railroad between Nelson, Illinois, and East St. Louis, Illinois,

(ii) a CNW line of railroad between St. Paul, Minnesota, and California Junction, Iowa, or

(iii) a CNW line of railroad running from Chicago, Illinois, to Milwaukee, Wisconsin and thence to Minneapolis—St. Paul, Minnesota; and

(c) without making a payment of the principal amount of the Notes as hereinafter in this Section provided, shall not dispose of, or abandon authority to operate over, any line of railroad if such disposition or abandonment would reduce the lines of railroad owned and operated by CNW and MRPI to less than 5,000 miles.

In the event (except as permitted by *clause (g)* of *Section 6.2.7* of the Loan Agreement and *clause (g)* of *Section 5.1* and *Section 5.2* hereof) of any disposition of, or abandonment of authority to operate over, a line of railroad, or any portion thereof, described in *clause (b)* or any other disposition or abandonment of authority which reduces or further reduces the aggregate mileage of the lines of railroad owned and operated by CNW and MRPI to less than 5,000 miles (collectively, but excluding in the case of *clause (c)* the number of miles of line involved which reduces such aggregate mileage to but not below 5,000 miles, the "Payoff Transactions"), on the first Quarterly Payment Date occurring thereafter, Mortgagors shall make a payment of the principal amount of the Notes in an amount equal to the then aggregate outstanding

principal balance of Notes multiplied by a fraction, the numerator of which shall equal the miles of lines of railroad which are the subject of the current Payoff Transaction and the denominator of which shall equal 5,000 less the aggregate numerator miles in all prior Payoff Transactions, if any. If a Payoff Transaction would require a principal payment under both *clauses (b)* and *(c)* above, only one such payment will be required.

SECTION 4.13. *Opinion of Counsel Regarding Certain Property Acquired.* If Mortgagors shall have acquired in exchange for all or any part of any Mortgaged Property released from the lien hereof, other property constituting Additions, there shall be delivered to Mortgagees an Opinion of Counsel to the effect that such property is subject to the lien and security interest of this Mortgage and Security Agreement or will become subject to such lien and security interest upon the delivery and recording or filing of the deeds, supplemental indentures or instruments of further assurance, if any, specified in said Opinion of Counsel (and delivered to Mortgagees therewith), subject to no Lien thereon prior to the lien and security interest of this Mortgage and Security Agreement except Prior Permitted Encumbrances, if any, and subject to no defect in title other than Permitted Encumbrances, if any; *provided that* such Opinion of Counsel may be based upon certificates or opinions of officers or engineers of Mortgagors as to any matters of fact not of public record if counsel delivering such opinion specifically states that, in his opinion, he and Mortgagees are reasonably justified in relying thereon.

SECTION 4.14. *Confirmation of Prior Lien of Equipment Obligations.* In order to confirm, secure or clear (of record or otherwise) the prior right, charge, lien or title with respect to transportation equipment securing any Equipment Obligation hereafter created under reservation of right set forth in *clause E(ii)* of the Granting Clause of this Mortgage and Security Agreement, Mortgagees shall, upon compliance with the subsequent provisions of this Section, at Mortgagees' option, either confirm as to such equipment the subordination of the lien and security interest of this Mortgage and Security Agreement to such prior right, charge, lien and security interest or title, or release such equipment from the lien of this Mortgage and Security Agreement. Prior to any such confirmation of subordination or release there shall be delivered to Mortgagees a request of Mortgagors and an Officers' Certificate, dated as of the date of delivery thereof, which shall describe the transportation equipment as to which a confirmation of subordination or a release is requested, shall describe the Equipment Obligation to be secured by a prior right, charge, lien or title thereon and shall state that such equipment was acquired or constructed for the use of the Mortgagors within three years prior to the date of such certificate. There shall also be furnished to the Mortgagees an Opinion of Counsel with which shall be furnished the Instrument or Instruments to be executed and delivered by the Mortgagees in order to effect the requested confirmation of subordination or release. Such Opinion of Counsel shall approve the form of the Instrument or Instruments furnished therewith and shall express the opinion that, upon execution and delivery by Mortgagees of such confirmation of subordination or release, the lien and security interest of this Mortgage and Security Agreement will attach to all right, title or interest of Mortgagors then or thereafter existing with respect to the equipment described in the certificate, subject only to the prior right, charge, lien or title of the Equipment Obligation with respect to which such subordination or release is requested and other specified Initial or Subsequent Prior Permitted Encumbrances; but such expression of opinion may be predicated upon the execution and delivery of other Instruments in addition to those specified above, or the taking of other action, in which case Mortgagors shall cause such other Instruments to be executed and delivered, or such other action to be taken, prior to the execution and delivery by Mortgagees of the Instruments of confirmation or release.

SECTION 4.15. *Releases After Default.* If an Event of Default hereunder or a Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, the Mortgagees may, if in the opinion of the Mortgagees it is in the best interests of the Noteholders so to do, permit Mortgagors to take any action authorized by the provisions of this Article, but shall not be required so to do.

If the Mortgaged Property shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred upon Mortgagors by this Article may be exercised by such receiver or trustee, but only with the approval of Mortgagees, and if Mortgagees shall be in possession of the Mortgaged Property under any provision of this Mortgage and Security Agreement, then all the powers by this Article conferred upon Mortgagors may be exercised by Mortgagees in their discretion.

SECTION 4.16. *Deposit of Cash with Depository Agent.* Upon the disposition of Mortgaged Property (except as provided in *Sections 4.3* and *4.6* and the last paragraph of this *Section 4.16*), and as a condition (except as provided in *Section 4.3*, *Section 4.4*, *paragraph A* of *Section 4.8* and the last paragraph of this *Section 4.16*) to the release thereof from the lien of this Mortgage and Security Agreement, Mortgagors shall deposit cash equal to the value thereof with the Depository Agent, and deliver to Depository Agent any certificate required by *clause (b)* below. There shall be deducted from the amount of such cash deposit requirement:

(a) the amount of any indebtedness outstanding under a prior lien on such Mortgaged Property at the time of disposition thereof which is repaid in connection therewith or which is assumed by the Person to whom such Mortgaged Property is disposed;

(b) the value, as evidenced to the reasonable satisfaction of the Depository Agent by a certificate of the Chief Engineer or any Assistant Chief Engineer of CNW, of any property constituting Additions received by Mortgagors as consideration for such Mortgaged Property; and

(c) the principal amount of any purchase money obligations being pledged with the Depository Agent received as consideration for and secured by a lien upon the Mortgaged Property so disposed of (Mortgagors shall be entitled to payments of interest thereon and the Depository Agent shall hold payments of principal as deposited cash);

provided, however, that for the purpose of the preceding *clause (a)*, indebtedness secured by a prior lien on the Mortgaged Property disposed of and which remains a lien on other Mortgaged Property shall be disregarded.

There shall also be deposited with the Depository Agent the amounts specified in *clause (x)* of the last sub-paragraph of *paragraph (b)* of *Section 4.17.*

Unless and until the cumulative total of the amount of cash which Mortgagors would otherwise be required under the provisions of this *Section 4.16* to deposit with the Depository Agent upon dispositions of Mortgaged Property shall have aggregated $2,000,000, Mortgagors shall not be required to deposit any of such cash with the Depository Agent upon the disposition of Mortgaged Property, and any consideration, other than property constituting Additions, received by Mortgagors in lieu of such cash shall not become subject to the lien and security interest of this Mortgage and Security Agreement.

Such amount of cash as Mortgagors would be required under the provisions of this *Section 4.16* to deposit with the Depository Agent upon disposition of Mortgaged Property need not be deposited to the extent that Mortgagors instead have complied with the requirements of *Section 4.17* for the withdrawal of such amount.

Mortgagors shall not be required to make any deposit of cash with the Depository Agent upon disposition of Commuter Service Assets included in the Mortgaged Property in connection with an RTA Sale, but shall be required to make a deposit, subject to the terms, conditions and provisions of this Section and *Section 4.17*, in connection with any other disposition of such assets except to a Subsidiary. Such assets shall remain subject to the lien and security interest of this Mortgage and Security Agreement if disposed of to a Subsidiary of Mortgagors. If disposed of to any other grantee (including such disposition by such a Subsidiary) in an RTA Sale, such assets shall be released automatically or released by the Mortgagees from the lien of this Mortgage and Security Agreement in accordance with applicable provisions of this Article, and Mortgagors shall make a payment of principal of the Notes or make a deposit of a portion of the proceeds of such disposition in accordance with the provisions of *Section 2.3.3* of the Loan Agreement.

SECTION 4.17. *Withdrawal of Cash; Application to Payment of Notes.* Unless an Event of Default hereunder or any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, all moneys deposited with or received by the Depository Agent pursuant to the provisions of this *Article IV* or as the proceeds of insurance upon Mortgaged Property lost, destroyed or damaged, or in respect of an award for any taking of Mortgaged Property may, at the option of Mortgagors:

(a) be withdrawn by Mortgagors, upon their request, in an amount equal to the amount of Available Additions made the basis therefor, but only upon delivery to the Depository Agent of an application consisting of an Officers' Certificate, signed as to matters of value by the Chief Engineer or

any Assistant Chief Engineer of CNW, dated not more than 30 days prior to the delivery thereof, and containing:

(i) a description in reasonable detail of the property constituting such Additions if not described in prior such applications,

(ii) a statement of the applicable Amount of Additions,

(iii) a statement that such Amount of Additions are Available Additions, and

(iv) a statement that no Event of Default hereunder nor any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement has occurred and is continuing.

(b) be withdrawn by Mortgagors, upon their request, after the release from the lien of any of the Old Mortgages of all of the Mortgaged Property subject thereto, whether by reason of satisfaction, defeasance or otherwise, in an amount equal to the amount of cash which if then on deposit thereunder could have been withdrawn immediately prior to said release from the lien of said Old Mortgage:

(i) in the case of the Great Western First Mortgage, pursuant to Section 9 of Article Ten thereof;

(ii) in the case of the M. & St. L. Mortgage, pursuant to clause (a) of Section 7.01 thereof; and

(iii) in the case of the North Western First Mortgage, pursuant to Section 7 of Article VIII thereof, with any deficiency in Net Capital Fund Expenditures (as defined in the North Western First Mortgage) being ignored.

In each case, however, the amount so withdrawable shall be reduced by the amount of cash, if any, actually on deposit with the trustee of such Old Mortgage immediately prior to said release if, and to the extent that, such cash is paid to Mortgagors by said trustee as a result of the transaction involving such release and not pursuant to the above-specified provision of the Old Mortgage.

Notwithstanding the foregoing provisions of this *paragraph (b)*, if at any time the aggregate of the amounts that can be withdrawn under the provisions of the Old Mortgages (with any deficiency in the "Net Capital Fund Expenditures" under the North Western First Mortgage being ignored) on any basis other than capital expenditures made after April 30, 1983, exceeds $70,000,000 (such excess being hereinafter referred to as "Potential Excess Withdrawals"), then:

(x) any Potential Excess Withdrawals actually withdrawn (computed as if withdrawals after April 30, 1983 are first applied to capital expenditures made after that date) shall forthwith be deposited, without duplication of the same requirement pursuant to Section 4.17 of the B Mortgage, with the Depository Agent pursuant to *Section 4.16*, and

(y) to the extent that Potential Excess Withdrawals do not become subject to deposit pursuant to the preceding *clause (x)*, they shall be deducted from the amount determined pursuant to *clause (b)(iii)* of this Section.

(c) Be applied by Mortgagors, upon their request and in accordance with *Section 2.3.6* of the Loan Agreement to prepayment of the outstanding principal amount of the Notes.

Notwithstanding anything to the contrary provided in *paragraphs (a)*, *(b)* and *(c)*, above, if the aggregate amount on deposit with the Depository Agent pursuant to this *Article IV* and Article IV of the B Mortgage exceeds $5,000,000 at any time or from time to time for a period of 90 consecutive days, Mortgagors may not withdraw any such excess and the amount on deposit in excess of $5,000,000 on the date of determination shall on the first Quarterly Payment Date occurring thereafter be applied by the Depository Agent to the payment of the principal amount of the Notes as provided in *Section 2.3.5* of the Loan Agreement.

In case any one or more Events of Default shall have occurred and be continuing, all moneys on deposit with Depository Agent (including all insurance proceeds and awards) shall be paid and applied as provided in *Section 6.10.*

SECTION 4.18. *Investment of Deposited Moneys.* Upon the request of Mortgagors, provided no Event of Default hereunder or any Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and then be continuing, any moneys at the time held under this Article by the Depository Agent shall be invested by it in any Cash Equivalent Investments (as defined in the Loan Agreement) which shall be specified in such request. Such obligations shall be held by the Depository Agent in lieu of the moneys invested therein subject to its absolute right to liquidate any such investment in such manner and at such time or times as, in the exercise of its discretion, it deems to be advisable. Mortgagors covenant that upon demand by the Depository Agent they will replace all moneys lost through any investment made and liquidated as by this Section contemplated, and will pay or reimburse the Depository Agent for all accrued interest, commissions and expenses paid or incurred in connection with the acquisition and liquidation of such investment. The Depository Agent shall have the right and duty to receive all amounts paid on account of any investment made by it as hereby contemplated, including all interest payments, pending liquidation of such investment, and, after such liquidation, shall retain so much of such interest payments as may be necessary to replace any loss of moneys suffered, or to pay or reimburse for any accrued interest, commissions or expenses paid or incurred, in connection with the acquisition and liquidation of such investment and not replaced, paid or reimbursed by Mortgagors as above provided, and shall, unless an Event of Default hereunder or a Default under *Section 7.1.1* or *clause (a)* of *Section 7.1.3* of the Loan Agreement shall have occurred and be continuing, pay any balance of such interest payments to Mortgagors or as they may direct.

ARTICLE V

CONSOLIDATION, MERGER, CONVEYANCE OR LEASE

SECTION 5.1. *Consolidation, Merger, etc. by Mortgagors.* Mortgagors will not, and will not permit any Subsidiary (including Western) to consolidate with or merge into or with any other Person, or purchase or otherwise acquire all or substantially all of the assets or stock or other evidence of ownership of any class of, or any partnership or joint venture interest in, any Person (or any division thereof), or sell, transfer, lease or otherwise dispose of all or any substantial part of its assets to any Person, or, except (x) in the case of Western or any Diversification Subsidiary or (y) in accordance with *Section 3.15*, sell or assign with or without recourse all or any substantial part of its receivables; *provided, however, that*:

(a) any Wholly-owned Subsidiary (other than MRPI or Western) may merge into or consolidate with, or sell, transfer, lease, assign or dispose of all or any substantial part of its assets to, any other Wholly-owned Subsidiary (other than MRPI or Western) or CNW;

(b) CNW or any Wholly-owned Subsidiary (other than MRPI or Western) may purchase or otherwise acquire, or consolidate or merge into it, any (other) Wholly-owned Subsidiary (other than MRPI or Western);

(c) Western may consolidate with or merge into or with, or sell, transfer, lease or otherwise dispose of all or any substantial part of its assets to, or purchase or otherwise acquire all or substantially all of the assets or stock or other evidence of ownership of any class of, or any partnership or joint venture interest in, any other Person, provided that the liability of CNW and its successors and assigns and their respective Subsidiaries for the obligations of Western shall not be increased or otherwise modified from that disclosed and described in the Western Disclosure Letter;

(d) CNW or any Subsidiary other than MRPI may acquire all or substantially all of the assets or stock or other evidence of ownership of any class of, and may merge into it, any Person (or any division thereof) which is engaged in the trucking industry (herein called a "Trucking Subsidiary"), provided that:

(i) CNW or such Subsidiary shall be the surviving corporation in the event of any such merger;

(ii) after giving effect to any such acquisition, the aggregate amount of the assets acquired, determined in accordance with generally accepted accounting principles and as of the date of each such acquisition, of all Trucking Subsidiaries shall not exceed the lesser of (A) $45,000,000 and

(B) $90,000,000 minus the aggregate amount of the assets acquired by CNW and Subsidiaries in accordance with *clause (e)* of this *Section 5.1* on and after February 15, 1983; and

(iii) immediately after giving effect to such transaction:

(A) no Default shall have occurred and be continuing,

(B) the Consolidated Working Capital (as defined in the Loan Agreement) of CNW and Subsidiaries, as of the end of the month immediately preceding the date of such transaction by at least fifteen days but giving effect to (1) such transaction, (2) all other merger or acquisition transactions of the type described in *clauses (d), (e)* and *(f)* of this Section occurring between such month end and the date of such transaction and (3) the aggregate amount of all restricted payments (as defined in *Section 6.2.4* of the Loan Agreement) declared, made or paid, and all Restricted Indebtedness of the nature described in *clauses (i), (iii), (v)* and *(vii)* of the definition of "*Restricted Indebtedness*" contained in *Section 6.2.2* of the Loan Agreement created, incurred or assumed, between such month end and the date of such transaction, shall not be less than $1,000,000,

(C) the Consolidated Net Worth (as defined in the Loan Agreement) of CNW and Subsidiaries shall not be less than the Consolidated Net Worth of CNW and Subsidiaries immediately prior to the consummation of such transaction,

(D) Mortgagors could incur at least $1 of additional Restricted Indebtedness (as defined in the Loan Agreement) in compliance with *Section 6.2.2* of the Loan Agreement as of the end of the month immediately preceding the date of such transaction by at least fifteen days but after giving effect to (1) such transaction, (2) all other merger or acquisition transactions of the type described in *clauses (d), (e)* and *(f)* of this Section occurring between such month end and the date of such transaction and (3) the aggregate amount of all restricted payments (as defined in *Section 6.2.4* of the Loan Agreement) declared, made or paid, and all Restricted Indebtedness of the nature described in *clauses (i), (iii), (v)* and *(vii)* of the definition of "*Restricted Indebtedness*" contained in *Section 6.2.2* of the Loan Agreement created, incurred or assumed, between such month end and the date of such transaction, and

(E) substantially all of the assets of such Trucking Subsidiary and of CNW and Subsidiaries shall be located in, and substantially all of their business shall be conducted within, the continental United States;

(e) CNW or any Subsidiary other than MRPI may acquire all or substantially all of the assets or stock or other evidence of ownership of any class of, and may merge into it, any other Person (or any division thereof), which is engaged in a field of business other than railroading, trucking, real estate, railroad equipment leasing, rebuilding, rehabilitation and repair or any other field of business engaged in by CNW and Subsidiaries on or prior to December 31, 1982 (herein called a "Diversification Subsidiary"), provided that:

(i) CNW or such Subsidiary shall be the surviving corporation in the event of any such merger;

(ii) after giving effect to any such acquisition, the aggregate amount of the assets acquired, determined in accordance with generally accepted accounting principles and as of the date of each such acquisition, of all Diversification Subsidiaries shall not exceed $90,000,000 minus the aggregate amount of the assets acquired by CNW and such Subsidiaries in accordance with *clause (d)* of this *Section 5.1* on and after February 15, 1983; and

(iii) the conditions set forth in *clause (d)(iii)*, above, shall be satisfied (substituting the term "Diversification Subsidiary", for the term "Trucking Subsidiary" in *clause (E)* thereof);

(f) CNW or any Wholly-owned Subsidiary (other than MRPI or Western) may purchase or otherwise acquire all or substantially all of the assets or stock or other evidence of ownership of, or merge into it, any other Person if:

(i) CNW or such Subsidiary, as the case may be, shall be the surviving corporation,

(ii) such Person, and CNW or such Subsidiary, as the case may be, immediately after such consolidation or merger, shall be engaged solely in a field or fields of business in which CNW or such Subsidiary, as the case may be, were engaged on or prior to December 31, 1982, or in activities incidental or reasonably related thereto, and

(iii) the conditions set forth in *clause (d)(iii)(B)* and *(D)*, above, shall be satisfied on a pro forma basis, giving effect to such transaction, as of the end of the fiscal quarter immediately preceding the date on which the agreement of merger or sale relating to such transaction was entered into and, immediately after giving effect to such transaction, the conditions set forth in *clause (d)(iii)(A), (C)* and *(E)* above, shall be satisfied (substituting the term "Person" for the term "Trucking Subsidiary" in *clause (E)* thereof);

(g) subject to *Section 5.2,* CNW and any of its Subsidiaries may consolidate with or merge into, or all or substantially all of the assets of CNW and any of its Subsidiaries may be acquired by, a railroad company which is a Class I Carrier (as defined by the rules of the Interstate Commerce Commission as in effect on February 15, 1983), *provided that*:

(i) the Consolidated Net Worth of the resulting railroad group shall not be less than the Consolidated Net Worth of CNW and Subsidiaries immediately prior to such consolidation, merger or acquisition;

(ii) the Loan Agreement and the other Loan Documents shall be complied with;

(iii) MRPI shall remain a separate corporation; and

(iv) the creditworthiness of such other railroad company and of the resulting railroad group shall be reasonably satisfactory to the Requisite Holders; and

(h) any Subsidiary (other than MRPI) may use its accounts or any other right to receive money as collateral for Indebtedness of CNW or such Subsidiary for borrowed money with the prior written consent of the Requisite Holders;

and *provided, further, that* in the case of any such merger into CNW, or purchase or other acquisition by, or sale, transfer, lease, disposition or assignment to CNW, CNW and any other necessary Person shall, subject to the exception provided in *Section 5.2*, upon the request of Mortgagees if and to the extent necessary in order to effect the same, expressly grant and convey, as further security hereunder, and shall subject to the lien and security interest of this Mortgage and Security Agreement, by supplemental indenture satisfactory in all respects to Mortgagees, all property, franchises and other assets so acquired by CNW of the nature intended to be subject to the lien and security interest of this Mortgage and Security Agreement; and *provided, further, that*, any such merger, purchase or other acquisition, sale, transfer, lease, disposition or assignment shall be on such terms as will fully protect and preserve the lien and security interest of this Mortgage and Security Agreement and the rights and powers of Mortgagees and Noteholders hereunder.

In the case of any such consolidation, merger or acquisition referred to in *clause (g)*, above:

(x) such consolidation, merger or acquisition shall be on such terms as shall fully preserve the lien and security interest of this Mortgage and Security Agreement in the Mortgaged Property and the rights and powers of the Mortgagees and Noteholders hereunder;

(y) the successor corporation shall expressly assume the due and punctual payment of the A Notes and the due and punctual payment, performance and observance of all other Liabilities and of the covenants, terms, conditions and provisions hereof and of the other Loan Documents; and

(z) the successor corporation shall, subject to the exceptions provided in *Section 5.2*, execute and deliver to Mortgagees a supplemental indenture and such financing statements as Mortgagees may reasonably request so as to perfect the lien and security interest of this Mortgage and Security Agreement in the real and personal property of such successor intended to be included in the Mortgaged Property and to evidence its succession to CNW hereunder.

SECTION 5.2. *Limitation of Lien on Property of Certain Persons in Event of Consolidation, etc.* In the event there shall be a consolidation of CNW with or a merger of CNW into a corporation which immediately prior to such consolidation or merger shall have been a Class I Carrier (as defined by the rules

of the Interstate Commerce Commission in effect on February 15, 1983) and not an Affiliate of Mortgagors (other than a New Carrier Affiliate of Mortgagors), in accordance with *Section 5.1*, or in the event of a conveyance by CNW of all or substantially all of its Mortgaged Property to any such Person, this Mortgage and Security Agreement shall not, by reason of such consolidation, merger or conveyance, constitute and become a lien upon or security interest in, and the term "Mortgaged Property" shall not include or comprise, the following:

(a) any property, right or franchise which, immediately prior to such consolidation, merger or conveyance, was owned by any such Person or by any other Person simultaneously consolidating with or merging into or conveying assets to such Person; or

(b) any property, right or franchise which may be purchased, constructed or otherwise acquired by such Person after the date of such consolidation, merger or conveyance, excepting only the property, rights and franchises referred to in *clauses (i)* through *(v)* of the next following paragraph, which, as and when purchased, constructed or otherwise acquired by such Person, shall be and become subject to the lien and security interest of this Mortgage and Security Agreement.

Any supplemental indenture provided for by *Section 5.1* hereof which, by reason of the provisions of this *Section 5.2*, is not required to contain an express grant by such Person of the property and franchises of any such Person referred to in the preceding paragraph of this Section shall in any event contain an express grant by such Person confirming the lien and security interest of this Mortgage and Security Agreement upon the Mortgaged Property in existence immediately prior to the consolidation, merger or conveyance, and subjecting to the lien and security interest of this Mortgage and Security Agreement, as fully as if such consolidation, merger or conveyance had not taken place and the same had been acquired by Mortgagors, the following property, rights and franchises purchased, constructed or otherwise acquired by such Person after the date of such consolidation, merger or conveyance:

(i) all property which shall be acquired with moneys from any fund under the North Western First Mortgage, the Great Western First Mortgage, the M. & St. L. Mortgage or the B Mortgage, or with cash at any time held under any such Mortgage by the trustee, Mortgagees or the Disbursement Agent or the Depository Agent thereunder, or in exchange for property released from the lien of any such mortgage, and all property the acquisition or construction of which shall be made the basis for any withdrawal of cash under any provision of any such mortgage;

(ii) all betterments, extensions, improvements and additions, of, to, upon or for the property, rights and franchises subject to the lien and security interest of this Mortgage and Security Agreement;

(iii) all repairs, renewals, replacements, substitutions and alterations of, to, upon or for the property, rights and franchises subject to the lien and security interest of this Mortgage and Security Agreement;

(iv) all property, rights and franchises appurtenant to any property subject to the lien and security interest of this Mortgage and Security Agreement; and

(v) an appropriate portion, properly identified so as to effectively create a lien and security interest hereunder, of all property (not covered by the preceding *clauses (i)* through *(iv)*) purchased, constructed or otherwise acquired after the date of such consolidation, merger or conveyance and which shall consist of equipment used for railroad purposes (whether or not transportation equipment), and additions, betterments and improvements thereto, which appropriate portion shall be determined on the basis of the percentage of the revenues of Mortgagors which may be expected to be attributable to rights and franchises of Mortgagors subject to the lien and security interest of this Mortgage and Security Agreement; and any final determination of such appropriate portion by the Interstate Commerce Commission or other federal governmental authority having jurisdiction of the consolidation, merger or conveyance shall be conclusive.

SECTION 5.3. *Limitation on Lien, etc. of this Mortgage and Security Agreement Upon Merger into or Conveyance to Mortgagors.* In the event that, in accordance with the provisions of *Section 5.1* other than *clause (g)* thereof, any other Person shall be merged into CNW or CNW shall acquire all or substantially all of the assets of any other Person, which other Person shall immediately prior to any such merger or acquisition have been a Class I Carrier (as defined by the rules of the Interstate Commerce Commission in

effect on February 15, 1983) and not an Affiliate of Mortgagors (other than a New Carrier Affiliate), this Mortgage and Security Agreement shall not, by reason of such merger or conveyance, constitute and become a lien upon or a security interest in, and the term "Mortgaged Property" shall not include or comprise, the following:

(a) any property, right or franchise of such other Person so merged into or acquired by CNW; and

(b) to the extent requested by CNW, any property, right or franchise which may be purchased, constructed or otherwise acquired by CNW after the date of such merger or acquisition and which, if such merger or acquisition had instead been a transaction in which CNW had merged into another corporation, or in which all or substantially all of the assets of CNW had been acquired by another corporation and such property, right or franchise were purchased, constructed or acquired by the successor corporation, would not have been required by the provisions of *Section 5.2* to be subjected to the lien or the security interest of this Mortgage and Security Agreement;

and, upon request of Mortgagors, Mortgagees will join in the execution and delivery of a supplemental indenture to this Mortgage and Security Agreement confirming and evidencing the foregoing.

ARTICLE VI

EVENTS OF DEFAULT; REMEDIES OF MORTGAGEES AND NOTEHOLDERS ETC.

SECTION 6.1. *Events of Default; Entry and Application of Income.* If one or more of the following events (herein called "Events of Default") shall occur, that is to say:

(a) Mortgagors shall default in the payment or prepayment when due of any principal of any Note, or in the payment when due of interest on any Note and, in any such case, such default shall continue for five days; or Mortgagors shall fail to pay, when due and payable, any commitment, facility or other fee or any other monetary Liability payable under the Loan Agreement, this Mortgage and Security Agreement, the B Mortgage or any other Loan Document and such failure shall continue for five days after notice setting forth such failure and requiring the same to be remedied shall have been given to Mortgagors by any of the Mortgagees, Co-Agents, Disbursement Agent or the unpaid Noteholder; or

(b) any other Event of Default shall have occurred and be continuing under the Loan Agreement; or

(c) Mortgagors shall default in the performance or observance of any other material covenant, condition or agreement contained in this Mortgage and Security Agreement and such default shall continue for a period of thirty days after the date of any notice from either Mortgagee, Depository Agent, Disbursement Agent or any Noteholder notifying Mortgagors of such default or, if such default cannot reasonably be cured within such thirty-day period, Mortgagors fail to commence all actions necessary to cure such default within such thirty-day period or, having commenced such cure, thereafter fail to prosecute such cure with diligence and continuity;

then, and in each and every such case, Mortgagees personally or by their agents or attorneys may, to the extent permitted by law, enter into and upon all or any part of the Mortgaged Property, and each and every part therof, and may exclude Mortgagors, their agents and servants wholly therefrom; and having and holding the same may use, operate, manage and control the Mortgaged Property or any part thereof, and conduct the business of the Mortgagors or any other lawful business thereon and therewith, either personally or by their superintendents, managers, agents, servants, attorneys, receivers or trustees, in such manner as the Mortgagees may deem to be to the best advantage of the Noteholders, and upon every such entry Mortgagees, at the expense of Mortgagors, may from time to time, either by purchase, repair or construction, maintain and restore the rolling stock, tools and machinery and other property, buildings, bridges and structures erected upon or provided for use in connection with the railways and other premises whereof they shall become possessed as aforesaid, and may insure or keep insured such of the same as are usually insured by railway companies and in the same manner and to the same extent; and likewise from time to time, at the expense of Mortgagors, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements to and on the Mortgaged Property, and purchase or

otherwise secure the use of additional engines, rolling stock, tools, machinery and other property for use thereon, as to them may seem judicious; and, in such case, Mortgagees shall have the right to manage the Mortgaged Property and to carry on the business and exercise all rights and powers of Mortgagors with respect thereto, either in the name of Mortgagors or otherwise, as Mortgagees shall deem best; and shall be entitled to collect and receive all rates, fares, tolls, earnings, incomes, rents, issues, revenues and profits of the same and every part thereof; and after deducting the expenses of operating said railways and other premises, and of conducting the business thereof, and all repairs, maintenance, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for their own services and for the services of all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and employed, and the services of any receivers and trustees and their attorneys, counsel, agents, clerks, servants and employees by them properly engaged and employed, Mortgagees shall apply the rest and residue of the moneys arising as foresaid: *first* to the payment of any Liabilities secured by this Mortgage and Security Agreement, other than indebtedness with respect to the A Notes, which Mortgagees may consider it necessary or desirable to pay; *second*, to the payment of accrued interest on the A Notes, in the order of maturity of the installments of such interest, with interest (to the extent permitted by law) on any overdue installments of interest at the Default Interest Rate; *third*, to the payment of the principal of the A Notes to the extent the same has become due and payable, by declaration or otherwise; in every instance such payments to be made ratably to the Noteholders, without discrimination or preference; and *fourth*, the balance, if any, to or at the direction of Mortgagors unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal.

SECTION 6.2. *Acceleration; Waiver.* In case one or more Events of Default shall have occurred and be continuing, then in each and every such case, unless the entire principal of the A Notes shall have already become due and payable, Mortgagees shall, upon the request of Noteholders holding 51% or more of the outstanding principal amount of the A Notes, by notice in writing mailed to Mortgagees and Mortgagors, declare the principal of the A Notes to be forthwith due and payable, and upon any such declaration the same shall become and be forthwith due and payable, anything in this Mortgage and Security Agreement or in the A Notes contained to the contrary notwithstanding. This provision, however, is subject to the condition, that, if at any time after the principal of the A Notes shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided or any sale of the Mortgaged Property or any part thereof shall have been made, all arrears of interest upon the A Notes, with interest (to the extent permitted by law) on overdue installments of interest at the Default Interest Rate, and any principal of the A Notes which shall have become due otherwise than by acceleration under this Section, and the reasonable charges and expenses of Mortgagees and their agents and attorneys shall either be paid by the Mortgagors or be collected out of the income of the Mortgaged Property, or be provided for by the deposit with Mortgagees of a sum sufficient to pay the same, and all other defaults made good to the satisfaction of Mortgagees, then and in every such case Noteholders holding 51% or more of the outstanding principal amount of the A Notes, by written notice to Mortgagees and Mortgagors, may waive such default or defaults and its or their consequences and annul any such declaration, *provided that* any such waiver or annulment shall not extend to or affect any subsequent default or impair any right consequent thereon.

In case Mortgagees shall have proceeded to enforce any right under this Mortgage and Security Agreement, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver or annulment, or for any other reason, or shall have been determined adversely to Mortgagees, then and in every such case the Mortgagors and Mortgagees shall be restored to their former position and rights hereunder in respect of the Mortgaged Property, and all rights, remedies and powers of the Mortgagors and of Mortgagees shall continue thereafter as though no such proceedings had been taken.

SECTION 6.3. *Sale; Judicial Proceedings.* In case one or more Events of Default shall have occurred and be continuing, Mortgagees, with or without entry, personally or by attorney, in their discretion, may:

(a) if and to the extent permitted by law, sell, subject to any prior liens thereon, to the highest bidder, all and singular the Mortgaged Property, or from time to time any part of the Mortgaged Property or any interest therein, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one or more parcels; which sale or sales shall be made at public auction at such place in the City of Chicago, State of Illinois, or at such other place or places, and at such time or times and upon such terms as Mortgagees may fix and briefly specify in the notice of sale to be given as hereinafter in *Section 6.6* provided or as otherwise required or permitted by applicable law; or

(b) proceed to protect and to enforce their rights and the rights of the Noteholders under this Mortgage and Security Agreement by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this Mortgage and Security Agreement, or for the enforcement of any other appropriate legal or equitable remedy, as Mortgagees, being advised by counsel, shall deem most effectual to protect and enforce any of their rights or duties and the rights of the Noteholders under this Mortgage and Security Agreement.

Upon the written request of Noteholders holding 51% or more in principal amount of the A Notes, in case any Event of Default shall have occurred and be continuing as aforesaid, it shall be the duty of Mortgagees, upon being indemnified as hereinafter provided, to take all steps necessary for the protection and enforcement of their rights and the rights of the Noteholders and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as Mortgagees, being advised by counsel, shall deem most expedient in the interest of the Noteholders.

SECTION 6.4. *Sale as an Entirety, etc.* In the event of any sale, whether under the power of sale herein granted or conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the Mortgaged Property may, but shall not be required to, be sold in one parcel, and as an entirety, unless Noteholders holding 51% or more in principal amount of the A Notes at the time outstanding request Mortgagees to cause the Mortgaged Property to be sold in such parcels and in such order as may be specified in such request.

Mortgagors, for themselves and all Persons hereafter claiming through or under them, or who may at any time hereafter become holders of liens junior to the lien of the Mortgage and Security Agreement, hereby expressly waive and release all right to have the Mortgaged Property marshalled upon any foreclosure or other enforcement hereof, and Mortgagees or any court in which the foreclosure of the Mortgage and Security Agreement or the administration of the trusts hereby created is sought, shall have the right as aforesaid to sell the entire property of every description comprised in the Mortgaged Property, as a whole in a single lot or parcel.

SECTION 6.5. *Uniform Commercial Code Remedies.* In case one or more Events of Default shall have occurred and be continuing, Mortgagees may exercise from time to time and at any time any rights and remedies available to them under applicable law upon default in the payment of indebtedness, including any right or remedy available to them as secured parties under the Uniform Commercial Code of any jurisdiction in which any portion of the Mortgaged Property is located. Mortgagors shall, promptly upon request by Mortgagees, assemble the Mortgaged Property, or any portion thereof generally described in such request, and make it available to Mortgagees at such place or places designated by Mortgagees and reasonably convenient to both Mortgagors and Mortgagees. If Mortgagees elect to proceed under the Uniform Commercial Code to dispose of portions of the Mortgaged Property, Mortgagees, at their option, may give Mortgagors notice of the time and place of any public sale of any such property, or of the date after which any private sale or other disposition thereof is to be made, by sending notice by registered or certified first class mail, postage prepaid, to Mortgagors at least five days before the time of the sale or other disposition. If any notice of any proposed sale, assignment or transfer by Mortgagees of any portion of the Mortgaged Property or any interest therein is required by law, Mortgagors conclusively agree that five days' notice to Mortgagors of the date, time and place (and, in the case of a private sale, the terms) thereof is reasonable.

SECTION 6.6. *Notice of Sale.* Except as otherwise provided in *Section 6.5*, any notice of any sale pursuant to any provision of this Mortgage and Security Agreement shall state the time and place of said sale, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if

(a) published once in each week for four successive weeks prior to such sale in a newspaper printed in the English language and customarily published on each Business Day and of general circulation in the City of Chicago, State of Illinois, and in a like newspaper so published and of general circulation in the Borough of Manhattan, City and State of New York, or

(b) provided in such other manner as may be required by law.

SECTION 6.7. *Adjournment of Sale.* Mortgagees may adjourn from time to time any sale to be made by them under the provisions of this Mortgage and Security Agreement by announcement at the time and place appointed for such sale, or for such adjourned sale or sales, and, without further notice or publication (unless otherwise required by law), such sale may be made at any time or place to which the same shall be so adjourned.

SECTION 6.8. *Conveyance Upon Sale; Receipt a Sufficient Discharge to Purchaser, etc.* Upon the completion of any sale or sales under this Mortgage and Security Agreement, Mortgagees or the court officer conducting the sale shall execute and deliver to the accepted purchaser or purchasers a good and sufficient bill or bills of sale and deed or deeds of conveyance of the property and franchises sold. Mortgagees and their successors are hereby appointed the true and lawful attorneys, irrevocably, of the Mortgagors, in their name and stead to make all necessary deeds, bills of sale and conveyances of the property and franchises thus sold; and may substitute one or more Persons with like power, the Mortgagors hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, the Mortgagors, if so requested by Mortgagees, shall ratify such sale by executing and delivering such deeds of conveyance, bills of sale or other instruments of assignment and transfer, as in the judgment of Mortgagees or such purchaser may be advisable.

Any such sale or sales made under or by virtue of this Mortgage and Security Agreement, whether under the power of sale hereby granted and conferred or under or by virtue of any judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, against the Mortgagors, their successors and assigns, and against any and all Persons claiming the premises and property sold, or any part thereof or any interest whatsoever therein, from, through or under the Mortgagors, their successors or assigns.

In addition to, not in limitation of, the other provisions hereof and the rights and privileges conferred herein, the personal property and chattels conveyed, or intended to be conveyed, by or pursuant to this Mortgage and Security Agreement may be considered, and be disposed of in one proceeding or sale hereunder, as real estate for the purposes of the Mortgage and Security Agreement, and may be held and taken to be fixtures and appurtenances of the lines of railroad of the Mortgagors, and a part of such lines of railroad, and may be used and sold therewith and not separate therefrom.

Mortgagors agree that in any sale of the Mortgaged Property, or any portion thereof or interest therein, Mortgagees are hereby authorized to comply with any limitation or restriction in connection with such sale as they may be advised by counsel is necessary in order to avoid any violation, and comply with any applicable provision, of applicable law (including compliance with any applicable laws and procedures which may limit the number or restrict the character of prospective bidders and purchasers), or in order to obtain any required approval of the sale or of the purchaser or of any other aspect of any such transaction by any governmental agency or official (including the Interstate Commerce Commission), and Mortgagors further agree that such compliance shall not result in any such sale being considered not to have been made in a commercially reasonable manner nor shall Mortgagees, Co-Agents, Disbursement Agent, Depository Agent or any Noteholder be liable or accountable to Mortgagors, or any Person claiming by, through or under Mortgagors or any owner, holder or beneficiary of or under any Permitted Encumbrance or otherwise, for any discount allowed by reason of the fact that any Mortgaged Property is sold in compliance with any such law, regulation, procedure, restriction or limitation.

Mortgagees may be the purchasers of the Mortgaged Property or any portion thereof or interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and, in the event of any such

sale and purchase, Mortgagees may apply upon the purchase price for such Mortgaged Property the indebtedness secured hereby. Mortgagees shall, upon any such purchase, acquire good title to the properties so purchased, free of all rights of redemption in Mortgagors and, at their option, free and clear of the lien and security interest of this Mortgage and Security Agreement.

The receipt of Mortgagees or other Person authorized to receive the same for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property, or any part thereof, sold as aforesaid, and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money or any part thereof upon or for any trust or purpose of this Mortgage and Security Agreement, or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SECTION 6.9. *Principal Due and Payable Upon Sale.* In case of a sale of all or substantially all of the Mortgaged Property under any of the foregoing provisions of this Article, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the principal of the A Notes, if not previously due, immediately thereupon shall become due and payable, anything in the A Notes or in this Mortgage and Security Agreement to the contrary notwithstanding.

SECTION 6.10. *Application of Proceeds of Sale, etc.* The purchase money, proceeds and avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by or for the Disbursement Agent, the Depository Agent or Mortgagees under any of the provisions of the Mortgage and Security Agreement as part of the Mortgaged Property or of the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagees, their agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by Mortgagees in managing and maintaining the Mortgaged Property, and to the payment of all taxes, assessments or liens prior to the lien of this Mortgage and Security Agreement, except taxes, assessments and prior liens, if any, subject to which the property shall have been sold.

Second. To the payment of any Liabilities, other than indebtedness with respect to the A Notes, at the time outstanding, which Mortgagees may consider it necessary or desireable to pay.

Third. To the payment of the whole amount then due and unpaid upon the A Notes for principal and interest with interest on any overdue principal and (to the extent permitted by law) on any overdue interest at the Default Interest Rate or, in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the A Notes, then, *first*, to the payment of all amounts of interest at the time due and payable on the A Notes and, *second*, to the payment of principal.

Fourth. To the payment of the surplus, if any, to the Mortgagors, their successors or assigns, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 6.11. *Judgment for Entire Principal and Interest; Application.* Mortgagors covenant that:

(a) if default shall be made in the payment of any principal of or interest on any Note and such default shall continue for five days as provided for in *clause (a)* of *Section 6.1*, or

(b) if default shall be made in the payment of any principal of any Note which has become due and payable at the maturity of such Note or by reason of declaration or of a sale of the Mortgaged Property,

then, upon demand of Mortgagees, Mortgagors will pay to Mortgagees for the benefit of the Noteholders the whole amount then due and payable on the A Notes, for principal and interest, with interest on any overdue principal and (to the extent permitted by law) on any overdue interest at the Default Interest Rate; and in case Mortgagors shall fail to pay the same forthwith upon such demand, Mortgagees, in their own name and as trustees of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

Mortgagees shall be entitled to institute and prosecute any action and enforce any judgment or final decree as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of

the lien and security interest of this Mortgage and Security Agreement, and the right of Mortgagees to such judgment or final decree shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage and Security Agreement or the foreclosure of the lien hereof; and in case of a sale of the Mortgaged Property or any part thereof, Mortgagees, in their own name and as trustees of an express trust, shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon the A Notes, for the benefit of the Noteholders, and shall be entitled to institute and prosecute any action and enforce any judgment or final decree as aforesaid for any portion of the said debt remaining unpaid, with interest. No judgment or decree obtained by Mortgagees, and no levy of any execution upon the Mortgaged Property, or upon any other property, shall in any manner, or to any extent, affect the lien and security interest of this Mortgage and Security Agreement upon the Mortgaged Property, or any part thereof, or any lien, rights, powers or remedies of Mortgagees hereunder, or any lien, rights, powers or remedies of the Noteholders, but such lien, rights, powers and remedies shall continue unimpaired as before except as otherwise provided by law.

Any moneys collected by Mortgagees under this Section shall be applied by Mortgagees:

First. To the payment of the costs and expenses of the proceedings resulting in the collection of such moneys, and of the expenses, liabilities and advances made or incurred by Mortgagees in managing or maintaining the Mortgaged Property;

Second. To the payment of any Liabilities, other than Indebtedness with respect to the A Notes, at the time outstanding, which Mortgagees may consider it necesary or desirable to pay; and

Third. To the payment of the amounts then due and unpaid upon the A Notes in respect of which such moneys shall have been collected, at the date fixed by Mortgagees for distribution of such moneys, upon presentation of the A Notes and surrender, if fully paid, or for proper stamping, if only partially paid; and, in case such moneys shall be insufficient to pay in full the whole amount then due on the A Notes, then, *first*, to the payment of all amounts of interest at the time due and payable and, *second*, to the payment of principal.

SECTION 6.12. *Waiver of Right of Redemption, Etc.* Mortgagors will not at any time insist upon or plead, or claim or take advantage of any statute or rule of law, now or hereafter in force, wherever enacted or established, in aid of debtors or permitting or providing for:

(a) any moratorium on the enforcement, or the staying of actions in respect of, mortgages or mortgage indebtedness;

(b) the valuation or appraisement of the property held under any mortgage or pledge to secure indebtedness prior to any sale or sales thereof pursuant to the terms of such mortgage or pledge or to the decree, judgment or order of any court; or

(c) the redemption of any property so sold or any exemption of property from the enforcement of liens thereon or security interests therein;

and Mortgagors hereby expressly waive all benefit and advantage of any such statute or rule of law, and covenant that they will not hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagees, Disbursement Agent, Depository Agent or Noteholders, but that they will suffer or permit the execution of such power, as though no such statute or rule of law had been enacted or established. Mortgagors further waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of the Notes and any other Liability.

SECTION 6.13. *Right to Receiver and Income.* In case any one or more Events of Default shall have occurred and be continuing, Mortgagees shall, as a matter of right and without regard to the adequacy of any security for the Liabilities or the solvency of Mortgagors, be entitled to:

(a) the appointment of a receiver for all or any part of the Mortgaged Property and of the earnings, rents, issues, profits, tolls, revenues and income thereof, with such powers as the court making such appointment shall confer, whether such receivership be incidental to a proposed sale of the Mortgaged Property or otherwise; and

(b) to the entry of an order directing that the rents, issues, profits, tolls, revenues and other income of the premises and property comprising the Mortgaged Property or any portion thereof be segregated,

sequestered and impounded for the benefit of Mortgagees and the Noteholders from and after the date of the institution of any proceedings of the nature referred to in this Section.

Mortgagors hereby irrevocably consent to, and agree not to oppose or resist in any manner, the appointment of such receiver and to the entry of such order.

SECTION 6.14. *Limitation on Suits by Noteholders.* No Noteholder shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Mortgage and Security Agreement, or for the execution of any trust hereunder, including the appointment of a receiver, or for any other remedy hereunder, unless:

(a) such Noteholder previously shall have delivered to Mortgagees written notice that one or more Events of Default, which default or defaults shall be specified in such notice, has occurred and is continuing; and

(b) Noteholders holding 51% or more of the principal amount of the A Notes at the time outstanding shall have requested Mortgagees in writing, and shall have afforded to them reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in their own name; and

(c) one or more Noteholders shall have offered to Mortgagees adequate security and indemnity, satisfactory to Mortgagees, against the costs, expenses and liabilities to be incurred therein or thereby; and

(d) Mortgagees shall have refused or neglected to act on such notification, request and offer of indemnity for at least 30 days;

and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Mortgagees, to be conditions precedent to the exercise of the powers and trusts of this Mortgage and Security Agreement and to any action or cause of action for foreclosure, including the appointment of a receiver or trustee, or for any other remedy hereunder, it being understood and intended that no Noteholder shall have any right in any manner whatever by any action to affect, disturb or prejudice the lien and security interest of this Mortgage and Security Agreement or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had or maintained in the manner herein provided, and for the equal benefit of all Noteholders.

Nothing contained in this Section or elsewhere in this Mortgage and Security Agreement or in the A Notes shall affect or impair the right, which is unconditional and absolute, of the Noteholders to payment of the principal of and interest on the A Notes at the times and places in such Notes stated, nor affect or impair the right of action at law, which is also absolute and unconditional, of such Noteholders to collect such payment.

SECTION 6.15. *Remedies Cumulative.* Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to Mortgagees or the Noteholders is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

SECTION 6.16. *Delay Not a Waiver.* No delay of Mortgagees or of any Noteholder in exercising any right or power accruing upon any default continuing as aforesaid and no omission to exercise any such right or power shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to Mortgagees, or to any such Noteholder, may be exercised from time to time, and as often as may be deemed expedient, by Mortgagees or by such Noteholder, respectively.

SECTION 6.17. *Suits Against Governmental Action.* Mortgagees shall have the power, but shall be under no duty, to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or governmental enactment, rule or order that they may be advised and believe is unconstitutional, or otherwise invalid, if the enforcement of, or compliance with, or observance of, such enactment, rule or order would, in the judgment of Mortgagees, impair the security hereunder or be prejudicial to Mortgagees or to the Noteholders.

SECTION 6.18. *Direction and Waiver by Noteholders.* Noteholders holding 51% or more of the principal amount of the A Notes at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Mortgagees, or the exercise of any trust or power conferred on the Mortgagees. The Requisite Holders may on behalf of all Noteholders waive any past default hereunder and its consequences except an Event of Default specified in *clause (a)* of *Section 6.1*. In the case of any such waiver, Mortgagors, Mortgagees and the Noteholders shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 6.19. *Undertaking to Pay Litigation Costs.* All parties to this Mortgage and Security Agreement agree, and each Noteholder, by its acceptance of the delivery of its Note, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Mortgage and Security Agreement, or in any suit against any Mortgagee for any action taken or omitted by it as Mortgagee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion, assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigants; but the provisions of this Section shall not apply to any suit instituted by Mortgagees, to any suit instituted by Noteholders holding 20% or more of the principal amount of the A Notes at the time outstanding, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on the A Notes, on or after the due date expressed in any A Note.

SECTION 6.20. *Invalid Provisions Separable.* To the extent that any provision of this Article may be invalid or unenforceable under any applicable law with respect to any of the Mortgaged Property, such provision shall be deemed inoperative and inapplicable.

ARTICLE VII

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, DIRECTORS AND OFFICERS

Except in the case of fraud by such Person, no recourse under or upon any obligation, covenant or agreement of this Mortgage and Security Agreement, or of the Notes, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, past, present or future, of Mortgagors or of any successor corporation, as such, either directly or through Mortgagors, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Mortgage and Security Agreement and the Notes are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors of Mortgagors of any successor corporation, as such, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Mortgage and Security Agreement or in the Notes or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, and any and all such rights and claims against every such incorporator, stockholder, officer or director, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Mortgage and Security Agreement or in the Notes or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Mortgage and Security Agreement and the issue of the Notes.

ARTICLE VIII

CONCERNING THE MORTGAGEES

SECTION 8.1. *Negligence; Reliance.* Mortgagees accept the trusts hereby created upon the terms and conditions in this Article specified, but the acceptance of the trusts hereunder and the performance of the same by Mortgagees shall not constitute a representation by them as to the legality, genuineness or sufficiency of the Notes, this Mortgage and Security Agreement or any other Loan Document, and shall be only upon and subject to the terms and conditions hereof, to all of which Mortgagors and each Noteholder, by the acceptance of the delivery of its Note, agree.

The Mortgagees, and each of them, undertake by such acceptance, for the pro rata benefit of the Noteholders, to take such action from time to time for the protection and enforcement of their rights under this Mortgage and Security Agreement as may be necessary or appropriate in the interests of the Noteholders. Mortgagees shall incur no liability for any act or omission hereunder to any Person other than Noteholders and neither Mortgagee shall be liable to the Noteholders in any event in the absence of gross negligence or wilful misconduct; and further:

(a) so long as no Event of Default shall have occurred and be continuing:

(1) the duties and obligations of Mortgagees shall be determined solely by the express provisions of this Mortgage and Security Agreement, and Mortgagees shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Mortgage and Security Agreement, and no implied covenants or obligations shall be read into this Mortgage and Security Agreement against Mortgagees; and

(2) in the absence of bad faith on the part of Mortgagees, Mortgagees, or either of them, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to Mortgagees; and in the case of any such certificates or opinions which are required to be furnished to Mortgagees, Mortgagees shall be under a duty to examine the same solely to determine whether or not they conform to the requirements of this Mortgage and Security Agreement;

(b) neither Mortgagee shall be liable for any error of judgment made in good faith by an officer or officers of such Mortgagee, if such officer or officers shall have been chosen and continued in office in the exercise of due care, unless it shall be proved that such Mortgagee was grossly negligent in ascertaining the pertinent facts; and

(c) Neither Mortgagee shall be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Noteholders holding 51% or more in principal amount of the A Notes at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to Mortgagees, or exercising any trust or power conferred upon Mortgagees under this Mortgage and Security Agreement.

None of the provisions contained in this Mortgage and Security Agreement shall require Mortgagees to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties or in the exercise of any of their rights or powers. Each Noteholder, by its acceptance of delivery of its Note, agrees (which agreement shall survive any discharge of this Mortgage and Security Agreement and the payment in full of the Liabilities) to reimburse Mortgagees for all reasonable out-of-pocket expenses (including attorneys' fees and expenses) incurred by Mortgagees hereunder or in connection herewith or in enforcing the obligations of Mortgagors hereunder and for which the Mortgagees are not reimbursed by Mortgagors, pro rata according to the percentage of the outstanding principal amount of the Notes held by such Noteholder.

SECTION 8.2. *Mortgagees Protected in Certain Circumstances.* Except as otherwise provided in *Section 8.1*:

(a) Mortgagees may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, direction or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties;

(b) any resolution of the Board of Directors of a Person may be evidenced to Mortgagees by a copy thereof certified by the Secretary or an Assistant Secretary of said Person;

(c) Mortgagees may consult with counsel (who may be counsel for Mortgagors) and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by them hereunder in good faith and in accordance with the opinion of such counsel;

(d) Mortgagees shall be under no obligation to exercise any of the trusts or powers hereof at the request, order or direction of any Noteholders pursuant to the provisions of the Mortgage and Security

Agreement, unless such Noteholders shall have offered to Mortgagees reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) Mortgagees shall not be personally liable in case of entry by them upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of said property;

(f) Mortgagees shall not be liable for any action taken by them in good faith and believed by them, in the exercise of due care, to be authorized or within the discretion or power conferred upon them by this Mortgage and Security Agreement; and

(g) Mortgagees may, in their sole discretion, advance moneys for the purpose of paying taxes, rentals under leases, or otherwise preserving the Mortgaged Property, and for such advances together with interest thereon at the Default Interest Rate, Mortgagees shall have a lien on the Mortgaged Property prior to any claim of the Noteholders.

SECTION 8.3. *Tax, etc. Indemnity and Lien.* Should any taxes or other governmental charges be imposed upon any Mortgagee, in its capacity as Mortgagee hereunder, which it may be required to pay under any present or future law of the United States of America or of any other authority therein having jurisdiction, such Mortgagee shall be reimbursed and indemnified therefor by Mortgagors, and any liability incurred or amounts paid by such Mortgagee in respect of any such taxes or other governmental charges, until paid, shall constitute a lien upon the Mortgaged Property prior to any claim of the Noteholders, except as to funds held in trust for the benefit of particular such Noteholders.

SECTION 8.4. *Miscellaneous Mortgagee Protection.*

(a) Except as provided in *Section 4.18*, neither Depository Agent nor any Mortgagee shall be under any duty to invest any moneys paid to or deposited with it or to its credit pursuant to any of the provisions of this Mortgage and Security Agreement, and shall not be liable for interest on any moneys during the period such moneys remain on deposit with it, except such interest as the Depository Agent or such Mortgagee may agree in writing with Mortgagors to pay.

(b) Any action at any time taken by Mortgagees pursuant to or with respect to this Mortgage and Security Agreement at the request or with the consent or approval (express or implied) of any Person who at the time is the holder of any Note, shall be conclusive and binding upon all future holders of such Note.

(c) All rights of action under this Mortgage and Security Agreement may be enforced by Mortgagees without the possession of any Note or the production thereof on the trial or other proceedings relative thereto.

SECTION 8.5. *Recitals Herein.* The recitals contained herein and in the Notes shall be taken as the statements of Mortgagors, and Mortgagees assume no responsibility for the correctness of the same, and Mortgagees make no representations as to the value of the Mortgaged Property, or as to the title of Mortgagors thereto, or as to the validity or sufficiency of this Mortgage and Security Agreement or of the Notes. Mortgagees shall not be accountable for the use or application by Mortgagors of the proceeds of the Notes.

SECTION 8.6. *Moneys in Trust; Need Not Segregate.* All moneys received by Mortgagees, the Depository Agent or the Disbursement Agent hereunder shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law.

SECTION 8.7. *Compensation and Expenses; Priority.* Mortgagors covenant and agree to pay to each Mortgagee and the Depository Agent from time to time, and each Mortgagee shall be entitled to, reasonable compensation (which shall not be limited by the statutes of any state relating to the compensation of a trustee of an express trust), and Mortgagors will pay or reimburse each Mortgagee and the Depository Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by such Mortgagee or Depository Agent in accordance with any of the provisions of this Mortgage and Security Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ), except any such expense, disbursement and advance as may arise

from its gross negligence or wilful misconduct. Mortgagors also covenant to indemnify each Mortgagee and the Depository Agent for, and to hold it harmless against, any loss, liability or expense incurred without bad faith on the part of such Mortgagee or Depository Agent, arising out of or in connection with the acceptance or administration of the trusts created by this Mortgage and Security Agreement, including the costs and expenses of defending itself against any claim of liability in the premises. The obligations of Mortgagors under this Section to compensate Mortgagee and the Depository Agent and to pay or reimburse Mortgagee and the Depository Agent for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall be secured by the lien hereof prior to the claims of the Noteholders upon the Mortgaged Property, except as to funds held in trust for the benefit of particular such Noteholders.

SECTION 8.8. *Conclusiveness of Officers' Certificate.* Subject to the provisions of *Section 8.1*, whenever in the administration of the trusts created by this Mortgage and Security Agreement, Mortgagees shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of Mortgagees, be deemed to be conclusively proved and established by an Officers' Certificate delivered to Mortgagees, and such certificate shall be full warrant to Mortgagees for any action taken, suffered or omitted by them under the provisions of this Mortgage and Security Agreement upon the faith thereof.

SECTION 8.9. *Merger of Mortgagee.* Any company into which any Mortgagee may be merged, or with which it or any company resulting from any merger, conversion or consolidation to which such Mortgagee or any such successor shall be a party (provided such company shall be a trust company or a banking corporation in good standing organized under the laws of the United States or the State of New York or the State of Illinois and shall have an office in the Borough of Manhattan in the City and State of New York or in the City of Chicago, State of Illinois) shall be a successor Mortgagee under this Mortgage and Security Agreement without the execution or filing of any Instrument or the performance of any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.10. *Mortgagee Resignation or Removal.* Any Mortgagee may at any time resign and be discharged from the trusts hereby created by giving to Mortgagors and the Noteholders notice of such resignation.

Any Mortgagee may be removed for cause at any time by Noteholders holding 51% or more of the A Notes at the time outstanding by an instrument or concurrent instruments signed by such Noteholders or their attorneys-in-fact duly authorized. Any Mortgagee so removed shall be entitled to its reasonable compensation then accrued and unpaid, and the reimbursement of proper expenses theretofore incurred and not previously reimbursed.

SECTION 8.11. *Appointment of Successor Mortgagee.* In case at any time any Mortgagee shall resign or shall be removed or shall become incapable of acting or shall be adjudged bankrupt or insolvent, or if a receiver of any Mortgagee, or of its property, shall be appointed, or if any public officer in the exercise of his official powers shall take charge or control of any Mortgagee, or its property or affairs, or if a vacancy shall arise in the trusteeship under this Mortgage and Security Agreement from any other cause, the remaining eligible Noteholder holding the largest amount of the Notes by principal amount shall automatically become the successor Mortgagee. If there shall be more than one such largest eligible Noteholder, they shall elect the successor Mortgagee from among them by majority vote or, in the absence of a majority, by lot.

Every successor Mortgagee shall be a trust company or a banking corporation in good standing, organized under the laws of the United States or the State of New York or the State of Illinois, having an office in the Borough of Manhattan in the City and State of New York or in the City of Chicago, State of Illinois.

Any successor Mortgagee appointed hereunder shall execute, acknowledge and deliver to its predecessor Mortgagee hereunder and to Mortgagors an instrument in writing accepting such appointment hereunder, and thereupon said successor Mortgagee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, and (except as the context may otherwise require) will be deemed to be referred to by the term

"Mortgagee" wherever appearing in this Mortgage and Security Agreement, all with like effect as if originally named as Mortgagee; but any predecessor Mortgagee, nevertheless, upon the written request of Mortgagors or its successor Mortgagee, and upon payment of its unpaid compensation and expenses, if any, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in said successor Mortgagee all the right, title and interest of the predecessor Mortgagee in and to the Mortgaged Property and said rights, powers, trusts, duties and obligations; and the predecessor Mortgagee shall also, upon like request and upon payment of its unpaid compensation and expenses as aforesaid, pay over, assign and deliver to the successor Mortgagee any money and other property subject to the lien and security interest of the Mortgage and Security Agreement then held by it, and deliver any and all records, or copies thereof, in respect of the trusts hereunder which it may have; and, upon request of any such successor Mortgagee, Mortgagors shall execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor Mortgagee said estates, properties, rights, powers and duties.

SECTION 8.12. *Concerning the Missouri and Nebraska Trustees.* The Nebraska Trustee is appointed hereunder as the qualified trustee pursuant to Section 76-1003 R.R.S. Nebraska 1943, as amended, and shall exercise all powers and rights given to a trustee qualified under the Nebraska Trust Deeds Act. The Missouri and Nebraska Trustees shall not act hereunder except upon the written direction of the Mortgagees and shall be entitled to rely exclusively on the Mortgagees concerning any action they may take hereunder. The Missouri and Nebraska Trustees shall be fully indemnified and held harmless by Mortgagors from all claims, causes of action and liabilities of whatever kind asserted against them as a result of their respective appointments hereunder, and Mortgagors will pay their reasonable compensation and expenses. The Mortgagees or the Requisite Holders may at any time, with or without cause, remove either the Missouri Trustee or the Nebraska Trustee and appoint a successor trustee therefor.

SECTION 8.13. *Additional or Separate Mortgagees.* If at any time or times it shall be necessary or prudent in order to conform to any law of any state in which Mortgagors shall at the time hold any property subject to the lien and security interest of this Mortgage and Security Agreement, or Mortgagees shall be advised by counsel satisfactory to them that it is so necessary or prudent, Mortgagees and Mortgagors shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company or one or more other Persons approved by Mortgagees and Mortgagors, either to act hereunder as an additional Mortgagee with respect to all or any of the property subject to the lien and security interest of this Mortgage and Security Agreement (any such bank, trust company or Person so appointed being hereinafter referred to as an "Additional Mortgagee") jointly with Mortgagees, or to act hereunder as separate Mortgagee with respect to any of such property. In the event Mortgagors shall not have joined in the execution of such instruments and agreements within ten days after the receipt of a request from Mortgagees so to do, or in case an Event of Default shall have occurred and be continuing, Mortgagees may act under the foregoing provision of this Section without the concurrence of Mortgagors; and Mortgagors hereby fully empower Mortgagees so to act and appoint Mortgagees their agents and attorneys to act for them under the foregoing provision of this Section in either of such contingencies.

Every such Additional Mortgagee hereunder shall, to the extent permitted by law, be appointed and act, and Mortgagees shall act, subject to the following provisions and conditions, namely:

(a) All powers, duties, obligations and rights conferred upon Mortgagees or Depository Agent in respect of the custody, control and management of moneys, papers or securities, shall be exercised solely by First National, or its successor, as Depository Agent and as Mortgagee hereunder.

(b) All rights, powers, duties and obligations conferred or imposed upon Mortgagees or any of them shall be conferred and imposed upon and exercised or performed by either Continental, or its successor, as Mortgagee, or First National, or its successor, as Mortgagee, and such Additional Mortgagee jointly, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed by Continental and First National, or their successors, as Mortgagees, such Mortgagees shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such Additional Mortgagee.

(c) No power given hereby to, or which it is provided hereby may be exercised by, any such Additional Mortgagee shall be exercised hereunder by such Additional Mortgagee except jointly with, or with the consent in writing of, Continental and First National, or their successors, as Mortgagees.

(d) No Mortgagee hereunder shall be personally liable by reason of any act or omission of any other Mortgagee hereunder.

(e) Mortgagors and Mortgagees at any time by an Instrument in writing executed by them jointly may remove any such Additional Mortgagee and in that case, by an instrument in writing executed by them jointly, may appoint a successor to such Additional Mortgagee. In the event that Mortgagors shall not have joined in the execution of any such instrument within ten days after the receipt of a request so to do, or in case an Event of Default shall have occurred and be continuing, Continental and First National, or their successors, as Mortgagees, shall have the power to remove any such Additional Mortgagee and to appoint a successor Additional Mortgagee without the concurrence of Mortgagors. Mortgagors hereby empower Continental and First National, or their successors, as Mortagees, to make such removal and appointment and appoint Continental and First National, or their successors, as Mortgagees, their agents and attorneys to act for them in such connection and in such contingency. In the event that Mortgagees, without the concurrence of Mortgagors, shall have appointed an Additional Mortgagee as above provided, they may at any time by an instrument in writing remove any such Additional Mortgagee, the successor to any such Additional Mortgagee to be appointed by Mortgagors and Mortgagees, or by Mortgagees, without the concurrence of Mortgagors, as hereinbefore in this Section provided.

Subject to requirements of context and to the foregoing, the term "Mortgagees" appearing throughout this Mortgage and Security Agreement shall be deemed to include each such Additional Mortgagees.

SECTION 8.14. *Mortgagees' Authority in Bankruptcy.* Mortgagees are hereby appointed (and the successive holders of Notes, by taking and holding the same, shall conclusively be deemed to have so appointed the Mortgagees) the true and lawful attorneys-in-fact of said holders, with authority to make and file, irrespective of whether the Notes are in default as to payment of principal or interest, in the respective names of the Noteholders or in behalf of all the Noteholders as a class, any proof of debt, amendment to any proof of debt, petition or other document, and to execute any and all other papers and documents and do and perform any and all other acts and things for and in behalf of the respective Noteholders, or in behalf of all the Noteholders as a class, as may be necessary or advisable in the opinion of Mortgagees in order to have the claims of the Noteholders against Mortgagors, or any successor, or any other Person or corporation, allowed and paid in any equity receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings or cases which shall involve Mortgagors or the Mortgaged Property or any part thereof, and to receive payment of or an account of any such claim or claims; and any receiver, assignee or trustee in any such proceeding or case is hereby authorized by each of the Noteholders to make such payments to Mortgagees. Nothing herein contained shall give Mortgagees authority to assent to or reject on behalf of any Noteholder any plan of reorganization, plan of adjustment, or any similar plan, proposed or approved in any such proceeding.

SECTION 8.15. *Authorization of Mortgagee to Act for Mortgagees.* Mortgagees may, by power of attorney or any other instrument reasonably satisfactory to Mortgagees and upon notice to Mortgagors and the Noteholders, authorize Continental, or its successor, or First National, or its successor, as Mortgagee, to receive any request for, approve, disapprove or otherwise act on, and execute and deliver any instrument required, in connection with any release of Mortgaged Property pursuant to *Article IV* or in connection with any other matter specified in any power of attorney or other instrument granting such authority. Without limiting the generality of the foregoing, the Mortgagees, and the Missouri Trustee and the Nebraska Trustee, to the full extent either may lawfully do so without limiting the remedies available under this Mortgage and Security Agreement, hereby authorize and appoint, and the Noteholders, by their acceptance of delivery of their Notes, consent to and confirm such authorization and appointment and do hereby appoint and empower, First National, as Mortgagee hereunder, to receive any notices or other communications, to take any actions, including the execution and delivery of releases of portions of the Mortgaged Property, and do all other things which Mortgagees are authorized to do pursuant to *Sections 3.11, 3.13, 4.2, 4.3, paragraph B.* of *Section 4.8, Sections 4.9, 4.10, 4.14, 4.16* and *4.17* and *Article V.*

ARTICLE IX

DEFEASANCE

SECTION 9.1. *Satisfaction and Discharge.* If

(a) Mortgagors shall have paid the principal of and all interest due on the A Notes in accordance with the terms thereof and hereof and shall have duly paid, performed and complied with all other Liabilities, or

(b) Mortgagors shall irrevocably deposit with the Disbursement Agent cash or Cash Equivalent Investments (as defined in the Loan Agreement) in an amount sufficient, in the reasonable judgment of the Requisite Holders, to pay the A Notes at maturity, together with the aggregate amount of the payments of principal and interest due and to become due thereon to the date of maturity, pursuant to an Instrument reasonably satisfactory in form and substance to the Mortgagees, Disbursement Agent, Co-Agents and the Requisite Holders (which may provide for the investment or reinvestment of such cash or investments at the direction of Mortgagors and the payment of the net income thereon to Mortgagors but which must provide that, upon the occurrence of a Default, all such amounts may, at the option of the Mortgagees, and, upon the occurrence of an Event of Default, shall, be immediately applied to the payment of the outstanding principal amount of and all interest accrued and unpaid on the A Notes), and if in either case Mortgagors shall also pay or cause to be paid all other Liabilities when due and payable hereunder by Mortgagors,

then this Mortgage and Security Agreement shall cease to be of further effect, except to the extent to which it may secure any rights of either of the Mortgagors against the other as provided in *Section 11.8.*

In such event Mortgagees, at the request of Mortgagors and at Mortgagors' sole cost and expense, shall execute and deliver to Mortgagors such instrument or instruments as may be appropriate to acknowledge satisfaction of this Mortgage and Security Agreement and as will enable Mortgagors to have this Mortgage and Security Agreement discharged of record, and shall release and assign, or cause to be released and assigned, to Mortgagors all of their interest in the Mortgaged Property, and shall deliver to Mortgagors or upon their order, all securities and moneys then held by Mortgagees under the provisions hereof other than the money or investments deposited as above provided in *clause (b)* of this Article. Mortgagors agree to reimburse Mortgagees for any costs or expenses reasonably and properly incurred by Mortgagees in connection with this Mortgage and Security Agreement or with the A Notes.

ARTICLE X

SUPPLEMENTAL INDENTURES

SECTION 10.1. *Without Noteholders' Consent.* Mortgagors, when authorized by resolutions of their Boards of Directors, and Mortgagees may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to convey, transfer and assign to Mortgagees and subject to the lien and security interest of this Mortgage and Security Agreement, with the same force and effect as through included in the granting clauses hereof, additional property then owned by Mortgagors, acquired through consolidation, merger, purchase or otherwise;

(b) to evidence the succession of another corporation to CNW, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of CNW, in accordance with *Article V*;

(c) to add to the covenants of Mortgagors such further covenants for the protection of the Mortgaged Property and the Noteholders as the Boards of Directors of the Mortgagors and Mortgagees shall consider to be for the protection of the Noteholders, and to make the occurrence and continuance of a default under any of such additional covenants a default permitting the enforcement of all or any of the several remedies provided in this Mortgage and Security Agreement; *provided, however, that* in respect of any such additional covenant, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforecement of said remedy or remedies upon such

default or may limit the remedies available to Mortgagees upon such default or may authorize the Noteholders holding a specified percentage (by principal amount) of the Notes to waive such default and prescribe limitations on such rights of waiver; and

(d) to cure any ambiguity or to correct or supplement any provision contained in this Mortgage and Security Agreement which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture or in the Loan Agreement, or to make such other provisions in regard to matters or questions arising under this Mortgage and Security Agreement as shall not be inconsistent with the provisions of this Mortgage and Security Agreement and the Loan Agreement and shall not adversely affect the interests of the Noteholders.

Mortgagees are hereby authorized to join with Mortgagors in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder.

Any supplemental indenture authorized by the provisons of this Section may be executed by Mortgagors and Mortgagees without the consent of the Noteholders, notwithstanding any of the provisions of *Section 10.2.*

SECTION 10.2. *With Noteholders' Consent.* With the consent of the Requisite Holders, Mortgagors, when authorized by resolutions of their Boards of Directors, and Mortgagees may, from time to time and at any time, whether or not an Event of Default shall have occurred and be continuing, and pursuant to general plan or otherwise, enter into an indenture or indentures supplemental hereto for the purpose of:

(a) modifying, altering, adding to or eliminating any provision of this Mortgage and Security Agreement and any provision as to the lien or security interest hereof, including the termination of such lien or security interest otherwise than as in this Mortgage and Security Agreement provided, with respect to any property or properties or part or parts thereof at any time subject thereto; or

(b) modifying, altering, adding to, eliminating or compromising rights of the Noteholders and rights and obligations of Mortgagors;

provided, however, that no such action shall:

(i) without the consent of the holder of such Note, alter or impair the obligation of Mortgagors to pay the principal thereof, or interest thereon, at the time and place and at the rate and in the currency provided therein; or

(ii) without the consent of any Noteholder, permit Mortgagors to create, otherwise than as permitted by this Mortgage and Security Agreement, any mortgage or lien in the nature of a mortgage, on the Mortgaged Property ranking prior to or on a parity with the lien of this Mortgage and Security Agreement which shall be effective as against such Noteholder; or

(iii) affect the rights, duties or immunities of any Mortgagee or the Disbursement Agent under this Mortgage and Security Agreement without the written consent of such Mortgagee or the Disbursement Agent; or

(iv) reduce the aforesaid percentage of Noteholders which is required to consent to any such supplemental indenture without the consent of the Requisite Holders.

Upon the request of Mortgagors, accompanied by certified copies of resolutions of their Boards of Directors authorizing the execution of any such supplemental indenture, and upon the filing with Mortgagees of evidence of the consent of the Noteholders as aforesaid, Mortgagees shall join with Mortgagors in the execution of such supplemental indenture.

It shall not be necessary for the consent of any Noteholder under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 10.3. *Effect of Supplemental Indenture.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article, this Mortgage and Security Agreement shall be and be deemed to be modified and amended in accordance therewith and the respective rights, duties and obligations under this Mortgage and Security Agreement of Mortgagors, Mortgagees, Disbursement Agent

and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Mortgage and Security Agreement for any and all purposes.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1. *Notices.* All notices and other communications hereunder by Mortgagors, Mortgagees, Disbursement Agent or the Noteholders, including without limitation any demand, request, consent or other action, shall be in writing and shall be deemed to have been duly given if delivered personally or mailed by certified or registered mail, postage prepaid, as follows:

(a) If to Mortgagors, to:

Office of the Secretary
Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated
One North Western Center
Chicago, Illinois 60606,

with a copy to the Senior Vice President—Finance and Accounting, at the above address,

or to such other address in the continental United States as Mortgagors may from time to time specify by notice to each Mortgagee and Noteholder and the Disbursement Agent and the Depository Agent; and

(b) If to either Mortgagee, to:

(i) Continental Illinois National Bank and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60697

Attention: Special Industries Services—Transportation Division,

with a copy to the attention of GBS Loan Support, at the above address.

and/or

(ii) The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670,

or to such other address or to the attention of such other person or division as each Mortgagee may designate in writing to Mortgagors, each Noteholder, Disbursement Agent, Depository Agent and each other Mortgagee; and to any successor Mortgagee or Additional Mortgagee appointed and acting hereunder, at such address as such Mortgagee shall designate in writing as aforesaid.

(c) If to Disbursement Agent, to:

Continental Illinois National Bank and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60697
Attention: Special Industries Services—Transportation Division,

with a copy to the attention of GBS Loan Support, at the above address.

(d) If to Depository Agent, to:

The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670,

or to such other address or to the attention of such other perons as the Depository Agent at the time may designate in writing to Mortgagors, Mortgagees, Disbursement Agent and each Noteholder.

(e) If to any Noteholder:

(i) to the address of each Bank set forth in the Loan Agreement, so long as such Bank is a Noteholder, or to such other address or to the attention of such other person or department as such Bank may designate in writing to Mortgagors, Mortgagees, Depository Agent and Disbursement Agent:

and

(ii) to any other Noteholder, at such address and to the attention of such person as such Noteholder may designate in writing to Mortgagors, Mortgagees, Depository Agent and Disbursement Agent, or until such Noteholder shall have made such designation, to and at the address of the last holder of such Note designating an address to Mortgagors, Mortgagees, Depository Agent and Disbursement Agent.

SECTION 11.2. *Headings.* The various headings used in this Mortgage and Security Agreement for Articles, Sections, paragraphs and clauses are for convenience only and shall not be used in interpreting this Mortgage and Security Agreement or the text of any provision hereof.

SECTION 11.3. *Severability.* Wherever possible, each provision of this Mortgage and Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if, for any reason whatsoever, any provision of this Mortgage and Security Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or cases in any particular jurisdiction or jurisdictions or in all jurisdictions or in all cases, such circumstances shall not have the effect of rendering such provision inoperative, unenforceable or invalid in any other jurisdiction or in any other case nor of rendering any other provisions of this Mortgage and Security Agreement inoperative, unenforceable or invalid.

SECTION 11.4. *Successors and Assigns.* This Mortgage and Security Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and, subject to the provisions hereof, including *Article V*, their respective successors and assigns.

SECTION 11.5. *Counterparts.* This Mortgage and Security Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

SECTION 11.6. *Execution as Security Agreement and Financing Statement.* The Mortgage and Security Agreement is being executed as a security agreement and financing statement by Mortgagors as debtors and by Mortgagees as secured parties on their own behalf and in their capacity as Mortgagees and on behalf of the Banks as secured parties at the direction of the Banks under the Loan Agreement.

SECTION 11.7. *Waivers, Consents, etc.* Mortgagees may, subject to the provisions of *Article X* and except as otherwise specifically provided herein, give any consents, waivers or approvals hereunder with the written consent of the Requisite Holders.

SECTION 11.8. *Subrogation of Mortgagors to Rights of Mortgagees, Noteholders, etc.* Subject and subordinate in all respects to the rights of the Mortgagees and the Noteholders, and of the Disbursement Agent and Co-Agents under and with respect to this Mortgage and Security Agreement, and notwithstanding the provisions of *Section 9.1*, this Mortgage and Security Agreement shall also secure:

(a) CNW for any payment by CNW of the principal of and interest on the A Notes, which as between CNW and MRPI has been agreed to be the obligation of MRPI; and

(b) each of the Mortgagors for any payment, performance or compliance with any other Liability by said Mortgagor herewith which as between them has been agreed to be the obligation of the other;

provided, however, that no such right of subrogation shall be enforceable by any Mortgagor unless and until the principal of and all interest on the Notes has been duly and fully paid and all other Liabilities have been well and truly paid, performed and complied with.

IN WITNESS WHEREOF, Mortgagors have caused this Mortgage and Security Agreement to be signed on their behalf and acknowledged by their respective President or a Vice President and their corporate seals to be affixed hereto and attested by their respective Secretary or an Assistant Secretary, all as of the date first above written.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

[CORPORATE SEAL]

By _____
Name: Julian S. Eberhardt
Title: *Vice President*

ATTEST:

Federal Tax Identification Number 36-2725945

_____
Name: J. S. Edwards
Title: *Assistant Secretary*

In the presence of:

_____
NAME ROBERTA MEYERS

_____
NAME June L. VanDerAa

MIDWESTERN RAILROAD PROPERTIES, INCORPORATED

[CORPORATE SEAL]

By _____
Name: Robert W. Mickey
Title: *Vice President*

ATTEST:

Federal Tax Identification Number 36-3163714

_____
Name: Joan A. Schramm
Title: *Assistant Secretary*

In the presence of:

_____
NAME ROBERTA MEYERS

_____
NAME June L. VanDerAa

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

[CORPORATE SEAL]

By Eileen Hudson

Name: EILEEN HUDSON

Title: VICE PRESIDENT

ATTEST:

Name: Jon A. VanDa

Title: BANKING OFFICER

In the presence of:

NAME ROBERTA MEYERS

NAME June L. VanDerAa

THE FIRST NATIONAL BANK OF CHICAGO

[CORPORATE SEAL]

By _____

Name: GERALD F MACKIN

Title: VICE PRESIDENT

ATTEST:

_____

Name: Gary S Gage

Title: COMMERCIAL BANKING OFFICER

In the presence of:

_____

NAME ROBERTA MEYERS

_____

NAME June L. VanDerAa

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

I, Marie A. Massie, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JULIAN S. EBERHARDT personally known to me to be a Vice President of Chicago and North Western Transportation Company, a Delaware corporation, and J. S. EDWARDS personally known to me to be an Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are a Vice President and an Assistant Secretary, respectively, of said corporation, that they signed and delivered said instrument as Vice President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

GIVEN under my hand and notarial seal this 27th day of June, A.D. 1983.

Marie A. Massie
Notary Public

My commission expires April 15, 1984

[NOTARIAL SEAL]

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

I, Marie A. Massie, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT W. MICKEY, personally known to me to be a Vice President of Midwestern Railroad Properties, Incorporated, a Delaware corporation, and JOAN A. SCHRAMM, personally known to me to be an Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are a Vice President and an Assistant Secretary, respectively, of said corporation, that they signed and delivered said instrument as Vice President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

GIVEN under my hand and notarial seal this 27th day of June, A.D. 1983.

Marie A. Massie
Notary Public

My commission expires April 15, 1984

[NOTARIAL SEAL]

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

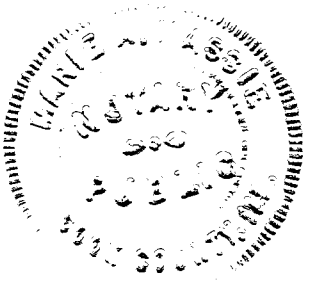
I, Marie A. Massie, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eileen Hudson, personally known to me to be Vice President of Continental Illinois National Bank and Trust Company of Chicago, a national banking association, and Jon A Anda, personally known to me to be Banking Officer of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Banking Officer, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are Vice President and Banking Officer, respectively, of said corporation, that they signed and delivered said instrument as Vice President and Banking Officer of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

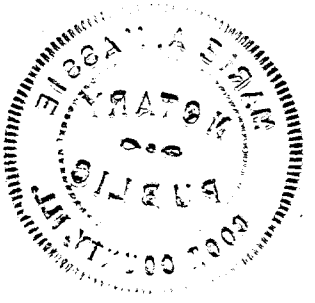
GIVEN under my hand and notarial seal this 27th day of June, A.D. 1983.

Marie A. Massie
Notary Public

My commission expires April 15, 1984

[NOTARIAL SEAL]





STATE OF ILLINOIS
COUNTY OF COOK } ss.:

I, Marie A. Massie, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald F. Mackin, personally known to me to be Vice President of The First National Bank of Chicago, a national banking association, and Gary S. Gage, personally known to me to be Banking Officer of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Banking officer, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are Vice President and Banking Officer respectively, of said corporation, that they signed and delivered said instrument as Vice President and Banking Officer of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

GIVEN under my hand and notarial seal this 27th day of June, A.D. 1983.

Marie A. Massie
Notary Public

My commission expires April 15, 1984

[NOTARIAL SEAL]

EXHIBIT A

A NOTE

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
and
MIDWESTERN RAILROAD PROPERTIES, INCORPORATED
FLOATING RATE MORTGAGE NOTE DUE _____(1)

$_____(2) Chicago, Illinois

_____, 19__(3)

FOR VALUE RECEIVED, the undersigned hereby promise to pay to the order of _____ _____(4) the principal amount of _____ Dollars ($_____)(2) on _____.(1)

The unpaid principal amount of this Note from time to time outstanding shall bear interest from the date hereof until paid in full at the rates, and shall be payable at the times, provided in *Sections 2.3, 2.4, 3.1, 3.2, 3.3* and *3.4* of that certain Loan Agreement, dated as of February 15, 1983, among the undersigned and various commercial banking institutions and the Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago, as co-agents (herein, as amended from time to time prior to and after the date hereof, called the "Loan Agreement"). After the maturity (whether by voluntary prepayment or required payment, declaration or otherwise) of all or any portion of the principal amount of this Note, the undersigned agree to pay interest (after, as well as before, judgment) on the principal amount so matured at the Applicable Default Interest Rate, in accordance with *Section 2.4.3* of the Loan Agreement, on demand.

All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America at the office of the Continental Illinois National Bank and Trust Company of Chicago, at 231 South LaSalle Street, Chicago, Illinois, in immediately available funds.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid prior to its due date and its due date accelerated. This Note is secured by, among other things, a certain mortgage indenture and deed of trust, assignment of leases and rents, security agreement and financing statement A, dated as of the date hereof, from the undersigned to Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago, encumbering certain real and personal property of the undersigned located in the States of Illinois, Minnesota, Iowa, Wisconsin, Kansas, Nebraska, Michigan, North Dakota, South Dakota, Missouri and Wyoming (the "Mortgage"), to which reference is made for a description of the property encumbered, the nature and extent of the security and the rights of the holder hereof in respect to such security. The provisions of the Loan Agreement and the Mortgage are incorporated by reference herein as though set out herein in their entirety.

In addition to and not in limitation of the foregoing and the provisions of the Loan Agreement, the undersigned further agree, subject only to any limitation imposed by applicable law, to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by the co-agents and the holder of this

---

(1) The stated maturity of the A Notes will be the earlier of (i) February 15, 1994, and (ii) the tenth anniversary of the Closing Date.

(2) the Bank's (or Institutional Investor's) Percentage of $35,000,000 (as "Percentage" and "Institutional Investor" are defined in the Loan Agreement)

(3) the Closing Date

(4) the Bank or Institutional Investor which is the original holder of the Note

Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by acceleration or otherwise.

This Note is made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. The obligations of the undersigned are joint and several.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

[Corporate Seal]

By_____

Attest:_____

Title:_____

Address: One North Western Center
165 North Canal Street
Chicago, Illinois 60606

MIDWESTERN RAILROAD PROPERTIES, INCORPORATED

[Corporate Seal]

By_____

Attest:_____

Title:_____

Address: One North Western Center
165 North Canal Street
Chicago, Illinois 60606

For the purpose only of complying with the provisions of section 443.050, Revised Statutes of Missouri, 1959, as amended, the undersigned, being a bank or trust company duly authorized to do a trust business in the State of Missouri, hereby certifies that this Note is one of the Floating Rate Notes due _____, 19__, of the Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated described in and secured by the Mortgage Indenture and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement A, dated _____, 19__, from the Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated to Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago.

_____

By_____

Title:_____

EXHIBIT B

B NOTE

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
and
MIDWESTERN RAILROAD PROPERTIES, INCORPORATED
FLOATING RATE MORTGAGE NOTE DUE _____(1)

$_____ (2) Chicago, Illinois

_____, 19__ (3)

FOR VALUE RECEIVED, the undersigned hereby promise to pay to the order of _____ (4) the principal amount of _____Dollars ($_____)(2) on _____.(1)

The unpaid principal amount of this Note from time to time outstanding shall bear interest from the date hereof until paid in full at the rates, and shall be payable at the times, provided in *Sections 2.3*, *2.4*, *3.1*, *3.2*, *3.3* and *3.4* of that certain Loan Agreement, dated as of February 15, 1983, among the undersigned and various commercial banking institutions and the Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago, as co-agents (herein, as amended from time to time prior to and after the date hereof, called the "Loan Agreement"). After the maturity (whether by voluntary prepayment or required payment, declaration or otherwise) of all or any portion of the principal amount of this Note, the undersigned agree to pay interest (after, as well as before, judgment) on the principal amount so matured at the Applicable Default Interest Rate, in accordance with *Section 2.4.3* of the Loan Agreement, on demand.

All payments of principal of and interest on this Note shall be payable in lawful currency of the United States of America at the office of the Continental Illinois National Bank and Trust Company of Chicago at 231 South LaSalle Street, Chicago, Illinois, in immediately available funds.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid prior to its due date and its due date accelerated. This Note is secured by, among other things, a certain mortgage indenture and deed of trust, assignment of leases and rents, security agreement and financing statement B, dated the date hereof, from the undersigned to Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago, encumbering certain real and personal property of the undersigned located in the States of Illinois, Minnesota, Iowa, Missouri, Wisconsin, Michigan, North Dakota, South Dakota, Kansas, Nebraska and Wyoming (the "Mortgage"), to which reference is made for a description of the property encumbered, the nature and extent of the security and the rights of the holder hereof in respect to such security. The provisions of the Loan Agreement and the Mortgage are incorporated by reference herein as though set out herein in their entirety.

In addition to and not in limitation of the foregoing and the provisions of the Loan Agreement, the undersigned further agree, subject only to any limitation imposed by applicable law, to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by the co-agents and the holder of this

---

(1) The stated maturity of the B Notes will be the earlier of (i) May 15, 1992, and (ii) the thirty-third Quarterly Payment Date.

(2) the Bank's (or Institutional Investor's) Percentage of the lesser of (i) the Total Commitment Amount and (ii) the Total Purchase Price, minus $35,000,000 (as the terms "Institutional Investor," "Percentage," "Total Commitment Amount" and "Total Purchase Price" are defined in the Loan Agreement)

(3) the Closing Date

(4) the Bank or Institutional Investor which is the original holder of the Note

Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by acceleration or otherwise.

This Note is made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. The obligations of the undersigned are joint and several.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By_____

[Corporate Seal]

Title:_____

Attest:_____

Address: One North Western Center
165 North Canal Street
Chicago, Illinois 60606

MIDWESTERN RAILROAD PROPERTIES,
INCORPORATED

By_____

[Corporate Seal]

Title:_____

Attest:_____

Address: One North Western Center
165 North Canal Street
Chicago Illinois 60606

For the purpose only of complying with the provisions of section 443.050, Revised Statutes of Missouri, 1959, as amended, the undersigned, being a bank or trust company duly authorized to do a trust business in the State of Missouri, hereby certifies that this Note is one of the Floating Rate Notes due , 19 , of the Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated described in and secured by the Mortgage Indenture and Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement B, dated , 198 , from the Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated to Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago.

_____

By_____

Title:_____

SCHEDULE I

Names and Addresses of Banks

Continental Illinois National Bank
and Trust Company of Chicago
231 South La Salle Street
Chicago, Illinois 60697

The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670

National Bank of North America
44 Wall Street
New York, New York 10005

Norwest Bank Minneapolis, N.A.
Seventh and Marquette
Minneapolis, Minnesota 55480

The Northern Trust Company
50 South LaSalle Street
Chicago, Illinois 60675

Harris Trust and Savings Bank
111 West Monroe Street
Chicago, Illinois 60690

First Wisconsin National Bank of Milwaukee
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Mercantile Trust Company, National Association
Mercantile Tower
St. Louis, Missouri 63166

SCHEDULE II

List of Counties

STATE OF ILLINOIS

Boone, Bureau, Cook, DeKalb, DuPage, Fulton, Henderson, Jo Daviess, Kane, Knox, Lake, LaSalle, Lee, Macoupin, Madison, Marshall, Mason, McHenry, Menard, Mercer, Montgomery, Ogle, Peoria, St. Clair, Sangamon, Stark, Stephenson, Tazewell, Warren, Whiteside, Winnebago

STATE OF IOWA

Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clay, Clinton, Crawford, Dallas, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Green, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Wayne, Wapello, Warren, Washington, Webster, Winnebago, Woodbury, Worth, Wright

STATE OF KANSAS

Leavenworth, Wyandotte, Johnson

STATE OF MICHIGAN

Alger, Delta, Dickinson, Gogebic, Iron, Marquette, Menominee, Ontonagon

STATE OF MINNESOTA

Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Hennepin, Jackson, Kandiyohi, Lac Qui Parle, Le Sueur, Lincoln, Lyon, Martin, McLeod, Meeker, Mower, Murray, Nicollet, Nobles, Olmsted, Ramsey, Redwood, Renville, Rice, Rock, St. Louis, Scott, Sibley, Steele, Wabasha, Waseca, Washington, Watonwan, Winona, Yellow, Medicine

STATE OF MISSOURI

Andrew, Buchanan, Caldwell, Clay, Daviess, Grundy, Jackson, Livingston, Mercer, Nodaway, Platte, Ray, Worth

STATE OF NEBRASKA

Antelope, Boone, Boyd, Brown, Burt, Butler, Cedar, Cherry, Clay, Colfax, Cuming, Dakota, Dawes, Dixon, Dodge, Douglas, Fillmore, Hamilton, Holt, Knox, Lancaster, Madison, Nuckolls, Pierce, Platte, Rock, Saunders, Seward, Sheridan, Sioux, Stanton, Thayer, Thurston, Washington, Wayne, York

STATE OF NORTH DAKOTA

Dickey

STATE OF SOUTH DAKOTA

Beadle, Brookings, Brown, Butte, Clark, Clay, Codington, Custer, Davison, Day, Deuel, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Hughes, Hyde, Jackson, Jones, Kingsbury, Lawrence, Lincoln, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Pennington, Potter, Spink, Stanley, Sully, Tripp, Turner, Union, Walworth, Yankton

STATE OF WYOMING

Converse, Crook, Fremont, Natrona, Niobrara

STATE OF WISCONSIN

Adams, Ashland, Barron, Bayfield, Brown, Buffalo, Calumet, Chippewa, Clark, Columbia, Dane, Dodge, Douglas, Dunn, Eau Claire, Florence, Fond du Lac, Forest, Grant, Greene, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kenosha, LaCrosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Pierce, Polk, Portage, Price, Racine, Rock, St. Croix, Sauk, Sawyer, Shawano, Sheboygan, Taylor, Trempealeau, Vilas, Walworth, Washburn, Washington, Waukesha, Waupaca, Wausbara, Winnebago, Wood

SCHEDULE III

Section References

STATE OF KANSAS

A line of railroad in Sections 35 and 36, Township 8 South, Range 22 East of the Sixth Principal Meridian, extending from the West bank of the Missouri River for a distance of 1 mile, more or less, all in Leavenworth County.

A line of railroad in Sections 3 and 10, Township 11 South, Range 25 East of the Sixth Principal Meridian, extending from the Northwesterly bank of the Kansas River for a distance of 1/2 mile, more or less, all in Wyandotte County.

BY OPERATING AGREEMENT WITH THE MISSOURI PACIFIC RAILROAD COMPANY:

A line of railroad beginning at a point in Section 36, Township 8 South, Range 22 East of the Sixth Principal Meridian, and extending Southeasterly through Leavenworth County and Wyandotte County, for a distance of 27 miles, more or less, to a point in Section 3, Township 11 South, Range 25 East of the Sixth Principal Meridian.

STATE OF NORTH DAKOTA

A line of railroad beginning at the Southerly line of Section 31, Township 129 North, Range 59 West of the Fifth Principal Meridian, and extending Northerly for a distance of 14 miles, more or less, to a point in Section 20, Township 131 North, Range 59 West of the Fifth Principal Meridian, all in Dickey County.

STATE OF SOUTH DAKOTA

A line of railroad beginning at the Southerly line of Section 14, Township 12 South, Range 7 East of the Black Hills Meridian, and extending Northerly for a distance of 155 miles, more or less, through Fall River County, Custer County, Pennington County, Meade County, Lawrence County, and Butte County, to the Westerly line of Section 19, Township 10 North, Range 1 East of the Black Hills Meridian.

A line of railroad beginning at the Easterly line of Section 22, Township 109 North, Range 47 West of the Fifth Principal Meridian, and extending Westerly for a distance of 376 miles, more or less, through Brookings County, Kingsbury County, Beadle County, Hand County, Hyde County, Hughes County, Stanley County, Jones County, Haakon County, Jackson County, and Pennington County, to a point in Section 1, Township 1 North, Range 7 East of the Black Hills Meridian.

A line of railroad beginning at a point in Section 24, Township 123 North, Range 64 West of the Fifth Principal Meridian, and extending Northeasterly for a distance of 39 miles, more or less, to the Northerly line of Section 2, Township 128 North, Range 61 West of the Fifth Principal Meridian, all in Brown County.

A line of railroad beginning at a point in Section 19, Township 110 North, Range 50 West of the Fifth Principal Meridian, and extending Northwesterly for a distance of 47 miles, more or less, through Brookings County, Deuel County, Hamlin County, and Codington County, to a point in Section 35, Township 117 North, Range 53 West of the Fifth Principal Meridian.

A line of railroad beginning at the Easterly line of Section 34, Township 102 North, Range 47 West of the Fifth Principal Meridian, and extending Westerly for a distance of 23 miles, more or less, to a point in Section 9, Township 101 North, Range 50 West of the Fifth Principal Meridian, all in Minnehaha County.