



January 14, 1999

Vernon A. Williams,
Secretary
Surface Transportation Board
1925 K St. N.W., Suite 700
Washington, DC 20423

RECORDATION NO. 21981 FILED
JAN 19 '99 10-45 AM

Dear Secretary:

I have enclosed an original and one copy-counterpart of the document(s) described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Mortgage, Security Agreement, Assignment, Financing Statement and Fixture Filing a primary document, dated December 10, 1998.

We request that this assignment be crossed-indexed. The names and addresses of the parties to the documents are as follows:

Mortgagor: Rock & Rail, Inc.
6435 South Pontiac Ct.
Englewood, Colorado 80111

Mortgagee: U.S. Bank National Association
503 North Main Street
Pueblo, Colorado 81003

A description of the equipment covered by the document follows:

All rolling stock of Mortgagor now owned or hereafter acquired including, without limitation, all locomotives, cars or other rolling stock. Included in the property covered by the aforesaid mortgage are locomotives, cars and other rolling stock intended for use related to interstate commerce, or interests therein, owned by Rock & Rail, Inc. at the date of said mortgage or thereafter acquired by it or its successors as owners of the lines or railway covered by the mortgage.

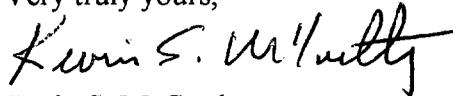
A fee of \$26.00 is enclosed. Please return the original and any extra copies not needed by the Board for recordation to U.S. Bank National Association, Attn: Kevin S. McCarthy
503 N. Main, Pueblo, CO 81003

A short summary of the document to appear in the index follows:

Mortgage, Security Agreement, Assignment, Financing Statement and Fixture Filing between Rock & Rail, Inc. (Mortgagor) whose address is 6435 South

Pontiac Ct., Englewood, CO 80111 and U.S. Bank National Association
(Mortgage) whose address is 503 North Main Street, Pueblo, CO 81003 covering
all locomotives, cars and other rolling stock of Mortgagor now owned or hereafter
acquired.

Very truly yours,

A handwritten signature in black ink that reads "Kevin S. McCarthy". The signature is written in a cursive style with a long, sweeping underline.

Kevin S. McCarthy
Vice President

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

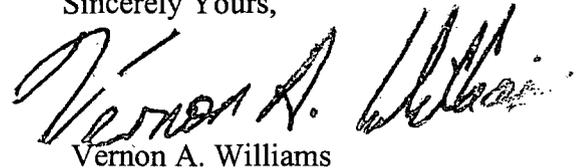
OFFICE OF THE SECRETARY

Kevin S. McCarthy
U.S. Bank National Association
503 North Main Street
Pueblo, Colorado 81003

Dear Sir:

The enclosed documents (s) was recorded pursuant to the provisions of 49 U.S.C.
11301 and CFR 1177.3 (c), on 1/19/99 at 10:45 AM, and
assigned recordation numbers (s): 21981.

Sincerely Yours,



Vernon A. Williams

Enclosure(s)
26.00

\$_____ 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. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature





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**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT,
FINANCING STATEMENT AND FIXTURE FILING**

RECORDATION NO. 21981 FILED

FROM

ROCK & RAIL, INC.
(Tax I.D. No. 84-1128007)

JAN 19 '99

10-45 AM

TO

U.S. BANK NATIONAL ASSOCIATION

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS.
THIS INSTRUMENT SECURES PAYMENT OF FUTURE ADVANCES.
THIS INSTRUMENT CREATES A PURCHASE-MONEY SECURITY INTEREST AS TO
PORTIONS OF THE COLLATERAL COVERED HEREBY.

SOME OF THE PERSONAL PROPERTY CONSTITUTING A PORTION OF THE
COLLATERAL IS OR IS TO BE AFFIXED TO THE REAL ESTATE COVERED
HEREBY.

MORTGAGOR HAS AN INTEREST OF RECORD IN THE REAL ESTATE CONCERNED.

~~THIS INSTRUMENT WAS PREPARED BY: AND
WHEN RECORDED SHOULD BE RETURNED TO:~~

David G. Stolfa
3300 South Columbine Circle
Englewood, Colorado 80110

AND SHOULD BE RETURNED TO:
U.S. Bank National Association
Attn: Kevin McCarthy
503 North Main Street
Pueblo CO 81003

#981254



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MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT, FINANCING STATEMENT
AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT, FINANCING STATEMENT AND FIXTURE FILING (this "Instrument"), dated as of December 10, 1998, is from and ROCK & RAIL, INC., a Colorado corporation, Tax I.D. No. 84-1128007 ("Mortgagor"), with an address at 6435 South Pontiac Court, Englewood, Colorado 80111, to U.S BANK NATIONAL ASSOCIATION ("USB"), with an address at 918 Seventeenth Street, Denver, Colorado 80202.

RECITAL

Pursuant to the terms of a Revolving Credit and Draw Loan Agreement dated as of December 10, 1998, among Mortgagor and Agile Stone Systems, Inc. ("ASSI"), as borrowers, and USB, as lender, as the same may hereafter be modified, extended, amended and/or restated from time to time (the "Loan Agreement"), USB has made, and may in the future make, one or more loans to Mortgagor and ASSI in the aggregate amount of up to \$6,250,000.

DEFINITIONS

For the purposes of this Instrument, the following terms shall have the following meanings:

A. "Collateral" shall mean:

(1) All of Mortgagor's right, title and interest, whether by direct ownership, lease, sublease, contract or other agreement, and whether heretofore or hereafter acquired, in and to any and all property and other rights located in Fremont County, Colorado or located in any other Colorado county described in Exhibit "A" (all of which, other than the "Canon City/Parkdale Railroad Property" described below, is hereinafter collectively called the "Colorado Property"), including without limitation Mortgagor's contract rights, whether under the Agreement (Regarding Use of Track) described in Exhibit "A" or otherwise, with respect to the line of railroad from milepost 160.15 in Canon City, Colorado, to Milepost 171.9 at Parkdale, Colorado, as such line of railroad is located in Fremont County, Colorado, and as more particularly described in Exhibit "A" attached hereto and made a part hereof, including, without limitation, all of Mortgagor's contract rights in and to all lead, spur, turnout, tail, siding and team tracks, crossing



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signals, bridges, fixtures and all other operating and non-operating appurtenances to said line of railroad located thereon and any and all air rights over the line of railroad and all scrap railroad ties (the foregoing specifically-described line of railroad and related rights being hereinafter collectively called the "Canon City/Parkdale Railroad Property" and Mortgagor's contract rights with respect to the Canon City/Parkdale Railroad Property being hereinafter collectively called the "Canon City/Parkdale Railroad Contract Rights");

(2) Any and all Rolling Stock, including without limitation any and all Rolling Stock described in Exhibit "A" hereto;

(3) All of the accounts, contract rights, general intangibles, fixtures, permits and other rights of Mortgagor, of whatever nature, heretofore or hereafter arising, and whether arising in connection with the Colorado Property, the Canon City/Parkdale Railroad Contract Rights, the Rolling Stock or otherwise, including, without limitation, any and all Permits and Related Agreements;

(4) All of the rights, privileges, benefits, hereditaments and appurtenances in any way belonging, incidental or appertaining to any of the property described under Paragraphs (1) through (3) above; and

(5) All of the proceeds and products of the property described under Paragraphs (1) through (4) above, including, without limitation, condemnation awards and the proceeds of any and all title insurance policies and other insurance policies covering all or any part of said property and, to the extent they may constitute proceeds, instruments, accounts, securities, general intangibles and contract rights.

B. "Permits" shall mean all governmental authorizations, approvals, permits, variances, land use entitlements, consents, licenses, franchises and agreements now or hereafter required for operating a railroad on all or any part of the Colorado Property or the Canon City/Parkdale Railroad Property, including without limitation any and all of the foregoing described in Exhibit "A" hereto.

C. "Related Agreements" shall mean any and all agreements, assignments, options, licenses, concessions, work agreements, joint venture agreements, partnerships, operating agreements, surface use agreements and surface use and damage agreements, easements, rights-of-way, options and all other conveyances, transfers, agreements or arrangements (whether previously or hereafter made, and whether existing now or hereafter) relating to all or any part of the Colorado Property or the Canon City/Parkdale Railroad Property, together with all



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rights of Mortgagor thereunder, including without limitation any and all of the foregoing described in Exhibit "A" hereto.

D. "Rolling Stock" shall mean all now or hereafter existing or acquired locomotives, rail cars, vehicles, equipment and rolling stock owned, leased, used or otherwise possessed by Mortgagor, including without limitation any and all of the foregoing used in whole or in part, on or in connection with the Colorado Property or the Canon City/Parkdale Railroad Property, and any of the foregoing described in Exhibit "A" hereto.

GRANT

IN CONSIDERATION of the sum of ten dollars (\$10.00) in hand paid to Mortgagor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby grants, bargains, sells, assigns, transfers, pledges, mortgages and conveys, and grants a security interest in, the Collateral to USB, WITH POWER OF SALE pursuant to this Instrument and applicable law; TO HAVE AND TO HOLD the Collateral to USB and its successors and assigns forever, subject to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of USB.

AND in furtherance thereof Mortgagor warrants, represents, covenants and agrees as follows:

ARTICLE I

Obligations

Section 1.1 This Instrument is executed, acknowledged and delivered by Mortgagor to secure and enforce the following obligations (herein called the "Obligations"):

A. (1) Payment of and performance of any and all obligations of Mortgagor and ASSI under or in connection with the Promissory Note dated December 10, 1998 (as the same may hereafter be extended, amended or modified, herein called the "Term Note"), made by Mortgagor and ASSI, in the face amount of \$5,500,000, payable to the order of USB on or before December 10, 2003 (unless payable sooner pursuant to the terms of the Loan Agreement), with interest at the rate specified in the Loan Agreement, which rate at the date hereof is an annual rate equal to the fluctuating interest rate announced publicly by USB from time to time as its reference rate, which may not be the lowest interest rate charged by USB (the "Reference Rate") plus one-quarter of one percentage point per annum;



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(2) Payment of and performance of any and all obligations of Mortgagor and ASSI under or in connection with the Promissory Note dated December 10, 1998 (as the same may hereafter be extended, amended or modified, herein called the "Revolving Note"), made by Mortgagor and ASSI, in the face amount of \$750,000, payable to the order of USB on or before June 10, 2000 (unless payable sooner pursuant to the terms of the Loan Agreement), with interest at the rate specified in the Loan Agreement, which rate at the date hereof is an annual rate equal to the fluctuating Reference Rate plus one-quarter of one percentage point per annum;

B. All indebtedness, liabilities and obligations of Mortgagor and/or ASSI to USB of every kind and character, now existing or hereafter arising, pursuant to or in connection with the Loan Agreement;

C. Payment of all sums advanced and costs and expenses incurred by USB (whether directly or indirectly and including, without limitation, all legal and engineering fees) in connection with the items described under A or B above or any part thereof, any renewal, extension or change of or substitution for the items described under A or B above or any part thereof, or the acquisition or perfection of the security therefor, whether such advances, costs and expenses were made or incurred at the request of Mortgagor or USB;

D. Payment of all other indebtedness and liabilities and performance of all other obligations of any or all of the Mortgagor to USB arising pursuant to this Instrument or in connection with this Instrument; and

E. All renewals, extensions, amendments and changes of, or substitutions or replacements for, all or any part of the items described under A through D above.

ARTICLE II

Warranties, Representations and Covenants

Section 2.1 Mortgagor warrants, represents and covenants to and with USB that: (a) any and all permits, leases, licenses, agreements, contracts and other instruments relating thereto described in Exhibit "A" hereto are valid and subsisting and are in full force and effect insofar as they cover or relate to the Collateral; (b) Mortgagor is the lawful owner of good and defensible title to the Collateral, free and clear of all liens, security interests, encumbrances and burdens, except liens, security interests and other matters permitted by the terms of the Loan Agreement; (c) all payments due and payable in connection with the Collateral and all taxes payable by Mortgagor with respect to the



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Collateral have been properly and timely paid; (d) all of Mortgagor's operations on or in connection with the Colorado Property or the Canon City/Parkdale Railroad Property have been conducted in conformity with all applicable laws and rules, regulations and orders of all regulatory authorities having jurisdiction, and are subject to no penalties on account of past production; (e) each loan, the payment of which constitutes an Obligation hereunder, is or shall be for a business or commercial purpose; and (f) Mortgagor warrants and will forever defend the title to the Collateral against the claims of all persons whomsoever claiming or to claim the same or any part thereof.

Section 2.2 Mortgagor covenants that, so long as any part of the Obligations remains unpaid or unsatisfied, unless USB shall have otherwise consented in writing:

A. Mortgagor shall promptly and, insofar as not contrary to applicable law, at Mortgagor's own expense, file and refile in such offices, at such times and as often as may be necessary, this Instrument and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the lien, encumbrance and security interest intended to be created hereby and the rights and remedies of USB hereunder;

B. Mortgagor shall execute, acknowledge and deliver to USB such other and further instruments and do such other acts as in the reasonable opinion of USB may be necessary or desirable to more fully identify and subject to the lien, encumbrance and security interest and assignment created hereby any property intended by the terms hereof to be covered hereby, to assure the first priority thereof, and otherwise to effect the intent of this Instrument, promptly upon request of USB and at Mortgagor's expense, including without limitation amendments to this Instrument containing specific descriptions of items of Rolling Stock hereafter acquired by Mortgagor; and

C. If the title, interest, lien or encumbrance, as the case may be, of Mortgagor or USB to the Collateral or any part thereof, or the security of this Instrument, or the rights or powers of USB hereunder, shall be attacked, either directly or indirectly, or if any legal proceedings are commenced involving Mortgagor or the Collateral, Mortgagor shall promptly give written notice thereof to USB and at Mortgagor's own expense shall take all reasonable steps diligently to defend against any such attack or proceedings; and USB may take such independent action in connection therewith as it may in its discretion deem advisable, and all



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costs and expenses, including, without limitation, reasonable attorneys' fees and legal expenses, incurred by USB in connection therewith shall be a demand obligation owing by Mortgagor to USB, shall bear interest at the rate provided in the Term Note, and shall be a part of the Obligations.

ARTICLE III

Termination

If all of the Obligations of Mortgagor and ASSI shall be paid or performed in full pursuant to the terms and conditions of this Instrument and the instruments evidencing the Obligations and if USB has no further obligation to make advances to Mortgagor and/or ASSI, then USB shall, promptly after the request of Mortgagor, execute, acknowledge and deliver to Mortgagor proper instruments evidencing the termination of this Instrument. Mortgagor shall pay all reasonable legal fees and other expenses incurred by USB for preparing and reviewing such instruments of termination and the execution and delivery thereof, and USB may require payment of the same prior to delivery of such instruments. Otherwise, this Instrument shall remain and continue in full force and effect.

ARTICLE IV

Default

Section 4.1 The occurrence of any of the events of default described in the Loan Agreement, including without limitation the expiration of any applicable grace periods ("Events of Default") shall, automatically (as described in the Loan Agreement), or at the option of USB, make all amounts then remaining unpaid on the Obligations immediately due and payable, and the liens, encumbrances and security interests evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law.

Section 4.2 Upon the occurrence of any of the Events of Default, or at any time thereafter, USB may elect to treat the fixtures included in the Collateral as real property, as personal property or as both, and may proceed to exercise such rights as apply to the type of property selected.

Section 4.3 Upon the occurrence of any of the Events of Default, and at all times thereafter, in addition to all other rights and remedies herein conferred, USB shall have all of the rights and remedies of a mortgagor under a



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mortgage with respect to all of the Collateral. This Instrument shall be effective as a mortgage, and, upon the occurrence of an Event of Default, may be foreclosed as to any of the Collateral in any manner permitted by applicable law, and any foreclosure suit may be brought by USB. The provisions set forth in this Section 4.3 shall not in any way limit any other provision of this Instrument. USB shall, to the extent permitted by applicable law (and to the extent that Mortgagor has the right to do so), have the right and power, but not the obligation, to enter upon and take immediate possession of the real property included in the Collateral or any part thereof, to exclude Mortgagor therefrom, to hold, use, operate, manage and control such real property, to make all such repairs, replacements, alterations, additions and improvements to the same as USB may deem proper, and to demand, collect and retain all other earnings, proceeds and other sums due or to become due with respect to such real property, accounting for and applying to the payment of the Obligations only the net earnings arising therefrom after charging against the receipts therefrom all costs, expenses, charges, damages and losses incurred by reason thereof plus interest thereon at an annual rate which equals the sum of the Reference Rate plus five percentage points per year, as fully and effectually as if USB were the absolute owner of such real property and without any liability to Mortgagor in connection therewith.

Section 4.4 Upon the occurrence of any of the Events of Default, or at any time thereafter, USB, in lieu of or in addition to exercising any other power, right or remedy herein granted or by law or equity conferred, may proceed by an action or actions in equity or at law for the seizure and sale of the real property included in the Collateral or any part thereof, for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power, right or remedy herein granted or by law or equity conferred, for the foreclosure or sale of such real property or any part thereof under the judgment or decree of any court of competent jurisdiction, for the appointment of a receiver pending any foreclosure hereunder or the sale of such real property or any part thereof or for the enforcement of any other appropriate equitable or legal remedy.

Section 4.5 Upon the occurrence of any of the Events of Default, or at any time thereafter, in addition to all other powers, rights and remedies herein granted or by law or equity conferred, USB shall have all of the rights and remedies of an assignee and secured party granted by applicable law, including the Uniform Commercial Code, and shall, to the extent permitted by applicable law (and to the extent that Mortgagor has the right to do so), have the right



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and power, but not the obligation, to take possession of the personal property included in the Collateral, and for that purpose USB may enter upon any premises on which any or all of such personal property is located and take possession of and operate such personal property or remove the same therefrom. USB may require Mortgagor to assemble such personal property and make it available to USB at a place to be designated by USB which is reasonably convenient to both parties. The following presumptions shall exist and shall be deemed conclusive with regard to the exercise by USB of any of its remedies with respect to personal property:

(a) If notice is required by applicable law, five days' prior written notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition thereof is to be made shall be reasonable notice to Mortgagor. No such notice is necessary if such property is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(b) Without in any way limiting the right and authority of USB to sell or otherwise dispose of Collateral in a commercially reasonable manner, the following shall be considered commercially reasonable: (i) USB may hold a public sale of the Collateral in Denver, Colorado, after having provided Mortgagor with five days' notice of such sale and after having published notice of such sale by an advertisement in such publication as may be permitted or required under applicable state law, as USB determines to be appropriate (which advertisement may be placed in the "classified" section), for a period of not less than five consecutive issues commencing not more than ten days prior to the sale; (ii) the Collateral may be sold for cash; and (iii) USB or any other person owning, directly or indirectly, any interest in any of the Obligations may be a purchaser at such sale.

Section 4.6 Upon the occurrence of any of the Events of Default, or at any time thereafter, USB may, with respect to all or any portion of the Collateral, subject to any mandatory requirements of applicable law, sell or have sold the real property or interests therein included in the Collateral or any part thereof at one or more sales, as an entirety or in parcels, at such place or places and otherwise in such manner and upon such notice as may be required by law or by this Instrument, or, in the absence of any such requirement, as USB may deem appropriate. USB may postpone the sale of such real property or interests therein or any part thereof by public announcement at the time and place of such sale, and from time to time thereafter may further



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postpone such sale by public announcement made at the time of sale fixed by the preceding postponement; provided that USB shall give notice to Mortgagor of any such postponement promptly after the public announcement thereof. Sale of a part of such real property or interests therein or any defective or irregular sale hereunder will not exhaust the power of sale, and sales may be made from time to time until all such property is sold without defect or irregularity or the Obligations are paid in full. USB shall have the right to appoint one or more attorneys-in-fact to act in conducting the foreclosure sale and executing a deed to the purchaser. It shall not be necessary for any of the Collateral at any such sale to be physically present or constructively in the possession of USB.

Section 4.7 USB or any other person owning, directly or indirectly, any interest in any of the Obligations shall have the right to become the purchaser at any sale made pursuant to the provisions of this Article V and shall have the right to credit upon the amount of the bid made therefor the amount payable to it under or in connection with the Obligations. Recitals contained in any conveyance to any purchaser at any sale made hereunder will conclusively establish, as to any and all third parties, the truth and accuracy of the matters therein stated, including without limitation nonpayment of the Obligations and advertisement and conduct of such sale in the manner provided herein or provided by law. Mortgagor hereby ratifies and confirms all legal acts that USB may do in carrying out the provisions of this Instrument.

Section 4.8 Mortgagor hereby waives and relinquishes, to the maximum extent permitted by law, and subject to any mandatory requirements of applicable law, Mortgagor hereby agrees that Mortgagor shall not at any time hereafter have or assert, any right under any law pertaining to: marshalling, whether of assets or liens, the sale of property in the inverse order of alienation, the exemption of homesteads, the administration of estates of decedents, appraisal, valuation, stay, extension, redemption, subrogation, or abatement, suspension, deferment, diminution or reduction of any of the Obligations (including, without limitation, setoff), now or hereafter in force. Mortgagor expressly agrees that USB may offer the Collateral as a whole or in such parcels or lots as USB, in its sole discretion elects, regardless of the manner in which the Collateral may be described.

Section 4.9 All costs and expenses (including reasonable attorneys' fees, legal expenses, filing fees, and mortgage, transfer, stamp and other excise taxes) incurred by



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USB in perfecting, protecting and enforcing its rights hereunder, whether or not an Event of Default shall have occurred, shall be a demand obligation of Mortgagor to USB and shall bear interest at the applicable rate provided in the Term Note, all of which shall be part of the Obligations.

Section 4.10 The proceeds of any sale of the Collateral or any part thereof made pursuant to this Article V shall be applied as follows:

A. First, to the payment of all costs and expenses incident to the enforcement of this Instrument, including, without limitation, such reasonable fees and expenses as may be payable by USB to the agents, attorneys and counsel of USB;

B. Second, to the payment or prepayment of the Obligations, in such order as USB shall elect; and

C. Third, the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law.

Section 4.11 Upon any sale made under the powers of sale herein granted and conferred, the receipt of USB will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of USB, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

ARTICLE V

Miscellaneous Provisions

Section 5.1 Each and every right, power and remedy hereby granted to USB shall be cumulative and not exclusive, and each and every right, power and remedy whether specifically hereby granted or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by USB, and the exercise of any such right, power or remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. All amendments and modifications of this Instrument must be in writing and signed by Mortgagor and USB.

Section 5.2 If any provision hereof or of any of the other documents constituting, evidencing or creating all or any part of the Obligations is invalid or unenforceable in



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any jurisdiction, the other provisions hereof or of said documents shall remain in full force and effect in such jurisdiction and the remaining provisions hereof will be liberally construed in favor of USB in order to carry out the provisions hereof and of such other documents. The invalidity of any provision of this Instrument in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.

Section 5.3 This Instrument will be deemed to be and may be enforced from time to time as an assignment, contract, financing statement, real estate mortgage, or security agreement, and from time to time as any one or more thereof, as is appropriate under applicable state law. A carbon, photographic or other reproduction of this Instrument or any financing statement in connection herewith shall be sufficient as a financing statement for any and all purposes.

Section 5.4 Notwithstanding anything to the contrary contained herein, no rate of interest required hereunder or under the Obligations shall exceed the maximum legal rate under applicable law, and, in the event any such rate is found to exceed such maximum legal rate, Mortgagor shall be required to pay only such maximum legal rate.

Section 5.5 Insofar as permitted by otherwise applicable law, this Instrument and the Obligations shall be construed under and governed by the laws of the State of Colorado (including, without limitation, choice of law and conflict of law rules).

Section 5.6 This Instrument may be executed in several original counterparts. To facilitate filing and recording, there may be omitted from certain counterparts the parts of Exhibit "A" hereto containing descriptions of the Colorado Property or the Canon City/Parkdale Railroad Property under the jurisdiction of offices or located in counties other than the office or county in which the particular counterpart is to be filed or recorded. Each counterpart shall be deemed to be an original for all purposes, and all counterparts shall together constitute but one and the same instrument.

Section 5.7 Unless otherwise specified in Exhibit "A" hereto, all recording references in Exhibit "A" hereto are to the official real property records of the county in which the affected land is located. The references in Exhibit "A" hereto to liens, encumbrances and other burdens shall not be deemed to recognize or create any rights in third parties.



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Section 5.8 All deliveries and notices hereunder shall be deemed to have been duly made or given if made or given in conformity with the provisions of the Loan Agreement.

Section 5.9 This Instrument shall bind and inure to the benefit of the respective successors and assigns of Mortgagor and USB, including, without limitation, any and all other banks, lending institutions and parties which may participate in the indebtedness evidenced by the Obligations or any of them. Notwithstanding any other provision contained herein, if any property interest granted by this Instrument does not vest on the execution and delivery of this Instrument, it shall vest, if at all, no later than 20 years days after the execution and delivery of this Instrument. As used herein, the term "person" shall mean individual, corporation, partnership, joint venture, agency or other form of entity or association.

Section 5.10 Some of the above goods are or are to become fixtures on the Colorado Property or the Canon City/Parkdale Railroad Property. This Instrument is to be filed for record in, among other places, the real estate records of each county in which the affected real estate is located; to wit, all of those listed in Exhibit "A" hereto. Mortgagor is the owner of a record interest in the real estate concerned. The mailing addresses of Mortgagor and the address of USB from which information concerning the security interest may be obtained are as set forth above.

Section 5.11 USB shall be entitled to enforce payment of any indebtedness and performance of any other of the Obligations secured hereby and to exercise all rights and powers under this Instrument or under any other instrument or other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of said indebtedness and other Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained shall prejudice or in any manner affect USB's right to realize upon or enforce any other security now or hereafter held by USB, it being agreed that USB shall be entitled to enforce this Instrument and any other security now or hereafter held by USB in such order and manner as it may in its absolute discretion determine.



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EXECUTED as of the date first above written.

ATTEST:

ROCK & RAIL, INC.

W.H. Fehr
Secretary

By: *W.H. Fehr*
President

STATE OF COLORADO

)

) ss.

CITY AND COUNTY OF DENVER

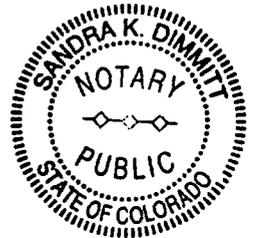
)

The foregoing instrument was acknowledged before me this 10th day of December, 1998, by W.H. Fehr, as the President of ROCK & RAIL, INC., a Colorado corporation. Witness my hand and official seal.

Sandra K Dimmitt
Notary Public

My commission expires: 9-14-2001

(SEAL)





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PREAMBLE TO

EXHIBIT "A"

Unless provided otherwise, all recording references in this Exhibit "A" are to the official real property records of the county or counties in which the Colorado Property or the Canon City/Parkdale Railroad Property is located and in which records such documents are or in the past have been customarily recorded.



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EXHIBIT "A"

FREMONT COUNTY, COLORADO

- (1) The right of way, trackage and appurtenances of a portion of the Tennessee Pass Subdivision, acquired from Union Pacific Railroad Company (previously Denver and Rio Grande Western Railroad Company), in Canon City, Fremont County, Colorado, as said line extends in a southwesterly direction from the east line of Section 32, Township 18 South, Range 70 West of the 6th Principal Meridian to the southeasterly prolongation of the southwesterly line of Third Street;
- (2) The right of way, trackage and appurtenances of a portion of aforesaid Tennessee Pass Subdivision, acquired from Union Pacific Railroad Company (previously Denver and Rio Grande Western Railroad Company), in Fremont County, Colorado, lying northwesterly of a line 7.50 feet distant southeasterly, as measured at right angles and/or radially, from the centerline of the main track of said subdivision and extending from the southeasterly prolongation of the southwesterly line of Third Street to a perpendicular line through said centerline at Railroad Engineering Station 2085-65, said stationing being at the westerly head block of the southerly siding, track I.C.C. No. 64A.
- (3) The right of way, trackage and appurtenances of a portion of aforesaid Tennessee Pass Subdivision, acquired from Union Pacific Railroad Company (previously Denver and Rio Grande Western Railroad Company), in Fremont County, Colorado as said line extends in a westerly and northwesterly direction from a perpendicular line through the centerline of the main track of said subdivision at Railroad Engineering Station 2085-65, said stationing being at the westerly head block of the southerly siding, track I.C.C. No. 64A, to the west line of the NE/4 of Section 14, Township 18 South, Range 72 West of the 6th Principal Meridian, in and over and across the following legal subdivisions:



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<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>
SW/4SE/4	31	18 S.	70 W.	6TH
S/2SE/4SW/4	"	"	"	"
N/2N/2N/2NW/4	6	19 S.	70 W.	6TH
S/2SW/4SW/4	31	18 S.	70 W.	6TH
S/2SE/4	36	18 S.	71 W.	6TH
E/2SW/4	"	"	"	"
NW/4SW/4	"	"	"	"
W/2SW/4SW/4NW/4	"	"	"	"
SE/4NE/4	35	"	"	"
N/2NE/4	"	"	"	"
SW/4SE/4	26	"	"	"
E/2SW/4	"	"	"	"
W/2SE/4NW/4	"	"	"	"
W/2NW/4	"	"	"	"
NE/4	27	"	"	"
E/2NE/4NW/4	"	"	"	"
S/2SW/4	22	"	"	"
E/2SE/4	21	"	"	"
N/2NW/4SE/4	"	"	"	"
S/2S/2SW/4NE/4	"	"	"	"
NE/2NE/4NE/4SW/4	"	"	"	"
S/2NW/4	"	"	"	"
N/2N/2NW/4SW/4	"	"	"	"
SE/4NE/4	20	"	"	"
N/2NE/4	"	"	"	"
NE/4NW/4	"	"	"	"
S/2SW/4	17	"	"	"
S/2SE/4	18	"	"	"
NW/4SE/4	"	"	"	"
W/2NE/4	"	"	"	"
NE/4NE/4NW/4	"	"	"	"
S/2S/2SW/4	7	"	"	"
S/2S/2SE/4SE/4	12	18 S.	72 W.	6TH
N/2N/2NE/4	13	"	"	"
N/2NW/4	"	"	"	"
N/2NE/4	14	"	"	"
N/2N/2SW/4NE/4	"	"	"	"

AGREEMENTS

Agreement (Regarding Use of Track), among Mortgagor, ASSI, Royal Gorge Express, LLC and Canon City & Royal Gorge Railroad, LLC, relating to the Canon City/Parkdale Railroad Property.

AFFIDAVIT

State of COLORADO }
County of PUEBLO } ss.

The undersigned Notary Public upon _____ oath states as follows:

I have compared the attached copy of the Mortgage, Security Agreement, Assignment, Financing Statement and Fixture Filing from Rock & Rail, Inc. to U.S. Bank National Association dated as of December 10, 1998 with the original and I have found the copy to be complete and identical to the original document.

Dated this 15th day of JANUARY, 19999th

Linda Jensen
Notary Public

seal

Address: 503 N. Main
Pueblo, CO 81003

My commission expires: 2-13-00