

LAW OFFICES
of

0100326004

T. SCOTT BANNISTER AND ASSOCIATES

ATTORNEY AND COUNSELOR AT LAW
1300 DES MOINES BUILDING
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18923

AUG 1 - 1994 10 05 AM

July 22, 1994

Mr. Sidney L. Strickland
Office of the Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Iowa Interstate Railroad, Ltd. - Locomotive Security
Interest Filing

Dear Secretary Strickland:

I have enclosed an original and one copy of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are 1) a Loan and Security Agreement and 2) a Financing Statement, both being primary documents dated July 21, 1994.

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

Lendor/Mortgagor: Maytag Financial Services Corp.
403 West Fourth Street North
Newton, Iowa 50208

Borrower/Mortgage: Iowa Interstate Railroad, Ltd.
800 Webster Street
Iowa City, Iowa 52240

A description of the equipment covered by the documents follows: One (1) General Motors GP-38, 2000 H.P. Diesel Electric Locomotive, Unit No. IAIS 600.

A filing fee of \$18.00 is enclosed.

Please return the original of each document after recordation and date-stamping each document to the undersigned.

A short summary of the documents to appear in the I.C.C. Index follows: One (1) General Motors GP-38 Locomotive, Unit No. IAIS 600, dated July 21, 1994, in favor of Maytag Financial Services Corp., 403 West Fourth Street North, Newton, Iowa 50208 from the borrower, Iowa Interstate Railroad, Ltd. 800 Webster Street, Iowa City, Iowa 52240.

Office of the Secretary
July 22, 1994
Page 2 of 2

Your recordation of these documents is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "T. Scott Bannister", written over a horizontal line.

T. Scott Bannister

TSB:nl

Enclosures

cc: Robert C. Finley
Ann M. Zenk

0965/1/22419

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

AUGUST 1, 1994

T. SCOTT BANNISTER
T. SCOTT BANNISTER & ASSOCIATES
1300 DES MOINES BUILDING
504 6TH AVENUE
DES MOINES IOWA 50309

Dear MR. BANNISTER:

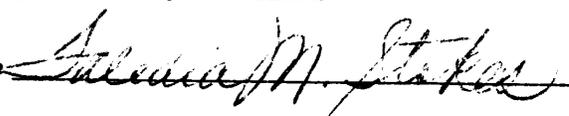
The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/1/94 at 10:05AM, and assigned recordation number(s). 18923

Sincerely yours,

VERNON A. WILLIAMS
ACTING SECRETARY

Enclosure(s)

\$ 18.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one stamped on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine you document.

Signature 

18923

REGISTRATION NO. FILED 1425

AUG 1 - 1994 - 10 05 AM

LOAN AND SECURITY AGREEMENT

This is a Loan and Security Agreement (this "Agreement") dated as of July 21, 1994, between Iowa Interstate Railroad, Ltd, 800 Webster Street, Iowa City, Iowa 52240-4806 referred to hereinafter as "Debtor", and Maytag Financial Services Corp., referred to hereinafter as "MFSC".

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the capitalized terms defined below have the respective meanings ascribed to them:

"**Collateral**" means all rights of Debtor in and to any of the following, whether now owned or hereafter acquired: (i) a General Motors GP-38, 2000 H. P. Diesel Electric Locomotive, Unit No. IAIS 600; (ii) all parts, fittings, and accessories relating thereto; (iii) all transferable rights of Debtor to licenses and warranties (express and implied) from the seller or manufacturer thereof; (iv) all policies of insurance relating thereto and all rights in and proceeds of such policies of insurance; (v) all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of such items or any interest therein; and (vi) all claims, credits, setoffs, and other rights of recovery related thereto.

"**Loans**" means all of the following, whether or not evidenced by a separate written instrument, whether or not requested by Debtor, whether in connection herewith or otherwise: all amounts loaned or advanced by MFSC to or on behalf of Debtor, all obligations incurred by MFSC on behalf of Debtor, all amounts paid by MFSC pursuant hereto or in connection herewith, and all other amounts owed by Debtor to MFSC, together with interest thereon as provided herein.

"**Prime Rate**" or "**Prime**" shall mean the publicly announced Harris Trust and Savings Bank, Chicago, Illinois, "prime commercial rate" as adjusted and determined on the first day of each month. MFSC does not have to give notice of any adjustment in the Prime Rate.

2. **Term.** Debtor promises to pay, to the order of MFSC, 403 W. 4th St. N., Newton, Iowa 50208 the principal sum of Eighty-Five Thousand and no/100 Dollars (\$85,000). The Debtor also promises to pay interest on the outstanding principal balance at a floating rate per annum (the "Interest Rate") equal to three hundred (300) basis points above the "Prime Rate" as defined herein. Such interest shall be payable monthly commencing the twentieth day of the month following the month of the initial draw down of principal by the Borrower and continuing on the twentieth day of each month thereafter, on the principal balance remaining from time to time unpaid as set forth in the Term Note of even date herewith.

3. **Grant of Security Interest.** As security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Loan, including renewals, extensions, and changes in form of any of them, Debtor grants to MFSC a continuing security interest in and to the Collateral wherever the Collateral is located. The parties intend that the security interest granted herein will, to the extent permitted by law, have priority over any other security interests granted in the Collateral before or after the date hereof. Debtor shall prominently stencil or otherwise display on the Collateral that the locomotive is financed by MFSC in accordance with ICC rules.

4. **Representations and Warranties.** Debtor represents and warrants to MFSC that (a) Debtor is and will remain the absolute owner of all items for which MFSC has made the Loan and keep the Collateral free from all liens, charges, and encumbrances, except for the security interest granted herein and any other security interest that is both (i) approved in advance in writing by MFSC, and (ii) subordinate in all respects to the security interest of MFSC; (b) the address of Debtor shown herein is the chief executive office and chief place of business of Debtor; and (c) all financial statements and other information furnished to MFSC, whether in the form of a schedule, certificate, report or other writing, is and will be true and correct as of the date furnished.

5. **Affirmative Covenants.** Debtor shall: (a) keep the Collateral in first class order and repair and will not waste or destroy the Collateral or any part of it; (b) defend the Collateral against the claims and demands of all persons at any time claiming the Collateral or any interest in it and indemnify, defend, and hold harmless MFSC from all claims and demands of all persons at any time or times hereafter claiming the Collateral or any interest therein; (c) permit MFSC and its agents and representatives to examine and inspect the Collateral wherever it is located, and at any reasonable time or times; (d) promptly pay when due all taxes and assessments on the Collateral, for its use or operation, on the proceeds from its lease or rental, or on this Agreement or other writings evidencing the Loan, (e) promptly pay when due all transportation, storage, and other charges relating to the Collateral or its use or operation, and all rents for the premises on which the Collateral is kept; (f) keep the Collateral insured, at its expense, against loss by fire, explosion and other risks for the full insurable value thereof, by policies of insurance in such form, with such companies and in such amounts as are satisfactory to MFSC; (g) deliver to MFSC certified copies of all such insurance policies, showing MFSC as loss payee, and including an agreement by the insurer that at least ten (10) days prior notice will be provided to MFSC before any such policy is canceled or altered and that no act or default of Debtor or any other person shall affect the right of MFSC to recover thereunder in the case of loss or damage; (h) keep accurate and complete records of the Collateral, (i) permit MFSC or its nominee to examine all Debtor's records relating to the Collateral at any time and to make extracts therefrom, (j) on request of MFSC, execute such financing statements and other documents and pay the cost of filing or recording the same in all public offices deemed necessary by MFSC, and do such other acts and things as MFSC may request to establish and maintain a valid security interest in the Collateral (free of all other liens and claims whatsoever) to secure payment of the Loans, (k) pay to MFSC all insurance and other proceeds attributable to the Collateral in the event the Collateral is destroyed in an accident or the Collateral is leased or rented to a third party.

6. **Negative Covenants.** Without the prior written consent of MFSC, Debtor shall not: (a) borrow on the security of the Collateral from anyone except MFSC or pledge or grant a security interest in the Collateral to anyone except MFSC, (b) permit any lien to attach to any of the Collateral, except for security interests in favor of MFSC or otherwise as provided in this Agreement, (c) use the Collateral or permit it to be used in violation of any law or policy of insurance, (d) permit any of the Collateral to be levied upon under legal process, (e) sell, lease, transfer, or otherwise dispose of any of the Collateral or any interest in it or offer to do so.

7. **Rights and Obligations of MFSC.** (a) MFSC shall not be liable for or responsible in any way for the safekeeping of the Collateral, or for any loss or damage thereto, or for any diminution in the value thereof. All risk of loss, damage or destruction to the Collateral from fire, theft or any other cause shall be Debtor's and the occurrence of the same shall not release the Debtor from his obligation to pay MFSC. (b) MFSC may, but will have no obligation to (i) discharge taxes, liens, transportation charges, storage charges, security interests, or other encumbrances at any time levied or placed on the Collateral, (ii) pay for insurance on the Collateral; (iii) pay for the maintenance and preservation of the Collateral; or (iv) discharge any rents for the use of the premises on which the Collateral is kept. Debtor agrees to reimburse MFSC on demand for any payment made or any expense incurred by MFSC pursuant to the foregoing authorization. Such payments or expenses by MFSC shall not constitute a waiver of any default or create any obligation for MFSC to make any such payment or expense thereafter. All such payments and expenses constitute Loans hereunder, bearing interest at the highest lawful rate, and shall be secured by the Collateral.

8. **Default.** Debtor shall, at the option of MFSC, be in default under this Agreement upon the happening or occurrence of any of the following events or conditions: (a) if not cured within ten (10) business days after receipt of written notice, default in the payment or performance of a Loan or any other obligation, covenant, or liability contained or referred to herein, or in any invoice, statement, book account, account stated, note, or other evidence of Debtor's debt to MFSC or any liability to MFSC of any endorser or guarantor of any of the obligations; (b) if any warranty, representation or statement made or furnished to MFSC by or on behalf of Debtor in this Agreement or otherwise was untrue in any material respect when made or furnished; (c) any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any indenture, agreement or undertaking; (d) loss, theft, damage, destruction, sale (except as herein expressly provided), or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereto or thereon or the failure to pay when due any tax thereon or, with respect to any insurance policy, any premium thereon; (e) if judgment as to the Collateral is entered against Debtor; (f) if Debtor is a corporation that undergoes a merger or consolidation, or the transfer of a substantial part of its property; (g) the occurrence of a dissolution, termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor.

9. **Remedies.** Upon default and at all times thereafter, (a) the interest rate applicable to the Loans will, at MFSC's option, be increased to the Prime Rate plus five percent (5%) (b) MFSC may declare all obligations secured hereby immediately due and payable and (c) MFSC shall, among all other rights and remedies available under applicable law, have the remedies of a secured party

under the Uniform Commercial Code in the State of Iowa and/or the Interstate Commerce Commission. After giving Debtor at least ten (10) business days written notice (which notice period Debtor hereby acknowledges to be adequate and reasonable), MFSC may conduct a private or public sale of the Collateral or otherwise take possession of or dispose of the Collateral in any manner permitted under applicable law and may direct third parties to send directly to MFSC all payments, distributions, and other proceeds relating to the Collateral. Any proceeds of a disposition of any Collateral may be applied by MFSC (regardless of whether an event of default has occurred) to the payment of expenses in connection with the Collateral, including attorneys' fees, and the balance of such proceeds may be applied by MFSC toward payment of the Loans in such order of application as MFSC may elect. If any payment required hereunder is more than ten days late, Debtor shall pay MFSC, without notice or demand, a late charge equal to five percent (5%) of the payment as compensation for MFSC's expense in collecting and administering delinquent accounts, and not as interest. In no event will MFSC be entitled to receive at any time any charges not allowed by law or any interest in excess of the highest lawful rate. Any payments of interest in excess of the highest lawful rate will be credited by MFSC toward other amounts due hereunder or, at Debtor's option, exercised in writing, refunded to Debtor.

10. **Advice of Counsel.** Debtor has have received independent legal advice from attorneys of their own choice with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by the Debtor, said attorneys have reviewed this Agreement in length, made all desired changes, and advised the Debtor fully as to the content and import of this Agreement.

11. **Attorneys Fees.** Debtor shall pay all reasonable attorneys' and paralegals' fees and other expenses incurred in connection with the collection of the Loans, and in any legal proceedings related to this Agreement or to such collection, including, without limitation, trial, appellate and bankruptcy proceedings.

12. **Choice of Law; Venue.** This Agreement shall be deemed to have been made in the State of Iowa, regardless of the order in which the signatures of the parties shall be affixed hereto and shall be interpreted in accordance with the laws of such State. As part of the consideration for this Agreement, Debtor consents to the jurisdiction of any local, state, or federal court located within such State. Debtor waives any objection to venue of any action instituted hereunder and consents to the granting of such legal or equitable relief as is deemed appropriate by the court.

13. **Counterparts.** This Agreement may be executed in counterparts and each counterpart may be deemed an original.

14. **Warranties of MFSC.** NO WARRANTIES, EXPRESSED OR IMPLIED, OF ANY KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY MFSC IN REFERENCE TO THE COLLATERAL. RATHER, THE UNDERSIGNED DEBTOR SHALL LOOK EXCLUSIVELY TO ANY PRODUCT WARRANTY GIVEN BY THE MANUFACTURER.

15. **Miscellaneous.** When any provision of this Agreement requires or prohibits action to be taken by a person, the provision applies regardless of whether the action is taken directly or indirectly by the person. Furthermore, MFSC may enforce this Agreement against any one or more of the Debtors without joining all the Debtors hereunder or enforcing the security interest granted herein. Time is of the essence of this Agreement. This Agreement will become effective as of its stated date of execution. A waiver, amendment, modification, or termination of this Agreement will be valid and effective only if it is in writing and signed by each party. In addition, a written waiver by MFSC of a default under any provision of this Agreement will not operate as a waiver of any other default or of a succeeding default under the same provision or as a waiver of the provision itself. A delay, omission, or course of dealing on the part of MFSC in exercising any right, power, or remedy will not operate as a waiver of it, except when this Agreement expressly requires the right, power, or remedy to be exercised within a specified time, and a single remedy does not preclude any further exercise of it or the exercise of any other right, power, or remedy. The exercise or nonexercise by MFSC of any right, power, or remedy does not constitute a waiver of any default by Debtor under this Agreement. This Agreement inures to the benefit of MFSC's assignees and successors and is binding on Debtor's heirs, executors, administrators, assignees and successors. Each notice, consent, or approval required or permitted under this Agreement will be valid only if it is given in writing (or sent by telex, telegram, or telecopy and promptly confirmed in writing) and addressed to the recipient at its address stated herein, or to such other address as either party may designate by notice to the other party. A validly given notice, consent, or approval will be effective on the earlier of its receipt, if hand delivered, or on the third day after it (or the written confirmation of it) is postmarked for dispatch by first class, postage prepaid, United States mail.

16. **Waiver of Jury Trial.** DEBTOR AND MFSC HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MFSC ENTERING INTO THE LOANS SECURED HEREBY.

DEBTOR(S)

IOWA INTERSTATE RAILROAD, LTD.

BY: Robert C. Finley
Name: Robert C. Finley
Title: Executive Vice-President

Address: 800 WEBSTER ST
IOWA CITY, IA 52246

SECURED PARTY

MAYTAG FINANCIAL SERVICES CORP.

By: Edward D. Shuey
Name: EDWARD D. SHUEY
Title: DIRECTOR OF CREDIT

Address: 403 W. 4th St. N.
Newton, Iowa 50208

Acknowledgement

State of Iowa :
 :SS:
County of Polk :

On this 21st day of July, 1994 before me personally appeared, Edward D. Shuey, to me personally known, who being by me duly sworn, says that he is the Director of Credit of Maytag Financial Services Corp., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Natalie L. Todd
Signature of notary public
My Commission expires



State of Iowa :
 :SS:
County of Polk :

On this 21st day of July, 1994 before me personally appeared, Robert C. Finley, to me personally known, who being by me duly sworn, says that he is the Executive Vice President of Iowa Interstate Railroad, Ltd., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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